

Is a Holograph Will a Good Idea?



By **Brian Madigan LL.B.**

How would you like to spend about \$50,000 on estate planning? This should get you a good Will and a good plan.

Maybe not!

Consider the case of Olga Laczova. She was indeed very frugal and accumulated a good deal of money over her lifetime. She thought lawyers were expensive and consequently avoided them.

She had two RRSP's, one with the Royal Bank and one with Scotiabank. When she opened them up she completed the **Beneficiary Designation Forms**. The beneficiaries were duly noted and were relatives. Upon her death the RRSP's held \$42,000.00 and \$91,000.00 respectively. She died leaving an estate worth \$608,000.00.

Only one little problem, Olga decided to complete a holograph Will. This is a Will completely in the handwriting of the testator and executed without witnesses. Olga listed her assets and also listed her beneficiaries. This time, she included more relatives and 19 charities.

The person who was called to administer the estate was not certain of Olga's intentions, so applied to Court for directions. At issue, was whether the Will revoked the Beneficiary Designations made about a decade earlier.

There was a great deal of discussion by the Court about the application of the appropriate statutory law to the circumstances of the case, namely s. 52 of the *Succession Law Reform Act*.

The Court said:

“A careful reading of s. 52(1) is sufficient to dispose of this alternative argument. Whereas s. 51(2) requires that a designation by will must relate “expressly to a plan, either generally or specifically”, s. 52(1) requires that a revocation in a will must relate “expressly to the designation, either generally or specifically”. But,, nowhere in the deceased's will is there any expression that relates to either of the previous designations in favour of her family members. By its very language, s. 52(1) renders a revocation in a will that fails to relate expressly to

the designation made by instrument ineffective to accomplish that purpose.”

So, the answer was in the Court’s view relatively straightforward.

However, this was the Ontario Court of Appeal and in order to get there, you first had to go to the Superior Court. Neither step is cheap. There were 19 charities and 5 relatives as beneficiaries as well as the Estate Trustee. That’s 25 different parties, each with their own lawyers and legal proceedings that entailed discoveries, motions and appeals. That’s a lot of money!

Conservatively, my guess is \$50,000.00. That’s more than the value of the Royal Bank RRSP. The simple mistake made by Olga Laczova when she signed her Will would easily have been caught by any lawyer.

Olga’s Will has cost her estate (that is, her beneficiaries) over \$50,000.00, so far. And, as that noted philosopher of the 21st Century, Yogi Berra once said “it ain’t over ‘til it’s over”.

However, one thing, for sure, no where in Olga’s Will did she state “the sum of \$50,000.00 to a group of random lawyers that I don’t know”.

If you have an estate, then get a lawyer to prepare your Will! It’s very expensive to have the Ontario Court of Appeal draft one for you.

You can read more about Olga’s case, see Laczova v. House (2001), 207 D.L.R. (4th) 341.

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