



## Contesting a will can be a risky business

Contesting a will is a time consuming and expensive process. It can easily take years to go to trial and run into tens, or even hundreds, of thousands of dollars depending on the case.

If a will is successfully contested, it's set aside and the previous will becomes valid to determine how the estate is distributed. If there isn't a previous will, the estate would be dealt with as if no will existed and distributed in accordance with provincial succession statutes.

Wills are contested for a number of reasons. One of the most common causes is the unequal treatment of beneficiaries.

Litigation could ensue if a person decides to leave more from the estate to one child than another either because of need or because the relationship was closer.

Sometimes the cause is simply that the estate plan is just out of date. For example, a person may have made a will in which they've left gifts to their grandchildren and the will was not amended to recognize other grandchildren born later.

Wills have also been successfully challenged on the grounds that they are not properly executed. There have been several cases where wills have not been properly signed or witnessed.

It's also very important for a person to make sure that they are using the correct name of a charity if they are leaving them money in their will. Charities have similar names and there have been cases where charities have fought over which one was entitled to the benefit.

*Continued on reverse*

## No will? No way!

Many people assume that if they don't have a will that their spouse or another family member will be able to carry out their wishes, or that their next of kin will simply inherit all that they own. In reality, it's not quite so simple.

In Ontario, if you die without a will, your estate is distributed in accordance with the rules set out in the Succession Law Reform Act. These rules may not coincide with your wishes.

If you leave a married spouse, your spouse will have the absolute right to your estate. Where there are both a surviving married spouse and children, the rules change. Your spouse inherits the first \$200,000.00 of your estate and shares the rest with your children (  $\frac{1}{2}$  of the residue where there is one child,  $\frac{1}{3}$  of the residue where there are two or more children).

*Continued on reverse*

## What is probate?

- Probate is the process that a will goes through to determine that it is valid, and it is at this point that the executor (estate trustee) is given legal authority by the court.
- Probate fees (in Ontario called the Estate Administration Tax) are based on a percentage of the value of the assets of the estate and can be minimized by effective estate planning.
- In Ontario, the tax is \$ 5.00 per \$ 1000.00 for the first \$ 50,000 worth of the estate and \$15.00 per thousand for the balance of the value of the estate.





## Contesting a will can be a risky business

(continued)

In Toronto, all parties must first attend mediation to attempt to settle the estate dispute before the case can proceed to trial. The parties won't always come to an agreement, but the law recognizes the benefits of having the estate settled without going to court.

Whether they get to trial or not, estate cases are different from other types of legal disputes because the main witness - the deceased - is obviously not there to give evidence.

It's not enough to simply make a claim - you must be able to prove it. Anything that is alleged to have been said by the deceased has to be corroborated by witnesses or other evidence.

Most people make a will to ensure their loved ones are comfortable and secure and never even think of challenges and family conflict. To avoid an estate dispute and the further stress that will put on your family, have your will properly drawn up, review it regularly and discuss any areas of concern with your legal counsel.



© Mike Baldwin / Cornered

BA Baldwin

“How will this affect my inheritance?”

Licensed by Cartoonstock

## No will? No way!

(continued)

If there is no spouse or children, the legislation provides the scheme of distribution among the next of kin in a specific order.

Without a will, a personal representative will be appointed by the court who may not be the person you would have chosen.

An estate administration bond may also be required which will increase the costs of administering your estate. No will also means there is no opportunity to do any estate planning or minimize taxes on the estate.

The very thought of estate planning causes many people to cringe and put off the writing of their wills until it's too late. Actually, it is not the deceased that need a will - it is their families and loved ones. Make sure that, when it matters most, you're the one calling the shots - not the courts.

*Always go to other people's funerals,  
otherwise they won't come to yours.*

*Yogi Berra*

**Charles B. Ticker, B.Sc., LL.B., TEP**  
Barrister and Solicitor

**Charles B. Ticker Law Office**  
7030 Woodbine Avenue, Suite 500  
Markham, Ontario L3R 6G2

**Tel:** 416-773-0007 **Fax:** 416-493-1855  
**Toll Free:** 1-866-677-7746

[www.tickerlaw.com](http://www.tickerlaw.com)