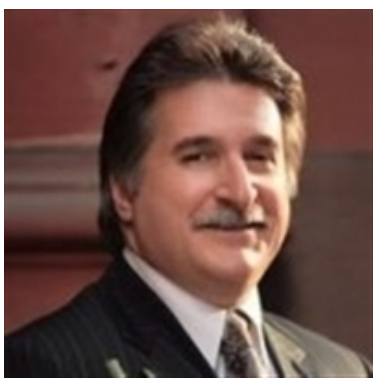
Estates & Wills & Trusts

Millionaire's handwritten notes wouldn't count as final wishes in Ontario

By Kirsten McMahon, Associate Editor



A Nova Scotia case — where a deceased millionaire's unsigned handwritten memos were ruled to count toward her testamentary intention — would play out differently in Ontario courts, Toronto-area estates litigator and mediator Charles B. Ticker tells AdvocateDaily.com.

The woman passed away at the age of 92, leaving behind a $6.7-million estate, the CBC reports. “Although she had a last will and testament dated 2009,” her personal representative “found two handwritten unsigned memos with more direction about her final wishes in her safety deposit box.”

A Supreme Court of Nova Scotia judge found that although the notes were not signed or witnessed and "were obviously self-made without the involvement of legal counsel,” they indicated the deceased’s "testamentary intention."

Ticker, who practises estates litigation and mediation at Charles B. Ticker Law Office, explains that in Ontario, a handwritten will must be signed by the testator and in his or her own handwriting in order to be valid.

“This woman’s handwritten notes weren’t signed or witnessed but they were testamentary in nature and referred to her will,” he says. “It's almost like this was an addendum or codicil.”

Ticker says while statutes in both provinces are similar when it comes to the requirements for valid typewritten and holographic wills, Nova Scotia amended its *Wills Act* in 2008 to include a section addressing “writings” that don't comply with the formal requirements.

Section 8(a) of the Nova Scotia Wills Act states: “Where a court of competent jurisdiction is satisfied that a writing embodies (a) The testamentary intentions of the deceased; or (b) The intention of the deceased to revoke, alter or revive a will of the deceased or the testamentary intentions of the deceased embodied in a document other than a will, the court may, notwithstanding that the writing was not executed in compliance with the formal requirements imposed by this Act, order that the writing is valid and fully effective as if it had been executed in compliance with the formal requirements imposed by this Act.”

Ticker says someone in Nova Scotia could scribble something without signing or dating it, but if it's established it goes to the testamentary intentions of the deceased, it may be admitted to probate.

Meanwhile, s. 6 of Ontario's *Succession Law Reform Act* (SLRA) states: “a testator may make a valid will wholly by his or her own handwriting and signature, without formality, and without the presence, attestation or signature of a witness.”

In Ontario, Ticker says unsigned handwritten notes or memos may help give insight as to the intention of a testator but would not stand alone as a bequest.

He says someone going into surgery, for example, may want to quickly write out their will with the intention to create a formal estate plan with a lawyer at a later date. Ticker cautions the holographic will has to be handwritten and signed by the testator and that under the SLRA, a typed will only signed by the testator without two witnesses present is not valid.

“At the end of the day, the amount of money to draw up a valid will with a lawyer is really quite modest compared to the cost consequences and legal fees that could be spent to unravel a mess,” he says.

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