



HOLOGRAPH WILLS – Testators Beware!

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“A man who dies without a will has lawyers for his heirs”. (Anonymous)

A will that is written completely in the hand of the testator and signed at its end by the testator is considered to be a valid will in Ontario. Such wills are known as “holograph wills”. They do not need to be witnessed. However, they do need to be drafted in a way that makes it clear that the document is meant to be a will or a “testamentary instrument”, intending to leave property after the death of the testator. It is also a good idea to date the will, although this is not mandatory to make it a valid will in Ontario.

An example of the holograph will that I learned as a law student was the case of Cecil Harris, a Saskatchewan farmer who was pinned under his tractor on June 8, 1948. On the tractor's fender, he scratched out the words, “In case I die in this mess, I leave all to my wife – Cecil Harris”. The court considered this to be a valid holograph will, and the tractor fender was admitted into probate. The fender is now permanently on display at the University of Saskatchewan Law Library.

Holograph wills are useful in cases of emergency. I do not recommend that they be used by anyone who really cares about what happens to their property after death. There are many cases involving holograph wills where the estate is worth hundreds of thousands or even millions of dollars. If the deceased relies on a holograph will to make bequests, litigation will likely result about the following types of disputes:

- (a) whether the will is valid;
- (b) ambiguous or contradictory language;
- (c) partial intestacy, missing pages, location of signature;
- (d) proof that the will is in the handwriting of the deceased; and
- (e) alterations to the will.

Another major problem with holograph wills is that they can easily go missing. I suspect that there are many cases where holograph wills have been kept in a secret place and are not found after death. I have heard of other cases where next of kin remove documentation and there is subsequently suspicion that a holograph will has been destroyed because the person removing the documentation did not like the contents of the will.

The same problems that arise with holograph wills also arise with attempts to make handwritten changes to wills. Any alteration on the face of the document will have no effect except to omit the words that can no longer be seen. There has been litigation about what kind of lights or devices can be used to try to see what words were written underneath a manually altered portion of the will. Altering an existing testamentary instrument will guarantee problems with proving the will. It may also give the testator the false impression that they have made an alteration to their will.

Where problems arise with any will, the cost of hiring lawyers to fight about these problems will be borne by the potential beneficiaries, relatives of the deceased or by the estate itself. There are cases where the whole estate has been consumed by legal fees, and potential beneficiaries receive nothing, or, even worse, are out-of-pocket for substantial sums of money.

There is a tendency to begrudge the cost of a lawyer to do something as straightforward as a simple will. This is false economy. In addition to preparing a will, a lawyer can keep the original will or a true copy of the will in a safe place, as well as retain a file that contains notes and information about the testator's competence and intentions, next of kin, property and assets. Lawyers can also discuss estate planning issues with clients. Individuals should pay as much care and attention to what happens to their property after they pass away as they do to what happens to their property while they are alive.