

Reaffirming the Importance of Clarity in Drafting a Will

By: Geoff S. Costeloe

Case Commented On: *MRM Estate (Re)*, [2015 ABQB 475](#)

A recent Alberta Court of Queen’s Bench decision has demonstrated the lengths that the Court can go to determine the true intentions of a testator of a Will. The central issue in this case is determining whether or not the provided Last Will and Testament of the Testatrix was genuine despite several deficiencies. This case highlights one of the important changes from the previous *Wills Act*, RSA 2000, c W-12 which was in force until February 2012 when it was replaced by the *Wills and Succession Act*, [SA 2010, c W-12.2](#) (the “Act”).

The relevant facts in the case are as follows.

The Testatrix passed away in 2014 at the age of 96. The provided Will was executed in November of 1996, making the document almost 30 years old. The alleged Will also contained several defects, specifically:

- The Will was not signed by the Testatrix;
- The pages of the Will preceding the page requiring signature were not initialed, despite the Will indicating that they were;
- Two witnesses signed the Will, indicating that the Testatrix signed the Will in their presence but neither of these witnesses can be located; and
- The alleged Will contained a backer that possessed a signature, allegedly of the Testatrix.

The applicable law includes sections 14 and 15 of the Act, which read as follows:

Requirements of a valid will

14 To be valid, a will

- (a) must be made in writing,
- (b) must contain a signature of the testator that makes it apparent on the face of the document that the testator intended, by signing, to give effect to the writing in the document as the testator’s will, and
- (c) subject to any order made under [section 37](#), must be made in accordance with [section 15](#), [16](#) or [17](#).

Formal will

15 A will may be made by a writing signed by the testator if

- (a) the testator makes or acknowledges his or her signature in the presence of 2 witnesses who are both present at the same time, and

- (b) each of the witnesses signs the will in the presence of the testator.

By these sections alone, the alleged Will would be void because it does not contain a signature of the testator as per section 14(b). However, the Act also allows the Court to examine extraneous evidence for the purpose of determining the intent of the Testatrix. Section 26 reads as follows:

Interpretation and evidence

26 A will must be interpreted in a manner that gives effect to the intent of the testator, and in determining the testator's intent the Court may admit the following evidence:

- (a) evidence as to the meaning, in either an ordinary or a specialized sense, of the words or phrases used in the will,
- (b) evidence as to the meaning of the provisions of the will in the context of the testator's circumstances at the time of the making of the will, and
- (c) evidence of the testator's intent with regard to the matters referred to in the will.

The purpose of such a section is to give as much latitude the Court as possible in allowing a justice to ensure that a Testator/Testatrix's final wishes are given effect.

In the case of *MRM Estate (Re)*, the Court was supplied with the Social Insurance Number card of the alleged Testatrix. Justice Donald Lee made a determination that:

In this case I am satisfied that the signature that appears on the backer of the Will is in fact the signature of the Testatrix, and in my review of the document as a whole, I am satisfied that the Testatrix intended by her signature to give effect to the Will presented to me (at para 6).

In allowing the grant for probate Justice Lee attempted to ensure that the intention of the Will was fulfilled. This was aided by the fact that the estate did not have a particularly large value (\$161,000) and that bequeaths and beneficiaries were clear and straightforward.

Prior to the coming into force of the *Wills and Succession Act* in early 2012, a Court would almost certainly have not been able to grant probate given the significant omissions present in the Testatrix's Will. Section 26 allows the Court to ensure that the Testator/Testatrix's intentions are performed in situations where the Act has not been strictly adhered to, so long as those intentions are clear.

There are two important takeaways for readers interested in the validity of a Will.

Firstly, ensure that a Will is up to date and adheres to the requirements of the Act. While alternative forms of a Will are set out in the Act (including the infamous Holographic Will in section 16), Albertans should strive to meet the requirements of sections 14 and 15. Doing so will ensure the smoothest and swiftest application for probate possible.

Secondly, the intention of the Testator/Testatrix is paramount. The majority of estate disputes are caused by uncertainty or ambiguity within the Will. Something that may be clear to the writer of the Will may not be clear to the readers or beneficiaries of the Will.

Adhering to form described the *Wills and Succession Act* and ensuring that there are no unanswered questions regarding the intention of the Testator are the two most important objectives when drafting any Will.

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>
Follow us on Twitter [@ABlawg](https://twitter.com/ABlawg)

