

# **Wills in the General Practice**

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## WILLS IN THE GENERAL PRACTICE

Estates law is peppered with cases about both the validity and interpretation of stationer's form Wills and the forms themselves were not particularly artful or considerate of local law. Despite this clear product advantage, lawyers tended to charge a relatively small amount for the Wills they produced; as word processing technology evolved, they could be produced quickly, accurately and efficiently. Used to a time-based valuation model, we could justify \$100 or \$200 for something that had become quite easy.

But then two things happened (over time): the world (meaning the families of our clients) got more complex, and the competition changed. Instead of fill-in-the-blank stationer's forms, there were digital versions that generated Wills using the answers to a handful of simple questions: what is your name, your spouse's name, your children's names, their ages, the name of your executor and guardian of the children, the age at which you wish your children to receive their shares. And there were also non-lawyers who would prepare a Will but not give legal advice. Each of these options cost a small fraction of what a lawyer is likely to charge. With all this competition the question must be asked: is there a place for Wills (and other planning documents) in the non-specialist practice?

For most simple Wills, the lawyer's time will often be not much more than an hour – mirror wills for husband and wife with minor-aged children, leaving everything to each other and then equal shares to the children in trust with a basic discretionary testamentary trust. Usually we are asked to quote the cost of a Will before knowing whether the Will is a simple one, or not. We have explored how technology can be used to take instructions, draft a Will and then print and sign that Will in a single client visit for the benefit of both the client and the lawyer. Often these simple instruments are billed for at rates that do not cover even minimal lawyer time, and allow nothing for the systems in place for getting instructions, preparing documents and then signing with clients and reporting and tracking original documents, not to mention keeping up to date with changes in the law or practice.

There are a variety of online products available for purchase that are local law-sensitive: Legal Zoom, legalwills.ca, Law Depot. A Will from LAWDEPOT, for example, costs \$19.00 and covers the basic husband and wife Will, with a simple but reasonably drawn trust for infant children. You can actually get the Will for free, but you must sign up for a \$33 per month trial subscription, which you can cancel at any time within a week without penalty or cost, keeping your documents. The process takes less than 5 minutes with simple questions and covers basic husband/wife, minor children families. So why would an average couple pay up to \$1,000 (or more) for a full set of documents with a Will, Enduring Power of Attorney and Personal Directive for each of them? There are two main advantages

that a lawyer offers over our digital competitors: 1) the opportunity for a face-to-face conversation about things that bear on the Will's preparation: family circumstances (blended family, dependent child, disinherited child, unequal advances to children), estate composition (pensions, RRSPs, RESPS, TFSAs, businesses, family farm, insurance policies) and testamentary intentions. While some online products offer "chat" or "email" consultations, generally at an added cost, none of them can compare with an open discussion in a face-to-face setting, and 2) comfort and confidence that comes from knowing that you have a properly prepared and signed Will, done. These "value-added" components are why we can and must charge more than a nominal amount for our Will and other estate planning documents.

A number of years ago I attended a local hospital to take instructions from a terminally ill bachelor farmer. After preparing the Will I returned to the hospital a day or two later to have it signed by the testator, who died shortly after that. In those days, you could go to the nurse's station and ask one of the nurses to be the second witness, which I did. Inevitably, the non-benefitting family of the bachelor farmer challenged his Will, arguing that the neighbors who were to receive a portion of the deceased's estate had unduly influenced him to make the Will benefitting them (he had no previous Will), and that his estate should pass by intestacy because the Will was not duly signed. At a trial for proof of the Will in solemn form I heard the second witness to the execution of the Will, the nurse I had secured from the nurse's station, swear under oath that I had not been in the room when the deceased signed his Will – in other words that the Will (which I had taken to the hospital and took back to the office with me once signed) was invalid as it was signed in front of only a single witness, the nurse, and not me. The point of this story is twofold: 1) eyewitness testimony is inherently flawed, and the only way to avoid that risk is to strictly control the execution process, and 2) what I was able to provide that deceased (just barely, it turned out) was the comfort of knowing that the Will containing his intentions was duly executed and valid.

### **WHY SHOULD WE CONTINUE TO OFFER WILL DRAFTING SERVICES?**

1. Online Will products are not suitable for many testators. If you have children by different mothers, or by different fathers, or a blended family, or a child likely to require extra assistance during his or her lifetime (after your death), or a business that is to be sold or bequeathed, or have made advances to individual beneficiaries that must be accounted for, or for any of a multitude of other reasons, you will require actual legal advice that goes well beyond what the legal document industry can provide. And that advice has value.