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Succession Planning for the Business Owner

The Use of the 2nd, 3rd…Wills

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By Kavina P. Nagrani

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INTRODUCTION

Do not take the phrase "My Last Will and Testament" to mean one single last Will. Today, estates are administered with two, three, and sometimes more "Last" Wills contemporaneously at play. The multiple Will strategy is designed such that different Wills are created to govern different assets of one's Estate, the intent being that upon death certain assets can be dealt with and administered differently than those under the main, often-labelled "Primary" Will. While this strategy can be beneficial for tax purposes, it is not always as simple as described—and incorrect use can have the opposite effect of what was intended. Moreover, there are a number of other factors which, if not properly considered in the estate planning stage, or if left ambiguous in the Wills, may force beneficiaries and executors to resort to costly court applications for directions.

In the majority of cases, a multiple Will strategy is borne from one of two main objectives:

1. To facilitate estate administration across multiple jurisdictions; or,
2. To save estate administration tax (also known as the dreaded "probate fee") by carving out of the main Will those assets which may not require a probated Will.

It is the latter of these two motivations that drives many professionals and clients alike to embark upon sometimes unwise estate planning strategies—in some instances, for example, clients have spent ten thousand dollars in professional fees merely to save eight thousand dollars in probate! When multiple Will estate plans are not comprehensive or well thought-out, estate trustees are left to make important and impactful decisions without the benefit of the true intentions of the testator. Such executor discretion, coupled with ambiguity in a Will, can be a recipe for interpretation issues causing conflict between or amongst beneficiaries.

It is with this in mind that we, as drafting solicitors, must make every attempt to contemplate even the unlikely "what-if" scenarios during the life of a testator.

In Ontario, the commonly known "Secondary Will" has become the norm for private business owners who, in many cases, have simply followed the popular mantra that owning a business means you *should* have a second Will. That analysis, however, is short-sighted. As the content of this paper should demonstrate, it is not true that owning a private business itself demands a second Will. It is likewise naïve to be fully confident that a second Will will inevitably shelter 100% of the estate administration tax (aka "probate fees") on privately held assets. Instead, a careful cost-benefit analysis should be performed, specialized practitioners engaged (particularly in the drafting stage), and clients properly advised of the risks involved.

While it is true that for Ontarians, probate fee savings can be achieved with a multiple Will strategy today, there is no guarantee that the law will remain as it is indefinitely. There are also circumstances (further described below) that may require each one of a testator's Wills to be submitted through the probate process. In 2019, Ontario estates practitioners felt this jolt of reality when the *Milne*[2] decision was reported, rejecting Mr. and Mrs. Milne's Secondary Wills for reasons specific to how the two estates were defined in the drafting. The result of the initial decision subjected both Mr. and Mrs. Milne's Primary and Secondary Wills to probate and the associated estate administration taxes. Fortunately for the Milne family, the decision was overturned on appeal,[3] but the case certainly raised the brows of Ontario wills and estates solicitors, who will undoubtedly take extra precautions in drafting multiple Wills moving forward. Non-specialized solicitors are turning away multiple Will engagements

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[2] *Milne Estate* (Re), 2018 ONSC 4174 ["*Milne*"].
[3] *Milne Estate (Re)*, 2019 ONSC 579.

after realizing that the risk of drafting errors can be costly, both to the client and to the lawyer, particularly after *Milne*.

To be clear, this paper is not meant to discourage the use of multiple Wills, but rather to encourage their use in a thoughtful manner and with the appropriate professionals engaged.

WHAT IS PROBATE?

Although the term "probate" has been around in some form since at least the Middle Ages in England, people, including lawyers and accountants, continue to be baffled by what it actually means. Is it a tax? Is it a process? Is it a thing? Is it a fee? Is it a stamp? Is it a Will? Is it a Certificate? Perhaps what is most confusing is that the term "probate" does in fact refer to all of those things! To explain, submitting a Will upon the death of a testator to "probate" is the process by which an estate trustee (aka an Executor) is certified by a court of competent jurisdiction to act as the administrator of the Estate. The authority of the Executor comes from being nominated in the testator's Will of course, but a probated Will undergoes due diligence that other Wills do not, which in turn gives third parties and institutions further assurances that whomever they are dealing with in respect of an estate asset is indeed the authorized representative of the Estate. The probate process also involves payment of the *Estate Administration Tax* ("**EAT**") to the Minister of Finance from the assets of the Estate. EAT is most commonly known as the probate fee. EAT in Ontario is the highest amongst the Canadian provinces and currently stands at approximately 1.5% of the value of the testator's assets at the date of his or her death; but only applies those assets governed by the Will being submitted through the probate process.

To ensure this important point is made clear, once a Will is put to probate, *all of the assets* governed by that Will must be declared for the purposes of calculating the EAT. If there are assets governed by that Will which do not require probate, EAT must still be paid on those assets. This is where many Executors go wrong: assets are not probated. Wills are. This point should make obvious why a second Will may be beneficial. If you know in advance of your death which of your assets may be dealt with, sold or transferred without a probated Will, segregating those assets out into a separate and distinct Will which avoids the probate process will save the EAT otherwise applicable had those assets been governed by the primary, probated Will.

MR. GRANOVSKY'S MULTIPLE WILLS CHALLENGED

The first Ontario case reported in respect of multiple Wills as they pertain to probate fees payable was in 1998, in *Granovsky Estate v. Ontario.*[4] In this decision, the now-retired Honourable Justice Greer supported a limited grant of probate to Mr. Granovsky's Estate, resulting in savings of $375,000 of EAT. Philip Granovsky was a successful businessman who died on or about December 24, 1995 with an aggregate estate value of approximately $28 million. He had two Wills, both executed on the same date and not revoking each other. His "Secondary Will" was defined to govern specific assets, mainly his private company interests, while his "Primary Will" was drafted so as to govern all assets save for those specified in his Secondary Will. On Mr. Granovsky's death, his Primary Will was submitted to the probate court and the probate fee paid was calculated on the basis of the assets thereunder, a significantly lesser amount that what would have been payable had he only executed one Will. The issue

[4] *Granovsky Estate v Ontario* (1998), 156 DLR (4th) 557, 1998 CanLII 14913 (Ont Sup Ct).

before Justice Greer was whether the Secondary Will must also have been submitted to probate and whether probate fees were payable on the assets governed by it. Ultimately, her Honour found in favour of Granovsky and agreed that the probate fee paid by the Estate was appropriately calculated in respect of the probated Primary Will, confirming that both his Primary and Secondary Wills stood as valid testamentary instruments despite only one of them having been formally 'probated'.

THE GRANOVSKY RATIONALE

Justice Greer's decision in Granovsky is largely supported by the legislation itself, particularly s.32(3) of the *Estates Act*, R.S.O. 1990, c. E.21, which provides specifically for an evaluation of a limited grant. It states, "Where the application or grant is limited to part only of the property of the deceased, it is sufficient to set forth in the statement of value only the property and value thereof intended to be affected by such application or grant." Arguably, the *Estates Act* was designed to accommodate the scenario in Granovsky whereby the *grant* of probate was only required for a subset of the testator's assets. Despite what one may think, it is not the court nor the government who makes the determination of whether an asset requires probate. Rather, it is the institution or third party with whom an estate representative is dealing with in respect of a particular asset that makes that call. In Granovsky's case, her Honour succinctly explained:

> "If the directors of the private companies in which the deceased owns shares or has an interest at death do not require the formal grant from the Court to deal with the transmission of the assets and are prepared to deal with the

estate trustees named in the Secondary Will, why then should the estate have to pay probate fees on those assets?"[5]

NOT EVERY BUSINESS OWNER WILL BENEFIT FROM A SECOND WILL

Not every private business owner is akin to Mr. Granovsky and, as earlier stated, having a business is not reason enough to create a second Will. To illustrate the analysis, let us review the situations of two different business owners, Joe and Marline.

Business Owner Joe

Business Owner Joe is a software developer. He is the sole shareholder of 123456 Ontario Inc., which he uses to bill his various clients for services rendered under short term contracts. He works either from home or at client sites. He draws a salary from Ontario 123456 Inc. and receives other income in the form of dividends. Over the past few years, Joe has not held more than $25,000 in cash and investments in Ontario 123456 Inc. as he draws out most of what he earns.

On Joe's death, his Estate is valued as follows:

Asset	Date of Death Value
Condo	$350,000
Stock Portfolio	$35,000
TFSA (Estate = Beneficiary)	$15,000

[5] *Granovsky Estate v. Ontario*, 1998 CanLII 14913 (ON SC) at para 29.

123456 Ontario Inc.	$22,500
Vehicle	$12,000
Other Households, Personal Effects	$10,000
Total	**$444,500**
Total EAT Payable	**$5,925**

The value of 123456 Ontario Inc. is simply the value of its underlying assets at the date of death. The company has no goodwill and is not saleable. The company is essentially a conduit for Joe to earn income for services rendered.

Upon submitting Joe's Will to probate, the EAT Payable on the basis of the foregoing values is $5,925. Although Joe's business will be dissolved on his death by his accountant and lawyer, and the underlying cash will simply transfer to his heirs, the value of the company must be declared for probate purposes.

Business Owner Marline

Marline started her own business five years ago. She designs and manufacturers custom and personalized handbags. She has been extremely successful and distributes her handbags globally to multiple large retail outlets. She owns a commercial building in Oshawa where she runs the manufacturing operation. Marline's operating company, "Ms. Bag" is owned by her numbered holding company, 555777 Ontario Ltd. of which she is the sole shareholder. Ms. Bag's net income year over year is growing exponentially. In 2019, Ms. Bag's income statement showed net income of $2.5 million.

On Marline's death, her Estate is valued as follows:

Asset	Date of Death Value
Primary Residence	$1,500,000
Personal Investments	$400,000
Cottage	$600,000
555777 Ontario Ltd.	$5,000,000
Vehicles	$80,000
Other Households, Personal Effects	$100,000
Total	**$7,680,000**
Total EAT Payable	**$114,450**

The value of Marline's holding company is the value of Ms. Bag, which is a saleable company with $2.5 million in cash and inventory, the value of the commercial building, and goodwill.

Upon submitting Marline's Will to probate, the EAT Payable on the basis of the foregoing values is **$114,450.**

The Effect of Two Wills for Joe and Marline

Would the implementation of a multiple Will strategy have benefitted Joe and Marline? Let's calculate the EAT in each of these cases.

Recall that Joe's EAT with one single Will was $5,925. If a second Will was executed to govern his non-probate assets, being his vehicle, personal effects and 123456 Ontario Inc., his EAT would be calculated as follows:

Asset	Primary (Probate Will Assets)	Secondary (Non-Probate Will Assets)
Condo	$350,000	

Stock Portfolio	$35,000	
TFSA (Estate = Beneficiary)	$15,000	
123456 Ontario Inc.		$22,500
Vehicle		$12,000
Other Households, Personal Effects		$10,000
Total	**$400,000**	**$44,500**
EAT Payable	**$5,250**	**0**

Recall that Marline's EAT with one single Will was $114,450. With a multiple Wills strategy, Marline's estate would be dealt with as follows:

Asset	Primary (Probate) Will Assets	Secondary (Non-Probate Will Assets)
Primary Residence	$1,500,000	
Personal Investments	$400,000	
Cottage	$600,000	
555777 Ontario Ltd.		$5,000,000
Vehicles		$80,000

Other Households, Personal Effects		$100,000
Total	**$2,500,000**	**$5,180,000**
EAT Payable	**$36,750**	**0**

Clearly, a second Will for Marline is a wise decision as she is able to shelter her most significant asset from the probate process, thereby saving her Estate **$77,700**. For Joe, the EAT savings was less significant and in his case, he must weigh the cost of getting professional advice, drafting and ongoing maintenance of two Wills against the potential probate savings. By maintenance in this context, I refer to the ongoing reviews and possible changes/amendments Joe may instigate throughout his lifetime. With multiple Wills, codicils are not as straight-forward as with a single Will and many drafting solicitors are of the view that codicils should be entertained only sparingly. Amending multiple Wills comes with its own unique set of challenges which are not covered within the scope of this paper, but the point is, for our example, that Joe should consider these factors when deciding whether to move forward with a multiple Will strategy.

ONE WILL, TWO WILLS, THREE WILLS, FOUR

So how many Wills should one have? One for every business? One for each non-probate asset? Is there a maximum number of Wills that one can have? As the law currently stands in Ontario, a testator can have as many Wills as he or she sees fit, but with the implementation of each Will comes with added risk and complexity. Assets that can safely be dealt with in the same manner, under the laws of the same jurisdiction, should be governed

by one Will. If Joe or Marline (from the examples discussed earlier) were to have US situs assets, they might want to consider another Will specifically to govern the disposition thereof in accordance with the laws of the state in which such assets were situated. The use of a separate Will for non-Ontario assets is fairly common and seems obvious. But the use of *more than two* Wills is not yet a widely-used or well understood practice. Deciding to dispose of one or more Ontario assets under a third or even fourth Will requires consideration of what one might refer to as the "taint risk factor".

Recall that in order to bypass the probate process altogether, no one asset governed by the Secondary Will should require the executor to present a court-issued Certificate of Appointment (a "**Certificate**"). If upon the death of the testator any third party insists on a Certificate, the Secondary Will is considered "tainted" and the objective of having the second Will in the first place fails. With the rise of executor liability insurance policies, we do not often see estate trustees opting to probate Secondary Wills for their own protection. Usually, if a Secondary Will is subject to probate, it is because a third party is demanding a Certificate, or, the Estate has ended up in court proceedings. Transfers of assets in kind or *in specie* to family members or friends are nearly always safe to be done without a probated Will. But what about an art dealer or museum recipient of a particularly valuable or infamous piece of art, or a third-party purchaser of a rare and expensive piece of jewellery? Whether or not these third parties and institutions are willing to accept the authority of an Executor without a Certificate is uncertain and will vary from case to case. Parties are justifiably suspicious of anyone purporting to have authority over high-value assets after the death of their owner. Moreover, no party wants to find themselves entangled in litigation with disappointed or frustrated estate beneficiaries because of a mishandled Estate. It is in these cases, with a risk averse

third party unfamiliar with a testator and/or purported executor, that a Certificate of Appointment may be requested—or perhaps even desired by the executor himself. This situation has been known to occur in Estates with any one or more of the following assets: original or high-value artwork, intellectual property, rare jewelry, boats, certain collectibles, racehorses and some private businesses. Although it may seem natural to group these assets into the definition of the Secondary (non-probate) Estate, solicitors should be cautious not to taint the entire Secondary Will with the inclusion of any one of them.

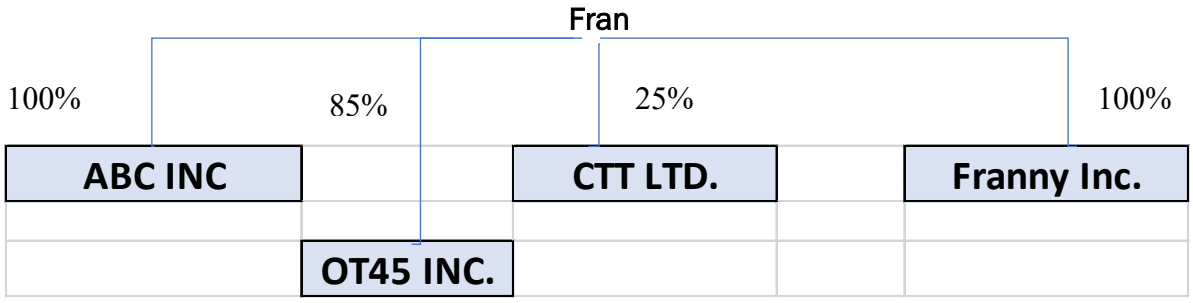
The fact that private businesses is listed amongst this list of potential taint risk assets should confuse you. Granovsky stands for the proposition that privately-held businesses can be dealt with under a separate, probate-free Will. Now, we are saying that a private business can taint the no-probate Will and subject it to probate? Yes! Recall that in Granovsky, the shareholders and directors of Mr. Granovsky's various business interests were not concerned about having to deal with the Executor named under his Secondary Will without a Certificate of Appointment. This will be the case in the majority of closely-held businesses with succession plans that involve a dissolution of the company upon the testator's death, a buy-out of the testator's interests by one or more existing shareholders, or the transfer of the testator's shares in specie to one or more family members. But where, upon the death of a business-owner, the possibility exists for the business to be sold to an arm's length party and particularly one outside of the jurisdiction, it is recommended that a separate Will (or Wills) be implemented for those particular businesses. As we know, protection against risk and liability underlies the very purpose of any legal document. A probated Will (aka Certificate of Appointment) is no exception. Third-party purchasers and independent boards of directors who may be unknown to a testator, the testator's family, and a purported executor are unlikely

to engage in a transaction, particularly in the case of a high-value business, without the authority of a court-certified estate representative. In an effort to avoid this unlucky scenario, drafting solicitors should do one of two things: (1) include assets with a taint risk in the Primary (probate) Will, accepting the associated EAT on what may be generally a no-probate asset, or (2) create another Will or Wills.

Example 1: Fran the Business Owner

To put this into perspective, let us examine the example of business owner Fran, the single mother of two adult children. Fran has multiple private business interests, as shown in the diagram in Figure 1 below. Fran owns 100% of ABC Inc. and Franny Inc. She is also the majority shareholder of OT45 Inc., but only holds a 25% interest in CTT Ltd. She has, for the most part, been a silent and non-active shareholder in this company, with the other shareholders being mainly unknown to her.

Figure 1



On the recommendation of Fran's solicitor and accountant, she has implemented Primary and Secondary Wills, aiming to shelter the EAT payable on the value of her private company interests upon her death. Her Wills are not specific in respect of directing her Estate Trustee to deal with each of her companies. Both Wills simply direct the residue of her Estate to be

divided equally between her issue, *per stirpes*. On Fran's death, her private company interests are valued as follows:

Fran's Interest	Date of Death Value
100% of ABC Inc.	$85,000
85% of OT45 Inc.	$200,000
25% of CTT Ltd.	$65,000
100% of Franny Inc.	$1,400,000
Total	**$1,750,000**

The EAT savings amounts to $25,500 provided Fran's Secondary Will is not submitted to probate. However, because Fran is not a party to a shareholder's agreement in respect of CTT Ltd., dealing with her minority interest in that company on her death should stand out as a risk to the Secondary Will. It is possible that the purchasing shareholders of CTT Ltd. will request a Certificate of Appointment from Fran's Executor before agreeing to enter into a buy-sell transaction in respect of her shares. If this occurs, her Secondary Will must be probated and the entire $25,500 of EAT must be paid. However, had Fran executed a third Will specific to the disposition of CTT Ltd., one of two things would have happened: either the purchasing shareholders of CTT Ltd. would have accepted the authority of her Executor under the third Will without probate, leaving Fran in the same position as if she had only two Wills (savings of $25,500) or, the third Will, governing the disposition of CTT Ltd. would have required probate, resulting in EAT of merely $225. Clearly, a far better outcome for Fran than had her Second Will been tainted by the inclusion of CTT Ltd.

Example 2: Ms. K the Art Dealer

As a second example, fine art dealer Ms. K is incorporated and operates as "ArtCo". ArtCo owns a series of fine artworks and copyrights. Ms. K's work is known internationally. Ms. K also owns shares in another private company, HoldCo, which owns a commercial property unrelated to ArtCo. Both ArtCo and HoldCo are of significant value. Should Ms. K implement one, two, or three Wills? It should be obvious that at least two Wills should be considered for Ms. K in an effort to shelter the probate fees on her private businesses at her death. ArtCo, however, should stand out as a taint risk asset and a third Will should be considered for Ms. K for ArtCo specifically.

ADMINISTERING AN ESTATE WITH MULTIPLE WILLS

From the perspective of the Canada Revenue Agency ("CRA"), people die with one single estate irrespective of how many estates are defined within a testator's multiple Wills. This is because, while multiple Wills may result in estate administration tax savings which would otherwise be payable to the Minister of Finance, multiple Wills do not have an effect on income or capital gains taxes owing to the CRA on death. It is frequently thought that multiple Wills save all of the taxes associated with death, but that is not correct. While there are income tax and capital gains deferral and minimization opportunities that can be explored both as part of estate and post-mortem planning, the creation of multiple wills is not one of them.

The administration of an Estate with multiple Wills brings about a number of additional challenges for the Executor, particularly where the language used in the Wills themselves is not helpful and, further, where the Executor named in each of the Wills is not the same person. Take for example the debts, tax liabilities and testamentary expenses of the deceased. Should they be paid from the assets of the Primary Estate? Secondary Estate? Or out of a combination of both Estates? If there is insufficient liquidity in a Primary Estate to satisfy cash legacies,

should the assets of the Secondary Estate be used to satisfy those deficiencies? Conflicts arising from these types of questions have often landed Estates in litigation, which is why it is important to address and answer them within the Wills themselves.

INTENTIONS DIE WITH THE PERSON – THE ESTATE OF MR. JOHN KAPTYN

In the absence of clear and specific instructions in the Will, Executors are left with broad discretion in liquidation and disposition of the Estate assets. We are understandably focused on defining who is to get what when we die but seemingly less attentive to *how* this grand undertaking will occur. This can be a costly mistake, particularly with a valuable privately-held business. One Toronto-based family learned this very lesson in the Estate of John Johannes Jacobus Kaptyn,[6] a 2010 case that every Will-drafting solicitor in Ontario should review. Kaptyn is a surname familiar to those in the hotel and commercial real estate development space in Toronto. John Kaptyn's Estate held interests in the Sheraton Parkway Toronto North hotel and a nearby Best Western, both in Richmond Hill, as well as a beach house and a shopping plaza in Florida. Needless to say, John Kaptyn died with a sizeable, multi-million-dollar Estate and two Wills, but nothing about this administration was going to be simple. Inevitably, the family ended up before the Ontario Superior Court and negligence claims against Kaptyn's legal and financial professionals were raised. Eleven (11) different interpretation issues and over thirty (30) questions were put before the Court and over the course of three (3) years since John Kaptyn died in 2007, an astonishing twenty-four (24) court orders were issued! In August of 2010, the Honourable Justice D.M. Brown delivered a lengthy, 221 paragraph judgment together with an Appendix summarizing the key

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[6] *Kaptyn Estate*, *Re*, 2010 ONSC 4293 ("*Kaptyn*").

interpretation issues and his reasoning in determining each one of them. *Kaptyn* should serve as a point of reference for solicitors and accounting professionals who provide estate planning advice, particularly for private business owners. Arguably, every one of the interpretation issues brought before his Honour was a question that could have been answered by Mr. Kaptyn himself and communicated through his Wills. Apparently, Mr. Kaptyn was satisfied with the language used to describe his wishes because he signed his last Wills under the mistaken belief that his appointed Executor sons would simply figure out how best to fulfil his requests when the time came. In hindsight, that decision was not a sensible one.

THE KAPTYN ISSUES SUMMARIZED

The following questions were raised in the Kaptyn Estate as a matter of interpretation, all of which may apply generally to a business owner's succession plan. Using these questions in the inquiry and planning stage with clients will inevitably reduce the risk of *Kaptyn*-like litigation:

1. Does the existence of multiple Wills create multiple Estates, or are they to be administered as one single Estate?[7]

2. Are salaries, bonuses and management fees payable from a private corporation to be paid to the Estate on a pro-rata basis to the date of death of the testator?[8]

3. How are the debts and expenses of the testator and his or her Estate to be allocated between a Primary and Secondary Estate? More specifically, are the taxes incurred upon the deemed disposition of assets at death to be paid from the assets to which the tax liability was related?[9]

4. Can a testator gift an asset owned wholly by a private corporation or does that gift fail and adeem to the residue of the Estate?[10]

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[7] *Kaptyn*, *supra* note 6 at para 57.
[8] *Kaptyn*, *supra* note 6 at para 70.
[9] *Kaptyn*, *supra* note 6 at para 86.
[10] *Kaptyn*, *supra* note 6 at para 194.

5. Are gifts of assets under a Will which may be saddled with liabilities at the death of the testator to be transferred 'free and clear' to the beneficiaries? Or do the associated liabilities port to the beneficiary together with the gifted asset?[11]

6. If a Will directs the liquidation of a private company, how is that liquidation to occur? On what terms? Within what time frame?[12]

7. How are inter-company loans to be handled during the administration of the Estate?[13]

8. Where a dispute arises in the administration of the Estate, how will costs be dealt with?[14]

Although the Court was ultimately able to determine what Mr. Kaptyn's true intentions were by following the guiding principle of the "armchair rule" (putting onself in the "armchair" of the testator to understand it through the testator's eyes), it undoubtedly took a toll on the parties to obtain judgement. We must all be reminded that in applications for the advice and directions of the Court involving the interpretation of a Will, judges are guided by the testator's actual or subjective intent, but those true intentions died with the testator. Regrettably, the number of judicial interpretations of a Will that in fact align with what was intended is not a metric that can ever be ascertained.

Drafting a perfect Will, free and clear of all risk of litigation and/or ambiguity is perhaps an unrealistic goal, but it is what estate solicitors strive to achieve for their clients. Conceivably, if the *Kaptyn* issues are translated into planning questions for business owners and the answers are incorporated into Wills in the form of directions for the Executor, we may find ourselves one step closer to that clear and unambiguous Will.

FINAL COMMENTS

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[11] *Kaptyn*, *supra* note 6 at para 167.
[12] *Kaptyn*, *supra* note 6 at para 205-212.
[13] *Kaptyn*, *supra* note 6 at para 196-199.
[14] *Kaptyn*, *supra* note 6 at para 46.

Ontario business owners should contemplate a multiple Will strategy. That is obvious because of the potential estate administration tax (probate fee) savings available. However, just as Rome was not built in a day, a second Will must be architected and developed in collaboration with accounting, tax and legal professionals, each contributing specialized expertise to the initiative. Because Ontario judges are bound by the goal of interpreting a Will in a manner that gives effect to the testamentary intentions of the testator,[15] every effort to document those intentions in the Will should be made. There is an infinite pool of possible "what-if" scenarios to contemplate with our clients and it is impossible to address them all. Moreover, testators are programmed naturally to believe that their loved ones will work together and figure things out in an amicable fashion after they die. But as we know, that is only a hope, not a reality. One of the key takeaways of this paper should be alerting solicitors of the need to be more thorough in their inquiries as to business owner succession plans. Providing guidance in the Wills with respect to tax, valuations, timing of transfers and terms of third-party sales are too often overlooked in the drafting stage, yet a few additional sentences could result in hundreds of thousands of dollars in legal fees saved. Just ask the Kaptyn family. Their answer will be in the millions.

[i]Disclaimer

[15] *Rondel v Robinson Estate,* 2011 ONCA 493 at para 23.

[i]The content of this paper is not intended to serve as legal advice, but rather a general guide regarding the subject matter.