



Wills Kept By The Law Society of Upper Canada

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How do you know that the Will you are submitting as part of your client's application for a Certificate of Appointment is, in fact, the Deceased's 'last' Will? The answer is, of course, that you cannot be certain, and you can only take reasonable steps to locate the 'last' Will. Some of the places that Wills may lurk include (*per* A.E.P. Armstrong and L.M. Tyrrell *Estate Administration: A Solicitor's Reference Manual* (Toronto: Thomson Carswell, 2007) at 1-4:

- (a) The lawyer's own Wills vault;
- (b) Among the Deceased's possessions;
- (c) In a safety deposit box;
- (d) With the Executor;
- (e) With an attorney for property or for personal care;
- (f) With another lawyer who acted for the Deceased, or anyone else who reads the Ontario Reports and responds to an ad that you place; or
- (g) On file with the Superior Court of Justice, even though it can be difficult to locate a Will filed with the Court. The depository established by section 2 of the *Estates Act* is administered by local Court offices, which do not employ uniform standards, and which have varying levels of enthusiasm for the system.

One other place to look is the Law Society of Upper Canada. The files of many lawyers who die, retire, or are disbarred are transferred to the Law Society's Trustee Services Department. Trustee Services keeps those files, most of which are now stored electronically.

Amazingly, the files kept by the Law Society contain over 45,000 Wills, a number that grows by about 3,000 per year. The Law Society keeps a register of Wills in its possession, which can be searched by the name of the lawyer whose file contains the Will or (mercifully) by the name of the Testator.

The Law Society monitors the O.R. ads that publicize requests for information about Wills, but cannot and does not otherwise try to connect Wills in its files with the recently deceased (for instance, the Law Society does not monitor obituaries in newspapers). To search the Law Society's files, lawyers should contact the Law Society's Administrative Compliance – Closed Trusteeship number: 416.947.3300 Ext. 3315.

In an ideal world, there would be a comprehensive register of Wills in Ontario. Until the Province creates such a register, lawyers must do their searches. The Law Society is a nook worth peering into.

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