

WILLS

Bequests are Good but Please Make Sure that the Name of the Beneficiary Charity is Correct

In *Bridgewater v. Stockey*, 2024 ONSC 6165, there was a bequest in a will that read “I leave to Guide Dogs of Canada the balance of my estate after all liabilities have been settled.” Needless to say, there is no charity with the name “Guide Dogs of Canada”, and a number of charities use the term “guide dogs”. In this particular case, the court determined:

[12] Applying the above principles, I find that Mr. Penrose’s intention cannot be determined solely from the plain meaning of the language that he used in the Will as there is no entity known as “Guide Dogs of Canada”. The closest similarly named entity is Canadian Guide Dogs for the Blind. However, the surrounding circumstances show that Mr. Penrose had made charitable donations to the CNIB, was on their email and mailing lists, and had a “CNIB Guide Dogs” brochure on his refrigerator at the time of his death. There were no similar connections to the Canadian Guide Dogs for the Blind or the other charities that have come forward. Applying the “armchair rule”, I find that Mr. Penrose intended to make his bequest to the Canadian National Institute for the Blind. Order to go accordingly.

You really don’t want bequests to be this complicated and involve so much effort. It is essential that people who want to leave a bequest have a proper will and ensure that the name of the charity is accurate.

Here are 13 lessons to help the last gift that you will ever make be successful and to avoid some common bequest mistakes:

- 1. Ensure that you have the correct name of the registered charity**, and sometimes that is not the name on the charity’s website or even the CRA’s Charities Listing, which includes the “account name” but not the legal name. If it is a significant bequest, it may be a good idea to review the governing documents of the charity to ensure it is the correct name.
- 2. If you want to minimize taxes** and plan to give a large part or all of your estate, consider giving away some money in the years before you die. This is because your estate may not have enough taxable income to use the official donation receipts.
- 3. Thinking that bequests can only go to charities** when they can also be given to non-profits that are not a charity. Yes, the non-profit cannot give an official donation receipt, but some estates have only a limited amount of tax to pay, and if you are giving a large part of your estate away, you don’t necessarily need all the bequests to go to a Canadian registered charity. This opens up ideas of giving bequests to foreign charities and Canadian non-profits.
- 4. Make sure the will is properly drafted**, and that usually means using a lawyer who is an expert in wills and estates. A will can be quite complicated, and if your will is set aside, the bequest may never happen. Every dollar spent on preparing the will usually saves \$10 on estate administration later.
- 5. Make your will while you still have the mental capacity to do so**, or others may fight later over whether you had the capacity.
- 6. Make sure that the will is clear as to whether the bequest being given to what is now a registered charity**, will still go through even if the organization loses its charitable status. This issue is often fought over and can be easily dealt with in the will. This is obviously not relevant if the bequest is to an NPO or foreign charity.
- 7. Remember, if you get divorced, the bequest survives**, but it does not survive marriage or remarriage unless special wording that will is made in contemplation of remarriage.
- 8. Best to give unrestricted bequests**, but if you insist on restrictions, make sure that you have discussed it with the charity and that you have variation language in the will if it is impossible, impractical, or inefficient to use the bequest for that purpose. This could save your estate a \$25,000 *cy pres* application asking the court for a variation of the purpose. Yes, a particular piece of equipment that a hospital desperately



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wants today may not be needed in 10 years from now. A program offered by a charity may not exist in 10 years from now.

9. Ensure that you have done your due diligence on the charity or non-profit you are leaving money to. Not all registered charities are legitimate or appropriate. Caveat Emptor.

10. Watch out for the disappearing will. If a will disappears and no one knows it exists, then the bequests in the Will will not be recognized, and if there is no will the estate will be divided according to the provincial laws of intestacy, which means a distant relative whom you dislike may get your whole estate and the charities or non-profits you care about will get nothing. It is best if the lawyer keeps the original will, or at least if you keep the original will, that a trusted friend, whether the executor

or not, has a copy of the will.

11. Ownership like “joint tenancy” can defeat your bequest. If you own a property with your brother, jointly, and you die, your part of the property may not go to your estate (it depends on complicated rules and facts), and therefore the estate may not have enough assets to satisfy the bequests

12. A beneficiary designation can defeat your testamentary intentions. If you have a life insurance policy, it will go to your estate, but if it is designated to someone else, then the estate will not receive the funds, and you may not have assets in the estate to pay for the bequest. Check your beneficiary designations. The same concern applies to RRSPs, RRIFs, and TFSAs.

13. Be wary of schemes to avoid pro-

bate that can save you 1.5% of the value of the assets (in Ontario) when you die, but cost you 50% in income tax immediately. Most schemes to avoid probate reduce the value of your estate, which can undermine any bequests you had planned.

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