



Solicitor's Tip - October 2025

MORE TIPS FOR GENDER-INCLUSIVE & GENDER-NEUTRAL WILL DRAFTING

As our understanding of gender evolves, it is more important than ever for legal writing, including wills, to be respectful of gender diversity and to avoid making assumptions about gender. To ensure that a will addresses those who survive the testator with respect and care, including individuals who fall outside the traditional male/female binary, gender-inclusive and gender-neutral will drafting is essential.

Whereas our last Solicitor's Tip explored the use of gender-inclusive and gender-neutral language in wills,¹ this month's Tip discusses the use of pronouns and addresses why including a beneficiary's "deadname" in a will may in some instances be appropriate, even though deadnaming is often perceived as offensive and should be avoided.

Pronoun Use in Wills

Recognizing that will drafters seldom know the preferred pronouns of all of the individuals included in a will, one way to ensure that a will is gender-inclusive is to refrain from using specific singular pronouns such as he/him or she/her. To draft a will this way, all individuals could consistently be referred to by name, rather than using pronouns.²

Alternatively, if counsel or the client prefers utilizing pronouns, it is now relatively common to use they/them in legal writing as a non-specific singular pronoun,³ particularly when the drafter does not know a person's preferred pronouns.⁴ Using they/them is preferable to referring to an individual using specific singular pronouns in light of the risk of misgendering. This would occur, for example, if a will refers to an individual using pronouns consistent with the gender assigned to them at birth rather than their gender identity. Not only may misgendering offend the affected individual, but as noted in last month's Solicitor's Tip, it may even cause harm, such as psychological distress.⁵ Misgendering has been described as "a critical stressor that is experienced as humiliating, stigmatizing, psychologically distressing, and dehumanizing."⁶

¹ Suzana Popovic-Montag, "Embracing Gender-Inclusive & Gender-Neutral Will Drafting", *Solicitor's Tip* (September 2025), online: Hull & Hull LLP <<https://hullandhull.com/2025/09/solicitors-tip-september-2025-embracing-gender-inclusive-gender-neutral-will-drafting/>> [September 2025 Tip].

² See British Columbia Law Institute, "Gender Diversity in Legal Writing: Pronouns, Honorifics, and Gender-Inclusive Techniques" (June 2022) at 21, online: <<https://www.bcli.org/wp-content/uploads/Gender-Diversity-in-Legal-Writing-1.pdf>> [BCLI].

³ *Ibid* at 8.

⁴ *Ibid* at 15-16.

⁵ September 2025 Tip, *supra* note 1, citing Samuel Singer and Amy Salyzyn, "Preventing Misgendering in Canadian Courts: Respectful Forms of Address Directives" (2023) 101 Cdn Bar Rev 319 at 322, 2023 CanLII Docs 2333 [Singer & Salyzyn].

⁶ Singer & Salyzyn, *ibid* at 337, citing Chan Tov McNamara, "Misgendering as Misconduct" (2020) 68 UCLA L Rev 40 at 61. On a similar note, see *Nelson v Goodberry Restaurant Group Ltd dba Buono Osteria and others*, 2021 BCHRT 137 at para 82: "... pronouns are a fundamental part of a person's identity ... Using correct pronouns communicates that we

If counsel choose to use they/them as a pronoun when drafting a will, however, it may be advisable to include a note in that document indicating that they/them is being used as a non-specific singular pronoun rather than as a plural pronoun. On occasion, pronouns are relevant to will interpretation,⁷ and a note could prove helpful if the court is asked a question during an estate administration that results in the interpretation of the will and the pronouns used therein.

Lastly, a will could be drafted using gender-neutral singular pronouns, such as ze/hir or ey/em.⁸ However, since constructed pronouns are not commonly used, a party with an interest in the estate could decide it is necessary to apply to the court to interpret these terms if they are included in a will.

Identifying Beneficiaries in a Will & Deadnaming

A will drafter should also take care if a beneficiary named in a client's will is in the process of legally changing their name to reflect their gender identity, or has informally re-named themselves without legally changing their name. Typically, referring to an individual by their original name, also known as "deadnaming," is perceived as offensive and harmful.⁹ Nevertheless, unless the beneficiary has legally changed their name, it remains advisable to refer to them in a will using both their chosen name and their deadname, to ensure that the estate trustee is able to identify the beneficiary with certainty.¹⁰ If a beneficiary's legal name is inconsistent with the name used in the will, the estate trustee may be uncertain who the testator actually intended to benefit and may feel that it is necessary to apply to the court for direction in light of their duty, as a fiduciary, to resolve any doubts regarding a beneficiary's entitlement before distributing the estate.¹¹

Alternatively, if a will only refers to a beneficiary using their chosen name, rather than their legal name, the beneficiary or the estate trustee could apply to the court for rectification, to correct the will to state the beneficiary's legal name.¹²

To show respect and courtesy to the beneficiary, however, it is not advisable to identify them in the will using only their deadname, even if the individual has taken no steps to legally change their name. A beneficiary ought to be referred to in the will using both their legal name and their chosen name at least once, and then their chosen name should subsequently be used to identify the beneficiary.¹³

see and respect people for who they are. Especially for trans, non-binary, or other non-cisgender people, using the correct pronouns validates and affirms they are a person equally deserving of respect and dignity."

⁷ See, for example, *Mohapel v Young*, 2024 ONSC 1332. See also *Reeves v Inglis*, 2022 ONSC 209 at paras. 44-46 (in a will that appointed multiple estate trustees, the pronouns used were relevant to determining the testator's intent with respect to replacing those trustees).

⁸ BCLI, *supra* note 2 at 16.

⁹ See, for example, *Hamilton v BC Medical Services Plan*, 2024 BCHRT 309 (human rights complaint premised on deadnaming, in addition to transphobia, misgendering, and incorrect pronoun use). See also the BCLI Report, *ibid* at 10 ("Using a deadname may cause a person distress, may endanger them by outing them as trans, and should not be done without their permission.")

¹⁰ BCLI Report, *ibid*.

¹¹ See, for example, *Boers v. Korpilahti Estate*, 2001 CarswellOnt 51.

¹² See, for example, *Jamt Estate, (Re)*, 2021 BCSC 788.

¹³ BCLI Report, *supra* note 2 at 10.

Conclusion

Attention to detail is key for gender-inclusive and gender-neutral will drafting. As noted above, care should be taken around the use of pronouns, particularly specific singular pronouns, to avoid making assumptions about gender. Similarly, care should be taken when drafting a will to include a beneficiary who has chosen to change their name to align with their gender identity, but has not yet legally changed their name. Harm associated with misgendering and deadnaming can hopefully be avoided or minimized through intentional, caring drafting.

While gender-neutral and gender-inclusive legal drafting may seem like a daunting undertaking, there are resources available to help lawyers make this transition – the British Columbia Law Institute’s recent report on gender diversity in legal writing is an excellent place to start.¹⁴

¹⁴ BCLI Report, *supra* note 2.