



HULL & HULL LLP

Barristers and Solicitors

Trust Experience™

The practice of drafting a will and sending it out to the client for execution is a risky one. Even a minor departure from the rules could render a will invalid.

Ontario has very strict rules about how a will or codicil must be executed. The [*Succession Law Reform Act*](#) provides a recipe for the execution of a valid will in section 4 that must be followed to the letter, or else the will is not valid.

Most other provinces have "substantial compliance" provisions that allow the courts to rescue wills that were not validly executed, where it is clear that a document represents a person's testamentary intentions. Ontario, however, is one of the last remaining "strict compliance" jurisdictions in Canada.

If a will is sent out to the client with instructions on how it should be executed, there is a real risk that those instructions could be misunderstood or ignored and that the will may be executed improperly. Even if properly executed, it might be challenged at a later date and it may be difficult to establish that the document was properly executed. If the will is challenged, the lawyer might be exposed to liability.

Under most circumstances, it is best to have the client attend at the lawyer's office or to have the lawyer attend at the client's home. By supervising the execution of the will from start to finish, and by taking careful notes, a lawyer can add value for the client by protecting the will from subsequent challenge.