



**HULL & HULL LLP**  
Barristers and Solicitors

### Precatory Language Within Last Wills and Testaments

When advising a client with respect to the preparation of a Last Will and Testament, it is important to explain to the client the difference between terms of a will by which an estate trustee will be bound and those that are merely precatory.

Wills often express the wishes of a testator with respect to funeral and burial arrangements. Sometimes reference to a memorandum of wishes may also be included with respect to the distribution of assets not specifically addressed within the testamentary document itself. Other wishes or requests that use permissive language ("wish", "hope", "request", "desire", "ask", etc.), rather than words like "shall" or "must", which are more likely to impose an obligation on the testator, are typically precatory. Where it is unclear whether a term is intended to bind the estate trustee, courts may consider the intention of the testator in determining whether the term leaves room for discretion. Testators should be made aware of the distinction between terms in a will by which an estate trustee is bound and those that are merely precatory, so that the legal effect of the will is properly understood.

With respect to funeral and burial arrangements, there is no legal requirement that an estate trustee follows wishes or requests expressed by the testator. Estate trustees have wide discretion and may or may not choose to comply with wishes or consult family members. In terms of burial arrangements, an estate trustee is able to apply discretion, so long as arrangements are not "inherently inappropriate" (see, for example, *Sopinka (Litigation Guardian of) v. Sopinka* (2001), 55 OR (3d) 529, 42 ETR (2d) 105 (Sup Ct J)).

For this reason and a multitude of others, it is important to encourage clients to select an estate trustee or estate trustees who can be trusted to follow their wishes in respect of issues that are important to them. It can be equally important to encourage clients to discuss their wishes openly with the individuals who are being selected to act as estate trustees, so that the wishes are properly understood and can be followed.