



**HULL & HULL LLP**  
Barristers and Solicitors

### Ensuring Strict Compliance with Formal Requirements for a Valid Will

In Ontario, the *Succession Law Reform Act* (the “**SLRA**”) outlines the formal requirements of a valid will. Some other Canadian jurisdictions, including British Columbia Alberta, and Quebec, have adopted what is known as a doctrine of “substantial compliance”, meaning that courts may nevertheless consider admitting wills that do not comply with all formal requirements, as set out in the applicable legislation, to probate.

Ontario, on the other hand, is one of the few remaining “strict compliance” jurisdictions in Canada – here, wills typically need to be executed in full compliance with the SLRA or they will not be found to be valid.

Among the requirements outlined by the SLRA, the following, while somewhat obvious, should remain top-of-mind for drafting solicitors:

- The will must be signed at its end by the testator or another person in his or her presence and as directed by the testator (Section 4(1)(a));
  - Section 7 provides further detail regarding this requirement and several exceptions thereto;
- The testator must sign the will (or acknowledges his or her signature) in the presence of two or more witnesses (Section 4(1)(b));
  - Those same witnesses must sign the will in the presence of one another and the testator (4(1)(c));
- Two witnesses are required unless the will is entirely in the testator's own writing (Section 6) or the testator is an active member of the Canadian Forces, naval, land, or air force, or a sailor, having executed the will while at sea (Section 5);
- The testator must ordinarily be no less than 18 years old, unless he or she is married, making a will in contemplation of marriage, is a member of the Canadian Forces, or is a sailor, having executed the will while at sea (Section 8(1)).

These formal requirements regarding the signature and age of the testator are common to holograph wills. If a client mentions that he or she has executed a holograph will, it is important to advise the client of the formal requirements of a will, including the above, if he or she wishes it to be valid.

While the SLRA specifies that gifts to a witness, a witness' spouse, or a person claiming under either the witness or the witness' spouse, will be void (Section 12), this does not have the impact of invalidating the other terms of the will or the will itself.

When unsure regarding the requirements for a valid will, it is best to re-review the SLRA to avoid any issues regarding strict compliance with its formal validity and/or to consult a specialist in wills and estates.