



# LEGACIES & LIBERTIES

Wisdom for aging wisely



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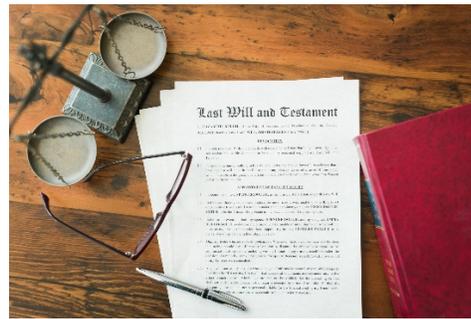
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*"While my job title may be 'lawyer', I like to think of myself as an elder advocate, trusted advisor and, most importantly, someone who just simply cares."*

[Kavina Nagrani](#) is both a planning and litigation lawyer who practices in the areas of:

- Elder Law
- Wealth Management / Estate & Trust Planning
- Capacity & Guardianship Law
- Wills & Estates & Powers of Attorney

## DO YOU HAVE A "PROBLEM" WILL?



**Identifying potential issues in your Will today could save you thousands in legal fees later!** The following article describes some of the common issues that I am seeing in the Wills crossing my desk:

1. **Accidental Revocation of Other Wills.** The revocation clause usually appears at the beginning of the Will. If you have a Will in another jurisdiction, or a second will that governs the disposition of your private business interests, it is important that you are not inadvertently revoking other Wills that you intend to be valid on your death. Codicils to one Will are more often the culprit in this area.
2. **No Mechanism for Replacement Trustees.** Without an appropriate replacement provision, the resignation or renunciation of a Trustee or Executor may require a court-application. Although most Wills today have alternate Trustee and Executor appointments, they often miss the *replacement* mechanism, especially where testamentary trusts are involved.
3. **Missing Trusts for "Potential" Minor Beneficiaries.** Where the principal beneficiaries under a Will are over the age of majority, trusts for minors are usually not contemplated. But if a principal beneficiary dies, leaving children of his or hers surviving, who would inherit their parent's share, a minor's trust may be necessary. Without this, payments over \$10,000 are paid into court until the beneficiary turns 18. It may be more efficient to have the beneficiary's inheritance managed by your Executor or another relative.

4. **No Mechanism to Deal with Sentimentals.** You may never think in a million years that your family members would argue about who would get your wedding ring, your watch, your raptors tickets, that Royal Daulton collection, the family portrait, the painting in your living room, your guitar, your old baseball card collection, but it happens! Identify these items in your Will with instructions to your Executor as to how to deal with them. Auctions, coin tosses and picking straws may seem trivial but can keep these issues out of the courtroom!
5. **Missing the Affidavit of One Witness.** All Wills that are registered with the court on death and subject to what we call the “probate” process, require a sworn affidavit by one of the two persons who witnessed the signing of the Will. If your Will does not already have the affidavit attached, it may be too late when the time comes to locate one of the two witnesses to swear this for you. A missing affidavit will not invalidate your Will, but it can make the probate process more cumbersome and more costly without it. I suggest you track down one of your witnesses today and get this document in hand.

I could certainly list another 20 or more issues that I have seen with recent Wills. If you are in doubt, it may help to have your Will reviewed by an Estate lawyer (such as myself) that did not draft your Will to see if there are any holes that need to be plugged. A second opinion usually helps and may give you some peace of mind. Your Will should serve your Executor as a clear outline of how to deal with your Estate on your demise and should facilitate a smooth and efficient transfer of your wealth to your intended beneficiaries.

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