

Will Disputes

How to Increase Your Chances for Success

Edward Olkovich

About Edward Olkovich



Ed is recognized as a leading Canadian estate expert. He has practised law in his own firm since 1978 and is a Certified Specialist in Trusts and Estates Law.

Ed is also the author of seven books, including *Choosing Executors*, *Breakthrough Estate Planning*, and *Estate to the Heart: How to Plan Wills and Estates for Your Loved Ones*.

He has spoken to audiences across Canada and is a frequent guest on television and radio. As a lawyer, Ed advises clients on wills, estates, executors, and estate administration and handles legal challenges to wills.

Ed is a member of the Ontario Law Society of Upper Canada, Ontario Bar Association, American Bar Association, Society of Trust and Estate Practitioners (STEP), Canadian Association of Professional Speakers (CAPS), and National Speakers Association (NSA).

He is the founder of estatetherapy.com, an online estate planning publisher, and is the Dean of Executor Academy. Ed can be reached by e-mail at ed@mrwills.com or by telephone at 416-769-9800 or toll free at 1-877-MrWills.

For Your Protection

This information is not financial, legal, tax, medical, or psychological advice or a substitute for professional advice. Always consult a professional before taking any action. The author and publisher assume no responsibility for loss or damages, direct or indirect, of any kind from use of this material. No part of this publication may be reproduced without permission from the publisher.

A handwritten signature in black ink, appearing to be 'Ed' with a stylized flourish.

Edward Olkovich, B.A., LL.B., C.S., TEP

“Blood is inherited and virtue is acquired.”

–Venezuelan proverb

Contesting a Will: First Things First

Will you be left empty-handed?

What if you have been cut out of a relative’s will?

Do you toss and turn at night unable to sleep?

Educate yourself about your rights. Investigate the possible reasons for what happened. Get legal advice from an experienced estate lawyer as soon as possible.

Professional advice can help weigh a number of factors that cannot be covered in this report.

What follows is a way to A.C.E. a will dispute. Be prepared to discuss these issues with your lawyer. It can save you time and money.

How to A.C.E. Your Will Dispute

Act Promptly

Confirm You Can Contest the Will

Evaluate Your Legal Position

What Is a Will Contest?

Wills may be challenged because they do not comply with legal formalities. Both homemade and professionally-prepared wills must comply with the same laws.

Wills are frequently challenged for reasons that the person making the will lacked the legal ability (capacity) to do so because of drugs, illness, frailty, or distress.

How to A.C.E. Your Will Dispute

You must get a copy of the will you wish to challenge or contest. The executor may refuse or the original will may not be available. This should not stop you from getting advice immediately.

Step #1 Act Promptly

Investigate what your rights are as soon as possible. There are strict time limits for taking certain legal steps against the estate. If you don't act in time, you can lose your rights.

Act quickly to avoid any improper distribution of the estate that does not consider your claims.

There are deadlines to assert claims against an estate. These can vary from a few days to a few months.

For example, your brother, John, still has signing authority on your mom's account. Spending two weeks searching for her will may not be important if he has taken the money.

Finding experienced estate advice can take time. Interview and find a compatible lawyer before you hire one. Check out estatetherapy.com for more tips on how to find the right lawyer.

Step #2 Confirm You Can Contest the Will

To contest a will, you must have a financial interest in the estate. This is the case even if you are not named in the will.

Each jurisdiction has different legal requirements to determine if you have standing.

How can you tell if you have a financial interest?

Generally, a financial interest in the estate can be demonstrated if you are:

- named in the last will or prior wills
- a creditor of the estate
- a spouse and have property or support rights
- a financial dependant of the person making the will
- relying on promises that can be enforced
- providing services for the deceased and were not paid
- entitled to inherit by an intestacy if the will was not valid

Experienced estate lawyers can help you identify if you have the right to attack the will. This is crucial before you examine the strength of your legal case that a will is invalid.

Intestacy

If a will is not valid, the government rules divide the estate. Friends and other intended beneficiaries may be cut out.

Step #3 Evaluate Your Legal Position

Only a lawyer with estate experience can tell you if you have legal grounds to contest a will.

The usual grounds to contest wills include these errors:

1. The will was not properly signed and did not comply with legal formalities.
2. The will was not properly witnessed.
3. The will is not legally valid as a holographic or handwritten will.
4. The person making the will:
 - a. suffered from an impairment that affected his or her mind (lack of testamentary capacity)
 - b. did not understand or read the will before signing
 - c. was coerced to do something they did not wish to do in the will
5. Suspicious circumstances existed when it was prepared or signed.
6. Fraud or forgery.
7. Failure to provide financially for dependants, including common law spouses.
8. The will does not provide what you, as a married spouse, may be entitled.
9. You were promised to receive something in the will and you relied on this promise.

Testamentary Capacity

“The law does not say that a man is incapacitated from making a will if he proposes to make a disposition of his property moved by capricious, frivolous, mean or even bad motives...”

–Sir James Hannen, Boughton v. Knight, 1873

Action steps to take:

- Act promptly to protect your rights (before it is too late)
- Confirm you can contest the will
- Evaluate your legal position

Summary A.C.E. Your Will Dispute

Don't wait if you may have to challenge a will.

Act promptly to get legal advice. Evaluate your position. Make sure the costs and benefits are in your best interest.

Your lawyer may tell you that you have a good case. However, you can still decide not to proceed with a lawsuit.

No lawyer can guarantee you will win your case.

Legal court battles are costly, both financially and emotionally. They are stressful means of resolving disputes.

You may benefit from using a mediator to resolve a dispute over a will.

Want more information?

Are you interested in a consultation with Edward Olkovich? Contact him at ed@mrwills.com.
By telephone at 416.769.9800 or, toll free at 1.877.Mr Wills (1.877.679.4557).

Register for our [blog](#) to get valuable up-to-date alerts.

Visit estatetherapy.com for simple solutions to your estate problems.