

Lessons Learned #17 Who Are Your Beneficiaries?

Clarity in the distribution of your estate is essential. When ambiguous terms such as “all my nieces and nephews” are used in a Will, your Executors may have no option but to apply to the Courts for interpretation of your intent. Ensuring your estate planner and lawyer fully understand your distribution scheme, and that it is correctly stated in your Will, will reduce the likelihood and expense of your Will going before the Courts for interpretation.

Re Holmes Estate

(British Columbia) 2007 BCSC 51

Cecil Holmes (“Cecil” or “the Testator”) executed his Will on June 9, 1995. His wife had predeceased him in 1982.

Cecil’s Will, which was prepared by a notary public, included the following clause:

“I hereby direct that the residue of my estate be paid and transferred over to all my nieces and nephews share and share alike for their own use absolutely.” He also included a statement that should the Executor be unable to locate a niece or nephew that the unclaimed share be paid to his executor, nephew Ronald Holmes (“Ronald” or “Mr. Holmes”).

Cecil passed away on October 3, 2004. The notary public had retired and could not be located. Ronald requested the court’s interpretation of the terms “niece” and “nephew”. Cecil had 11 nieces and nephews (“the Holmes family”) and his late wife had 18 nieces and nephews (“the Olson family”).

The Court, after reviewing case law and referencing the *New Concise Oxford English Dictionary* determined that “I am satisfied that the words nieces and nephews can in their ordinary meaning apply to both the Holmes and Olsen [*sic*] families. The question remains as to what the Testator meant when he used those words in the Will.”

Cecil’s prior four Wills all provided, to some extent, for both the Holmes and Olson families.

Cecil had stayed in contact with the Holmes family. He also remained in contact with the Olson family, and if he lost track of an Olson family member, he would request assistance from another Olson in locating an address. Goepel J stated in the ruling “The loss of contact gives context to the provision in the Will concerning missing nieces and nephews. There is no evidence that the Testator ever lost contact with any member of the Holmes family.”

At one point, Ronald brought to Cecil’s attention the fact that the statement “all my nieces and nephews” was ambiguous and he should consider redoing his Will. “He did agree to consider having a new will prepared, but when Mr. Holmes later pressed the Testator about preparing a new will, he again indicated he was satisfied with the wording of the Will.”

Goepel J ruled “I find that the Testator intended to benefit both the Holmes and Olson families. This finding is consistent with his earlier Wills in which both sides of the family benefited. ... the Testator knew that the Will could be interpreted to include both the Holmes and Olson families. ... In the result, the answer to the question “Does the phrase all my nieces and nephews include the children of the siblings of the Testator’s late wife?”, is yes.”

The information provided is not meant as a legal opinion and readers are cautioned not to act on information provided without seeking specific advice with respect to their particular situation.
