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**When Are Two Wills Better Than One?**  
**by Ryan Carson**

The use of multiple Wills in Ontario was first recognized by the courts in *Granovsky Estate v. Ontario*. In that case, the testator, Phillip Granovsky, died leaving two wills. Mr. Granovsky's "Primary Will" dealt with all of his property except for shares in the capital of certain private corporations, amounts receivable from private corporations, and assets held in trust for Mr. Granovsky by private corporations. The assets excluded from the Primary Will totaling nearly \$25,000,000.00 were dealt with under his "Secondary Will". The issues in this case centered on whether or not Mr. Granovsky's assets listed in the Secondary Will should be excluded from probate. The Crown took the position that probate fees must be paid based upon the value of all of the deceased's property at the time of death regardless of whether probate was sought for Wills dealing with all those assets. Madame Justice Greer rejected the Crown's argument. Accordingly, the executors of Mr. Granovsky's estate were not required to submit the Secondary Will for probate at a significant cost savings for the Estate.

The abovementioned begs the following questions: What can we learn from this? And when should we use Primary and Secondary Wills?

When deciding if multiple Wills are appropriate for your estate planning, you should first separate your assets into two categories: probate and non-probate.

**Probate:** Lands registered in the Land Titles System - Shares or debt obligations of publicly traded corporations - Bank accounts - GICs - Brokerage accounts - Term deposits.

**Non-Probate:** Life insurance - Pension plans - RRSPs and RRIFs for which a beneficiary is named - Assets held jointly that pass by right of survivorship - Real estate registered in the Registry System and real estate not situated in Ontario - Personal effects and household contents - Shares or debt obligations of private corporations.

Unfortunately, it is not simply the nature of the assets that determine if a Will's assets are subject to probate or not. The Courts have identified three situations in which probate is required:

If the Estate is involved in litigation;

If third parties dispute the asset transfer; and/or

If foreign executors are dealing with the assets, which are situated in Ontario.

Based on the above, an individual who owns significant assets for which probate is not required, would want to consider the use of Primary and Secondary Wills as an Estate Planning tool, so as to minimize the costs of probate.

*The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.*

Commercial Law Group

Rodger Gordon	rgordon@lbwlawyers.com	Robert Welch	rwelch@lbwlawyers.com
Harry Thorsteinson	hthorsteinson@lbwlawyers.com	R. Bruce Smith	bsmith@lbwlawyers.com
Gary Black	gblack@lbwlawyers.com	Michael A. Mann	mmann@lbwlawyers.com
David L. Edwards	dedwards@lbwlawyers.com	Ryan J. Carson	rcarson@lbwlawyers.com

Employment Law Group

Robert B. Reid	rreid@lbwlawyers.com	Leanne E. Standryk	lstandryk@lbwlawyers.com
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**Lancaster, Brooks & Welch LLP**

BARRISTERS AND SOLICITORS

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1 Tel. 905.641.1551, Fax 905.641.1830

PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9 Tel. 905.735.5684, Fax 905.735.3340

[www.lbwlawyers.com](http://www.lbwlawyers.com)