

CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

How disinherited family can end up with estate assets



Most people will leave behind something in their estate when they pass. Most of them have preferences about who should receive those things and under what conditions. Yet, the majority of Canadians have no will¹, let alone appointed someone to act for them which means their property will be distributed to family members as prescribed by law, which may not be what they want. Then there are the “do it yourselves” who feel they can handle their estate and legacy planning themselves and save money in the process. The problem is that unintended consequences arise when proper, professional advice is bypassed.

A good example is the case of *Eissmann v. Kuntz*, 2018 ONSC 3650.

Seigfried Kunz was born and raised in Germany where he married and subsequently had one child, Petra, born in 1962. Seigfried and his wife divorced in 1967 and he emigrated to Toronto, Ontario. He remained a German citizen though he was a resident of Canada. He never remarried nor had any other children. He did return to Germany several times between 1980-89 to rekindle a relationship with Petra which did not flourish. He and his daughter became estranged in 1989 and never saw or spoke to each other again. Seigfried did reconnect with the only other family he had when the Berlin Wall fell. There he found a sister, Ruth, a half-brother, Wolfgang, and their families in the former East Germany. Seigfried became close to Ruth and her family.



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Peter works with independent advisors and other professionals raising awareness on issues and concerns faced by affluent individuals, professionals and business owners. He supports efforts in researching and developing optimal solutions for clients aimed at improving their financial well-being and supporting their personal wishes and lifestyles. He annually provides 100's of workshops, seminars and technical support throughout the country on tax, retirement income and estate planning issues, concepts and strategies to both advisors and consumers. As an accredited Registered Financial Gerontologist, a good deal of his time is spent on building awareness and educating people of all professions who work with or specialize in the needs, expectations and issues of elders. Comprehensive lifestyle planning is an important element of these processes.

The Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team provides internal and broker support, including seminars, education, advanced concept illustrations & Client case technical consultations.

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After Seigfried died in 2016, police located his sister Ruth, who hired an Ontario lawyer to help her settle Seigfried's estate. Seigfried had drafted 4 testamentary documents during his lifetime. Each one had different instructions

for the distribution of his estate. None had appointed an executor or estate trustee. One key question was; which documents were valid?

Here is a summary of those documents.

Testamentary documents	Beneficiaries and Instructions
Will, Jan. 8, 1967 executed before notary in Germany, prior to divorce and emigration to Canada	Estate divided equally between ex-wife and daughter, Petra
Will, Oct. 26, 1982 in Seigfried's own handwriting, signed, no witnesses; resident of Toronto	Entire estate to Petra
Will, July. 15, 2000 in Seigfried's own handwriting, signed, no witnesses; resident of Toronto	Specific bequests to Ruth, her sons, their wives and children; residue to Petra
Alterations to 2000 will, handwritten by Seigfried in different colored ink, determined to be after Dec. 2008, alterations not initialled or signed; resident of Toronto	Substantial increases to specific amounts to Ruth, her sons, their wives and children
Testamentary documents, Aug. 25, 2009, in Seigfried's own handwriting, signed; contained alteration to specify "amendments to will dated July 15, 2000", subsequent alterations made, undated, unsigned; resident of Toronto	No Testamentary dispositions; specified that "Petra...may not receive a single Euro out of my estate"

* Source: Eismann v. Kuntz, 2018 ONSC 3650 (CanLII), June 12, 2018 File #05-1777/17

The 2000 and 2009 documents were kept together in an envelope by Seigfried in his Toronto apartment.

A court application was brought by Ruth's lawyer (with Ruth's consent) to name him as administrator of the Seigfried's estate. Petra was served with notice. The parties agreed that, "to the extent material, German law and Ontario law are materially identical as regards holograph wills." Section 6 of the Succession Law Reform Act states that a holograph will is one that is written entirely in the deceased's own handwriting and is signed at the end. Holograph wills can be valid if properly executed.

Section 18 of the same Act states that the deceased must have signed "in the margin or in some other part of the will opposite or near the alteration or at the end of or opposite to a memorandum referring to the alteration and

written in some part of the will." This was crucial to the decision on the validity of changes made to the will.

All parties agreed that the 1967 will was no longer in force. Justice S.F. Dunphy J. concluded that the 1982 will had been valid but was revoked when the 2000 will was signed. The July 15, 2000 will was held to be a valid holograph will that left bequests to Ruth and her family and the residue to Petra, but the alterations made to it apparently after 2008 will were found to be invalid as they were not signed. Therefore, the large increases in the bequests to Ruth and her family were not valid.

The 2009 document was found to be a valid codicil (or amendment) to the 2000 will. This meant that the revocation of the bequest to Petra of the residue of the estate was considered to be valid.

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Here is where the unintended twist occurred. The effect of declaring the 2009 document as a codicil was that:

- Petra was no longer entitled to receive the residue of Seigfried's estate and
- The 2000 will as amended now contained no disposition of the residue of Seigfried's estate. This meant that there was a partial intestacy in respect of what would now be a rather substantial residue.

Part II of the Succession Law Reform Act prescribes the distribution of property in the event of a full or partial intestacy. Section 47(1) provides that "the property shall be distributed, subject to the rights of the spouse, if any, equally among his or her issue".

Since Seigfried was divorced and Petra was his only issue, intestacy law required that Petra be awarded the residue

of the estate, even though the codicil made in 2009 had revoked her entitlement to anything from the estate.

Estate and legacy planning are not "do it yourself" exercises. Unintended consequences frequently arise when they are improperly or incompletely done. Engage the services of a wills and estates lawyer who can prepare a will for you that expresses your wishes as to what happens to the assets you leave behind when you pass. Ensure that your documents, including your will, are periodically stress tested to make sure they continue to do the job they were designed to do and reflect your wishes which may change over time. That includes covering off as many scenarios as possible so that your assets go to the people and causes you care about.

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¹ Number of Canadians without Wills significantly under-reported; Google Consumer Surveys, June 2016

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