CITATION: Smith v. Bechtel et al, 2026 ONSC 975
COURT FILE NO.: CV-25-00000058-00ES
DATE: February 17, 2026

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE ESTATE OF TIMOTHY JOHN BECHTEL, deceased.

BETWEEN:	)	
TAMMY LYN SMITH, also known as TAMMYLYNN SMITH	)	
Applicant	)	Barrie M. Hayes, for the Applicant
– and –	)	
TERRY BECHTEL, DARREL BECHTEL, JUDY TOFFLEMIRE (nee BECHTEL), KEITH BECHTEL, ANDREW BECHTEL, also known as ANDY BECHTEL, KEVIN BECHTEL, and MARK BECHTEL	)	
Respondents	)	Jonathan Miller, for the Respondent Terry Bechtel
	)	**HEARD:** October 17, 2025 and January 8, 2026

REASONS FOR JUDGMENT

MUSZYNSKI J.

[1] This application involves a request to validate a draft will pursuant to s. 21.1(1) of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (*SLRA*).

[2] There are no factual disputes in this case. There is no question that the deceased, Timothy Bechtel, had capacity when he provided instructions to an experienced lawyer who prepared a will

and powers of attorney in accordance with those instructions. There is no suggestion that Timothy was being pressured or coerced in any way.

[3] Twelve days after the will was prepared in draft, but before it was signed, Timothy died of a sudden heart attack.

[4] Timothy was never married, had no common law spouse, and no children. He was predeceased by his parents and estranged from his surviving siblings. The draft will appoints Timothy's former employee and friend, the applicant, Tammy Lyn Smith, as estate trustee and residual beneficiary of Timothy's estate after making several cash legacies to friends, nephews, and a charity. There are no prior wills.

[5] Without an order validating the draft will, the *SLRA*'s provisions on intestacy govern the distribution of Timothy's estate. His property would pass to his estranged surviving siblings and the children of his predeceased brother.

[6] The respondent, Terry Bechtel, opposes the application. The remaining respondents have not taken a position with respect to the application.

Background

[7] Timothy was predeceased by his brother, Gregory, and survived by four other siblings, Terry Bechtel, Darryl Bechtel, Judy Tofflemire, and Keith Bechtel. The respondents in this application include Timothy's surviving siblings and Gregory's three children – Andrew (Andy) Bechtel, Kevin Bechtel, and Mark Bechtel.

[8] The applicant worked as the office manager for Timothy's small business from 2003-2016. After her employment ended, the applicant maintained a close friendship with Timothy until his death.

[9] Timothy did not have an ongoing relationship with any of his surviving siblings, although he did have a positive relationship with his nephews – Andy, Kevin, and Mark. According to the applicant, Timothy did not want his siblings to be notified when he died.

[10] It was the applicant's evidence that Timothy told her that he was going to appoint her as his estate trustee and that she would be named as a beneficiary in his will. No specific details were discussed.

[11] In August of 2024, Timothy was hospitalized due to kidney stones. While at the hospital, he was diagnosed with having an enlarged aorta. On September 18, 2024, Timothy had a meeting with Lorne Plater, a lawyer, for the purposes of preparing a will and continuing powers of attorney for property and personal care.

[12] Mr. Plater has been a practicing lawyer for 49 years. He deposes that he had not met Timothy prior to the September 18, 2024 meeting, that Timothy came to the meeting alone, had capacity, and appeared to know what he wanted to do with his estate. During the meeting, Mr. Plater took handwritten notes on a form that he uses when meeting with will clients. The

handwritten notes state that the applicant was to be the single executor and identifies specific bequests of property and cash legacies. Mr. Plater's notes also state that the applicant was to be appointed as attorney for Timothy's property and personal care.

[13] Mr. Plater estimates that the meeting with Timothy lasted less than 30 minutes. The plan was for Mr. Plater to draft the continuing powers of attorney and will and provide it to Timothy for review. A letter from Mr. Plater to Timothy dated September 23, 2024 was left for Timothy at the reception of Mr. Plater's law office for pick up. The letter enclosed drafts of the will and power of attorney, confirms an appointment for October 16, 2024 to sign the documents, and also states: "Kindly review the draft and advise of any changes or corrections, preferably at least two or three days prior to your appointment."

[14] The draft will and powers of attorney incorporate the details contained in Mr. Plater's handwritten notes. Specifically:

a. The applicant is appointed as estate trustee, and a friend, Terry Emon, is named as alternate estate trustee;

b. Each nephew – Mark, Andy, and Kevin – is to receive $75,000;

c. A friend, Scott Harper, is to receive $100,000;

d. A friend, Terry Emon, is to receive $50,000;

e. The Arnprior Humane Society is to receive $75,000;

f. A neighbour, Doug Smith, is to receive a riding lawn mower; and

g. The applicant is to receive the residual of the estate.

[15] On September 30, 2024, Timothy died of a sudden heart attack.

[16] After Timothy's death, the applicant went to his home and found the letter from Mr. Plater along with the drafts of the will and powers of attorney. It is the applicant's evidence that she found the documents in an unaltered form with no notes or memorandum prepared by Timothy in relation to the will. It is not clear whether the documents were found within a sealed envelope or whether they were out in the open.

[17] In the home, the applicant also found an undated document in Timothy's handwriting listing his assets with some general instructions. Amongst other things, the handwritten document states:

a. Each nephew – Mark, Andy, and Kevin – is to receive $50,000;

b. $50,000 each to Scott and Sheri Harper;

c. Terry Emon, is to receive $50,000;

d. The Arnprior Animal Hospital is to receive $50,000;

e. The applicant is to receive “everything else”; and

f. “My siblings not to be notified”.

[18] After Timothy’s death, the applicant discovered that she was named as an equal beneficiary, with the Arnprior Humane Society, of a life insurance policy with London Life. The Arnprior Humane Society was named as sole beneficiary of investment accounts that Timothy had with Canada Life.

[19] The total value of Timothy’s estate was estimated as being $1,275,000 as of October 2024.

Issue

[20] The sole issue to determine on this application is whether the draft will sets out Timothy’s testamentary intentions.

Law and Analysis

[21] On January 1, 2022, s. 21.1 of the *SLRA* came into effect to address situations where technically deficient wills could be validated by court order. It provides as follows:

> **Court-ordered validity**
> **21.1** (1) If the Superior Court of Justice is satisfied that a document or writing that was not properly executed or made under this Act sets out the testamentary intentions of a deceased or an intention of a deceased to revoke, alter or revive a will of the deceased, the Court may, on application, order that the document or writing is as valid and fully effective as the will of the deceased, or as the revocation, alteration or revival of the will of the deceased, as if it had been properly executed or made.
>
> **No electronic wills**
>
> (2) Subsection (1) is subject to section 31 of the *Electronic Commerce Act, 2000*.

[22] The *SLRA* provides that a will is not valid unless it satisfies the following conditions:

> 4(2)(a) at its end it is signed by the testator or by some other person in his or her presence and by his or her direction;
> (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
> (c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

[23] The draft will clearly does not satisfy the formal requirements set out in s. 4(2) of the *SLRA*.

[24] Up until recently, there has been no appellate guidance from Ontario on the interpretation of s. 21.1 of the *SLRA*. At the original hearing of the application, counsel were made aware that the Court of Appeal for Ontario had a potentially relevant decision under reserve. It was agreed that I would postpone the release of my reasons to permit counsel to make further legal submissions following the release of the appellate decision.

[25] On December 17, 2025, the decision of *Hejno v. Hejno* 2025 ONCA 876 was released. In *Hejno*, a draft will was validated by the application judge pursuant to s. 21.1 of the *SLRA*. As it was unopposed, the application judge did not issue reasons for judgment. The Court of Appeal allowed the appeal. It was noted that without "the benefit of reasons in the court below or full argument before us, this is not an appropriate case for us to definitively determine the legal test that governs applications under s. 21.1 of the *SLRA*."

[26] On January 8, 2026, counsel appeared before me and it was agreed that, given the outcome in *Hejno*, no further submissions were necessary.

[27] When reviewing the caselaw dealing with court validated wills, it is evident that a key consideration is whether the deceased has demonstrated "a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death": *Estate of Young*, 2015 BCSC 182, at para. 35; *White v. White*, 2023 ONSC 3740, 89 E.T.R. (4th) 25, at para. 18; *Skopyk Estate*, 2017 BCSC 2335, at para. 21; *Salmon v. Rombough*, 2024 ONSC 1186, at para. 115; *Smith Estate, Re*, 2016 BCSC 350, at para. 19; and *McKinlay v. Currie et al*, 2025 ONSC 3471, at para. 28.

[28] The applicant relies on the unreported decision of *Grattan v. Grattan* to support her position that a draft will can be validated pursuant to s. 21.1 of the *SLRA* if the court is satisfied it reflects the testamentary intentions of the deceased: February 1, 2023, Court File No. 22-0054 Superior Court of Justice Belleville. In *Grattan*, a lawyer prepared a draft will based on instructions provided by the deceased in a meeting. Following the meeting, the lawyer emailed a draft version of the will to the deceased for review and comment. The deceased responded to the email by attaching a copy for the draft will with minor amendments but died 15 days later before she was able to execute the final version. The application judge was satisfied that by reviewing the draft and making amendments to the same, the last version of the draft will was an accurate reflection of the deceased's testamentary intentions.

[29] Aside from *Gratton*, courts in Ontario have more frequently allowed applications under s. 21.1 of the *SLRA* to cure technical deficiencies to a signed will: See *Cruz v. Public Guardian and Trustee*, 2023 ONSC 3629; *Kertesz v. Kertesz*, 2023 ONSC 7055; *Vojska v. Ostrowski*, 2023 ONSC 3894, 87 E.T.R. (4th) 326; *Marsden v. Hunt et al.*, 2024 ONSC 1711, *Re: O'Neill Estate*, 2024 ONSC 2228, 97 E.T.R. (4th) 311; and *Groskopf v. Rogers*, 2023 ONSC 5312, 90 E.T.R. (4th) 26.

[30] In *Madhani v. Fast*, 2025 ONSC 4100, 99 E.T.R. (4th) 111, the deceased retained a lawyer to update his will. Over several months, the lawyer revised the draft updated will on several

occasions pursuant to the deceased's instructions. There was no evidence that the deceased had reviewed the "final version" of the draft updated will that had been emailed to him by his lawyer. The deceased died the morning he was to attend his lawyer's office to sign the will. A.A. Sanfilippo J. denied an application to validate the draft will pursuant to s. 21.1 of the *SLRA* on the basis that it was in electronic form and because the applicant could not establish that the draft will reflected the deliberate or fixed and final intentions of the deceased on a balance of probabilities.

[31] The validation of an improperly executed or otherwise deficient will is a fact specific inquiry that often requires reliance on extrinsic evidence: see *Hejno*, at para. 22, *Hadley Estate, Re*, 2017 BCCA 311, 416 D.L.R. (4th) 673, at para. 40.

[32] The applicant has put forward evidence on instances where Timothy expressed his intentions with respect to the disposal of his property. Most notably, there is compelling evidence that Timothy wanted the applicant, other friends, a charity, and specific nephews to benefit from his estate instead of his surviving siblings. For instance, he named the applicant and a charity as beneficiaries of his life insurance policies as opposed to family members and, at some point, prepared a handwritten document saying that his siblings should not be notified of his death, and he instructed his lawyer to prepare a draft will that does not benefit his siblings.

[33] In *Madhani*, A.A. Sanfilippo J. notes: "Expressions of intentions as to how a testator would like their property to be disposed of after death are not testamentary intentions. Expressions of intentions, alone, are insufficient to ground a valid will."

[34] The distinction between expressions of intentions and testamentary intentions is at the heart of this case.

[35] The applicant has not satisfied me that the draft will reflects Timothy's testamentary intentions, meaning his deliberate or fixed and final expression of intention as to the disposal of his property on death for the following reasons:

a. While there are some similarities between the handwritten list found in Timothy's home and in the draft will, there are notable discrepancies.

b. There is no evidence that Timothy reviewed the draft will.

c. Mr. Plater's letter enclosing the draft will invites Timothy to review draft and to "advise of any changes or corrections" at least two to three days prior to the signing appointment.

d. The suggested deadline for Timothy to "advise of any changes or corrections" had not yet expired before he died.

e. While Mr. Plater's evidence is that Timothy was clear in his instructions and had made up his mind as to who he wanted to benefit from his estate, Mr. Plater also acknowledges that he scheduled a follow-up appointment weeks later to allow Timothy an opportunity to review the draft documents and make any requested changes or corrections.

[36] People change their minds. Timothy appeared to have changed his mind on at least one occasion between the time he made his handwritten list and the time he met with Mr. Plater. It is unclear whether Timothy had even reviewed the draft will. It is unknown whether Timothy would have requested that Mr. Plater make changes or corrections before he returned to sign a final version.

[37] I find that the unsigned, unwitnessed, draft will cannot be validated by s. 21.1 of the *SLRA.*

Costs

[38] While the respondent was the successful party, and presumptively entitled to a costs award, in my view, the application was reasonably brought under the circumstances. There is no appellate guidance on the issue of court ordered will validation pursuant to s. 21.1 of the *SLRA,* and at least one decision from this court that was supportive of the applicant's position.

[39] Although I will consider costs submissions if the parties are unable to reach an agreement, on the facts of this case, I note that that this may be an instance where the respondent's legal costs should be borne by the estate, not the applicant.

[40] If necessary, costs submissions, which shall not exceed 3 pages, with any offers to settle attached, shall be filed in accordance with the following schedule:

- The respondent shall serve and file costs submissions by March 6, 2026;
- The applicant shall serve and file responding costs submissions by March 20, 2026. Thereafter, I will decide the issue of costs based on the material filed.

Muszynski J.

Released: February 17, 2026

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Applicant

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Respondent

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