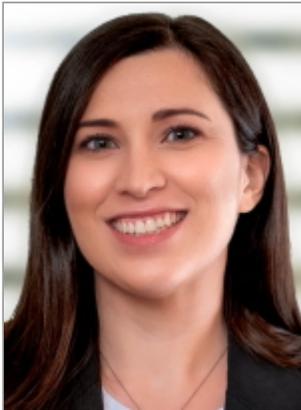


Wills, Trusts & Estates

Using language to make wills more inclusive

By **Stephanie Battista**

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(November 18, 2021, 9:37 AM EST) -- This past summer, history was made at the 2020 Tokyo Olympics when Canadian soccer player, Quinn, became the first openly transgendered and non-binary athlete to not only compete at the Olympics, but also to win an Olympic medal (which happened to be gold, by the way).

Quinn's journey to the top of the podium was fun and inspiring for Canadians to watch, but hopefully, and more importantly, it also continues to normalize the idea that gender is not limited to only two categories, and that our everyday language should reflect this.

Our society is taking steps towards greater inclusivity and recognition of people who do not identify as either male or female. Bill C-16 was passed in 2017 which amended the *Canadian Human Rights Act* and the *Criminal Code*, with respect to gender identity and gender expression, including adding these categories as prohibited grounds of discrimination. That same year, changes were made in Ontario to the gender and sex information required on government identification and forms: Ontario residents who do not identify as either male or female, or do not want to disclose their gender identity, can choose "X" instead of only "M" or "F" on government documents.

The appropriate use of pronouns is important to many aspects of our lives. Wills and estate planning are no different. Will drafting historically incorporated binary language in describing beneficiaries, executors and the testators themselves. It is still very common to see individuals addressed as "Mr." or "Ms.," children described specifically as "daughters" or "sons," beneficiaries referred to as "he/him" or "she/her", and we even occasionally still see the term "testatrix" or "executrix" used.

Descriptors are an important part of wills in order to sufficiently identify the beneficiary who is entitled to receive the gift. Although mislabeling an individual's gender does not necessarily invalidate a gift left in a will so long as the individual is clearly identifiable, most people do want to ensure that their loved one's gender identity is respected. Thus, it is important to know how your loved ones identify themselves and what their preferred pronouns may be.

But even more than this, it may be time to look at gender-neutral drafting altogether. Using the correct pronouns in a will is a good first step, but it can still pose some issues. A will is written and signed at one specific point in time and does not come into effect until the death of the testator. This can be months, years and even decades from when the will was initially drafted. This increases the likelihood that a beneficiary may identify differently at the time of your death.

Descriptors should not be abandoned altogether, as they could be necessary to properly identify a beneficiary — in order to ensure the proper loved one is receiving their gift, these descriptors could be very valuable. But the use of gendered language is not necessary. A gift "to your sibling, X" is just as legally effective as "to your sister, X" and leaves no uncertainty as to who the intended beneficiary is. This also takes away any uncertainty as to whether a beneficiary named in your will may identify themselves differently after the date of your death.

As individuals are being more open about their gender identities, estates practitioners should strive to be as welcoming and inclusive as possible. This can, and perhaps should, include adjusting old drafting practices to incorporate more gender-neutral language.

A will represents some of your last words to a loved one. The wrong pronouns or gender, or even using a birth name that your beneficiary no longer uses may cause more pain in an already highly emotional situation. Trying to use the correct pronouns and names, or choosing to use more gender-neutral language where available, can show the proper respect to your loved ones, and that is a legacy worth striving for.

Stephanie Battista is an associate at O'Sullivan Estate Lawyers LLP. She practises exclusively in estate and trust law, focusing on all aspects of estate planning, including cross-border planning and estate administration in order to provide clients with sound and helpful legal advice.

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