COURT FILE NO.: 05-79/09
DATE: 20091103

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE ESTATE OF Evelyn O'Reilly, deceased; Michael O'Reilly and Terrence O'Reilly, Estate Trustees for the Estate of Evelyn O'Reilly v. Dan O'Reilly

BEFORE: Justice D. M. Brown

COUNSEL: A. McCracken, for the Applicants

DATE HEARD: November 3, 2009

E N D O R S E M E N T
(Form of order in applications to prove a lost will under Rule 75.02)

[1] This is an application under Rule 75.02 of the *Rules of Civil Procedure* to prove the validity and contents of a will, the original of which has been lost, and of which only a copy remains. In light of the evidence filed about the search for the original will conducted by the applicants, including their efforts to obtain the original from the solicitor who acted for their mother, and in view of the consents from all the potential beneficiaries, I grant the order sought.

[2] My only purpose in writing this brief endorsement is to deal with the form of the order. Since the *Rules of Civil Procedure* do not prescribe the form for an order made under Rule 75.02, judges see a wide range of language submitted for proposed orders proving lost wills. In order to bring some uniformity to this type of application, I would ask applicants to submit draft orders using the language recommended several years ago by (now retired) Justice Haley. The draft order should read:

> I declare that the Will of [insert name of deceased] dated [insert date of will] has been proved and that the copy of the Will adduced in evidence shall be admitted to probate as the last Will of [insert name of deceased] deceased, until such time as the original may be found.
>
> I direct that, subject to the filing of the appropriate documents with the Court, a Certificate of Appointment of Estate Trustee with a Will for the Will of [insert name of deceased] dated [insert date of will] be issued to the applicant(s).

To this language should be added any other orders sought by the applicant, such as dispensing with service of the application, etc.

[3] Judges considering these applications are provided with a template endorsement using this language. Therefore, in order for an applicant to avoid the delays associated with submitting a draft with different language and then having to submit a revised order that tracks the language of the endorsement signed by the judge, the language I have set out above should be used in the draft order submitted with the application record.

[4] In the present case, an order shall go dispensing with service of the application record and further:

> I declare that the Will of Evelyn O'Reilly dated July 14, 1995 has been proved and that the copy of the Will adduced in evidence shall be admitted to probate as the last Will of Evelyn O'Reilly deceased, until such time as the original may be found.
>
> I direct that, subject to the filing of the appropriate documents with the Court, a Certificate of Appointment of Estate Trustee with a Will for the Will of Evelyn O'Reilly dated July 14, 1995 be issued to the applicants.

(original signed by D. Brown J.)
D. M. Brown J.

DATE: November 3, 2009