

*SENT VIA EMAIL*

**June 12, 2012**

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Dear Mr. Handford,

**Re: Response to regulation of online Will-writer – Perspective from Canada and Australia**

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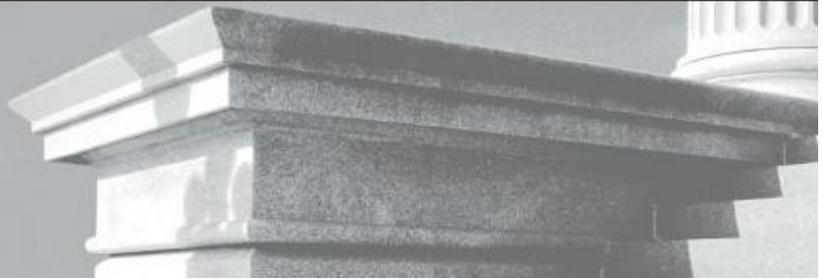
**Objective:**

I am providing this letter in response to the Legal Services Board's consultation about provisional recommendations on the regulatory approach to will-writing, probate and estate administration activities.

My comments are limited to the do-it-yourself online Will-writing industries in Canada and Australia (which I am knowledgeable of).

Overall, I am in favour of the Legal Services Board's proposed recommendations, but I would like to know more about the specifics of how regulation is to be conducted. For example, will being part of a Will-writing association be required? Will abiding by a code of conduct be required? Will insurance be required? Will audits be available to the regulatory body? Will filings need to be regularly provided to the regulatory body? I think these and other questions will need to be addressed. When it comes to regulating online Will writers, I think the Legal Services Board should strive for a certain balance in order to promote access to justice, protect the public, and not stifle innovation and entrepreneurialism in this industry. As such, non-solicitors should be able to provide online Will-writing services, but should be held to certain basic standards of conduct.

I personally believe that online do-it-yourself Will-writers should be required to demonstrate to regulators how their products are substantively adequate. They should also agree to abide by a code of conduct and carry a minimum level of insurance. I also believe that the Solicitors Regulatory Authority would be best suited to regulate Will-writers.



## **About Me:**

I am a Barrister, Solicitor and Notary Public in the Province of Ontario, Canada. I was called to the bar in 2008 and, since then, I have spent considerable time, money and effort trying to make legal services more cost-effective and convenient to the general public. With respect to the latter, I am the principal of Dynamic Lawyers Ltd., a federal corporation in Canada that sells (among other things) a fully automated online legal Will creation software called the “Will-O-Matic” through [www.dynamiclawyers.com](http://www.dynamiclawyers.com). Dynamic Lawyers Ltd. also owns Dynamic Law Pty Ltd., an Australian corporation which sells an Australian version of the Will-O-Matic through [www.dynamiclaw.com.au](http://www.dynamiclaw.com.au).

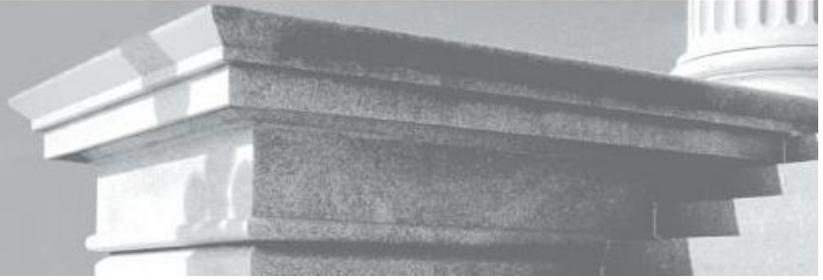
## **About the Will-O-Matic:**

I believe that the Will-O-Matic is the most advanced, comprehensive, and flexible Will-making software available for the general public. It allows users to create a custom-tailored Will through an online questionnaire. It is easy to use and provides lots of prompts and information to help users make an informed decision. It tries to make the very complex world of Wills and estates understandable to the average person. It strives to do so without sacrificing comprehensiveness or best drafting techniques. The users’ answers are stored on a secure sever and daily backups of their information are made (to prevent against catastrophic loss).

The Will-O-Matic is constantly updated to make it more comprehensive or flexible or to reflect changes in the Wills and estates law of Canada or Australia. For example, this was done recently when the Wills and estates laws changed in the Province of Alberta; this will also be the case next year, when the Wills and estates laws change in the Province of British Columbia.

The Will that is generated by the Will-O-Matic system comes in a .pdf format. It is drafted using best practices and is based on a user’s Provincial (for Canada) or State (for Australia) Wills and estates laws. Users can edit their Will for free for 1 year. The Will also comes with mandatory signing instructions (to help ensure that the Will is entered into properly), witness affidavit templates (to facilitate probate in Canada), and a comprehensive eBook about Wills for the user’s Province (for Canada) or State (for Australia). For example, the eBook for the Province of Ontario is 73 (single spaced) pages and deals with issues such as: what is a Will, the benefits of having a Will, what happens if you don’t have a Will, legal requirements for a Will, whether users should engage a lawyer to prepare their Will, typical Will clauses, how a Will is administered, and much more.

Finally, our customer service (i.e. me) has been hailed as being very responsive and friendly ;-). I take pride in answering customer’s technical issues within 24 hours (or sooner).



The Will-O-Matic is the result of 2 years of legal research and computer programming. The Canadian Will-O-Matic sells for \$97 plus tax on [www.dynamiclawyers.com](http://www.dynamiclawyers.com) while the Australian Will-O-Matic sells for \$69 plus tax on [www.dynamiclaw.com.au](http://www.dynamiclaw.com.au).

But using the Will-O-Matic is not without its risks. To begin, the Will-O-Matic is not for everyone. The following warning is displayed as part of using the Will-O-Matic for Canada and Australia:

The Will-O-Matic is designed for a couple or single person with a few beneficiaries and harmonious family situation, possibly owning their own home and otherwise straightforward possessions (e.g. household goods and a few bank accounts). For individuals and couples with blended families, dependants, complex financial affairs (e.g. involving trusts, taxes, business interests, joint property), international property, or issues with mental capacity, advice from a lawyer is recommended. Also, if there are issues concerning undue influence, duress, or other factors which may prevent the Will-maker from entering into the Will freely and voluntarily, advice from a lawyer is recommended.

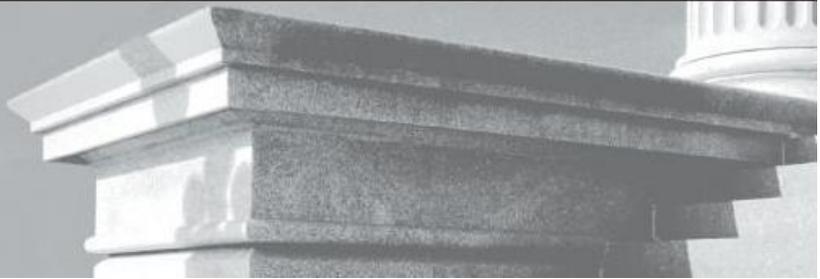
By using the Will-O-Matic, users acknowledge (through terms of use and disclaimers on the website) that we are not a law firm, there is no solicitor-client relationship, that we cannot guarantee the accuracy or completeness of the information provided on our website, and that they should always seek legal advice from a professional if they need it. We also carry errors and omissions insurance for the Will-O-Matic.

The response to our Will-O-Matic has been positive. Here are the five most recent testimonials (of many over the past few months):

**Testimonial #1 (Canada)**

I purchased an online product from Dynamic Lawyers (Last Will) and I thought that I got a good product and an excellent service. The download of the online form was quick and friendly, the questionnaire was simple and clear, and the final product (printed form) looked good and professional. Furthermore, I asked for some help and the response was swift and client friendly. Finally, all this happened on a Sunday which really impressed me. It felt good to know that there are professional people who care and make an extra effort. Well done Dynamic Lawyers.

N. J.



## **Testimonial #2 (Australia)**

I had an existing will prepared by a lawyer. However, as my circumstances changed, I wanted to update my will. I balked at the idea of paying a lawyer \$500 (if not more) to draw up a new will with only one change so I kept putting it off. Then I found Will-o-matic. For less than \$100 I was able to prepare my will on-line AND have 12 months free access to edit and make changes! I checked the finished document against my previous will and found that the Will-o-matic document was actually more comprehensive which gives me great peace of mind.

Catherine

## **Testimonial #3 (Australia)**

The dynamiclaw program was simple to purchase and use. Instead of having to book an appointment with a Solicitor, I was able to complete my will by myself. I was able to tailor it to my needs then print it out for signing very easily. Not only was this convenient, it also saved me a lot of money. I would recommend this program to everyone. Thanks Dynamiclaw.

Cheryl

## **Testimonial #4 (Canada)**

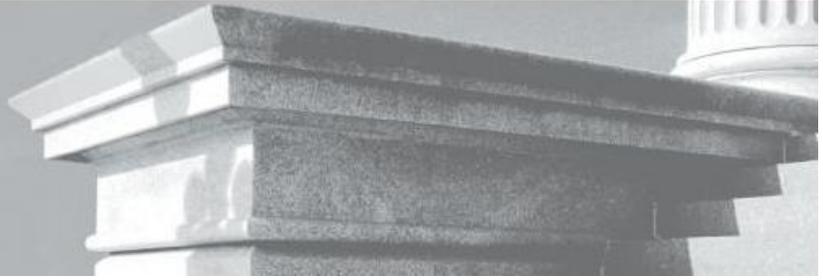
I used Will-O-Matic to make my will and found it very quick and easy to use. I had a few questions on some of the legal matters and Michael responded promptly to explain everything in great detail in layman's terms. To have a legal will completed and printed within a half an hour was amazing. I would recommend Dynamic Lawyers to anyone. Thank You

Ron

## **Testimonial #5 (Canada)**

I recently purchased two Last Will and Testament Kits from Dynamic Lawyers and was pleasantly surprised to see how easy it was to complete on my own. Their website and online forms were easy to understand and included information and advice when answering more difficult questions. When I did have some personal questions, I emailed Dynamic Lawyers and got quick responses to guide me through the completion of my Will. Now I can rest assured knowing that my children will go to the respective relatives, my assets and properties are safe and my personal belongings are given to the people I want. Thank you Dynamic Lawyers for helping me finally write my Will for myself and my husband at an affordable price. Thanks again for your help.

Debbie



The bottom line is that I truly care about delivering an exceptionally high quality product in a cost-effective and convenient manner. That's why it has taken YEARS to develop and launch the Will-O-Matic. Throughout that time, I have regularly attended Wills and estates continuing education courses, purchased the leading Wills and estate texts from various countries (e.g. Canada, Australia and the UK), and regularly engaged other senior Wills and estates lawyers to create Wills using the Will-O-Matic system and offer their input (which I then take and build into the Will-O-Matic). I will also be getting my STEP diploma over the next few years.

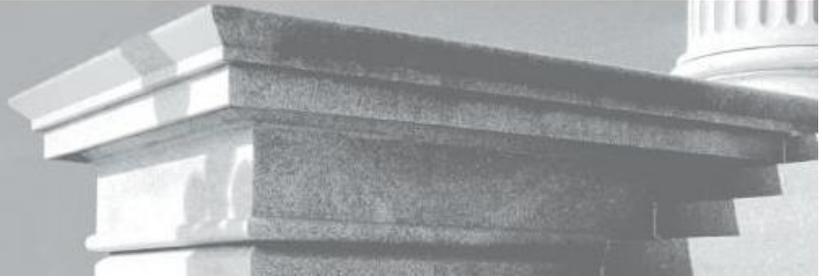
Since launching in Canada in January 1, 2012, the Will-O-Matic has been constantly featured in the national and local media: [www.dynamiclawyers.com/in-the-news](http://www.dynamiclawyers.com/in-the-news).

## **Keys to Success**

If I (as a lay person) was looking for a do-it-yourself online Will creation software option, I would want everything that the Will-O-Matic offers. Specifically, I would want something that was comprehensive, flexible, and based on my Provincial (for Canada) or State (for Australia) Wills and estates laws. I would want important terms to be defined in simple terms and prompts to be displayed in appropriate placed. I would want an education about Wills so that I could better understand and appreciate what creating a Will is all about. I would want to know that the Will is drafted using clear and meaningful language that uses best practices and which does not contradict itself. I would want to know that it is backed by years of research and constantly updated to reflect changes in the law. I would want all of this. And, if a software could deliver all of this, then I would presumably have the second best thing to an experienced solicitor.

## **Competition**

Before and after I launched the Will-O-Matic, I reviewed the online do-it-yourself (or 'botch it yourself') Will-writing landscape in Canada and Australia. I was not impressed. In fact, I was shocked about the quality of the Will-writing products and services that were out there. Without naming names, I can offer the following observations concerning how they may be deficient (although not all of them suffer from all of these deficiencies):



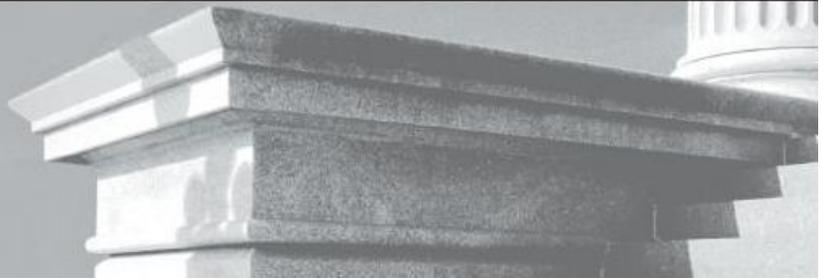
- They may not be regularly updated to reflect changes in the law.
- They do not reflect the nuances of Provincial or State laws (e.g. a legal representative for your children is called a “Tutor” in Quebec or a “Custodian of your minor children and Guardian of their property” in Ontario; Will-writers in Canada just call that person the “Guardian” of your minor children!).
- They are definitely not comprehensive enough.
- They are definitely not flexible enough when it comes to options and alternate options.
- They are not all questionnaires that generate a custom-tailored Will (some are just generic downloadable word document or .pdf templates with fill-in-the blanks)
- They are not well drafted using clear, complete, and certain language and structure
- There may not be any appropriate signing instructions
- You may not be able to insert your own clauses
- For Canada, they are missing witness affidavits which help facilitate the probate process
- They may not allow you to go back and edit
- They may have limited or no legal guidance or information
- These websites may not have appropriate warnings, terms of use or disclaimers
- These websites may not carry errors and omissions insurance

Now, granted, I am a lawyer who has spent years researching Wills and estates laws in Canada and Australia and who can (presumably) tell the difference between a well-drafted and comprehensive Will versus one that is not. But who else can say that they can? The average person cannot easily recognize these deficiencies. And that is why they need protection from fraudsters and shoddy online do it yourself Will-writing products and services.

### **Case-in-Point**

One Canadian online Will-writing company has recently been offering an “online”, “customizable” and “Canadian” Will Kit for \$10. The Will Kit included a downloadable .pdf fill-in-the blank template for a Will, Powers of Attorneys and a Living Will. Sufficed to say, they had no idea what they were doing. I reviewed their product and pointed out the SIGNIFICANT deficiencies therein to third parties dealing with this particular company. I spent 10 minutes doing so and noted the following problems:

1. You don’t know who they are. They are not lawyers. They have no reputation. I posed a number of questions to them and they responded to my email with wrong and incomplete information. They have really no idea of what they’re actually doing and the harm they’re causing.
2. They have 1 page with a download link on their website. Again, no terms and conditions. No disclaimers. No privacy policy. No warnings about how individuals should seek legal help if they need it. Nothing.



3. Their product is legally deficient. It's only 3 pages (whereas a typical Will generated through my Will-O-Matic is at least 10 pages). Some of the things that I note are as follows:

- a. This will is no good for couples who are about to get married (the Will will be automatically revoked in many provinces). This means that the laws of the Province will govern and that may not be what the individual wanted (but it will be their beneficiaries who end up suing you because they will long-be dead).
- b. It repeats this sentence twice for no reason (the first time it is stated is actually in the wrong place: "**I DIRECT** all my just debts, funeral and testamentary expenses to be paid and satisfied by my Executor as soon as conveniently may be after my death."
- c. It's missing sooooo much vital information such as RRSP, RRIF, and Life Insurance designations, gifts (e.g. real estate, charity, personal property, money, executor powers, how the residue is to be dealt with, family law act provisions, mediation provisions, additional clauses, definitions, etc.). This is very, very bad.
- d. The signing page with witness signatures must come at the end. Otherwise, anything above it will not be counted. Well, guess what? The signing page is page 2 and there is information below it. So that information will not be included in the Will.

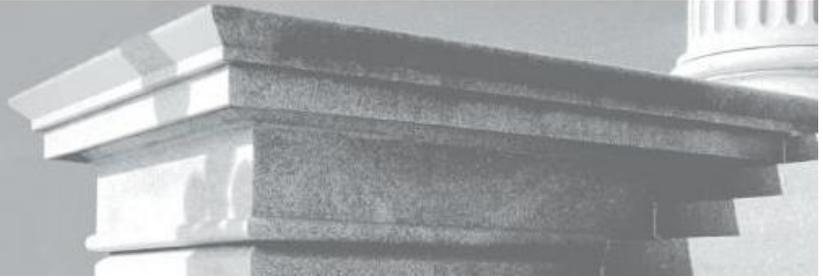
4. But the bottom line is that these .pdf documents are not in compliance with provincial laws. It is not really customizable. It is a .pdf that you simply enter information into. The user doesn't have much of a choice in terms of customizing them (it's just fill in the blank). It is missing so much important information. There's no guidance. It's a sham.

5. If they get sued, they will likely disappear, leaving you to hold the bag.

6. Their product is not likely backed by any errors and omissions insurance.

After reviewing my notes, the third parties which had previously been dealing with this online Wills company responded: "After reviewing the information you sent with my Marketing Manager we have decided to take this advertisement off our website. I would like to thank you again for bringing this to our attention, we look forward to working with you in the near future."

Much of what I've written applies equally to the online do-it-yourself landscape in Australia.



I guess the question that matters the most to me is: why do **I** have to police the online Wills industry wherever I launch my Will-O-Matic service? I care about the public and about the reputation of my Will-O-Matic. But it shouldn't be my job to make sure that others are kicked out of the industry or prevented from coming in because they are doing more harm than good. I do not have the time, energy or resources to police the online Will-writing industry. And it is not my place to do so; this is the role of government and regulations. I have spent the time and effort to develop a high quality product; and others that want to compete with me on my level should be held to the same standards. There are basic barriers to entry which **NEED** to exist here for the public's protection.

Feel free to contact me if you have any comments, questions, or concerns.

Regards,

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