

**Re Fawkes (2020 QSC 200)**

**By John Fitzpatrick**

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- This case concerned a grant of probate based on a copy of a Will.
- The original of the Will of the deceased could not be found.
- The original was held by the deceased or by the solicitors who prepared the Will but it was lost.
- The Will revoked all previous Wills.
- There is no evidence of any intention by the Testator to revoke the Will.
- The question in this case was whether it is appropriate to grant probate to a copy of the Will.
- In the case of *Frizzo v Frizzo*, Applegarth J followed the NSW decision of *Cahill v Rhodes* and held that five matters must be established for the admission to probate of a copy of a Will. These are:
  1. There is actually a Will;
  2. That Will revokes all previous Wills;
  3. The applicant overcomes the presumption that if, the original Will, cannot be produced to the Court, it was destroyed by the Testator with the intention of revoking it;
  4. There is evidence of the terms of the Will;
  5. The Will was duly executed
- In this case, a copy of the Will was produced.
- It was found in this case that Mrs Fawkes had not revoked her Will and that probate ought to be given to a copy of the Will.

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