

Overview of the *Wills and Succession Act* **A Summary of Changes**

Prepared For: Legal Education Society of Alberta

Wills & Succession Act for Legal Support Staff

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BACKGROUND

At time of writing, a new *Wills and Succession Act (WSA)*¹ has been passed by the Alberta Legislature. A year was set aside before proclamation to allow for preparation and education. Once in force it will have significant impact on wills and succession practice in Alberta. Proclamation is expected February 1, 2012.

A second phase of succession law reform is in the works and will deal with estate administration.

The *Wills and Succession Act, SA 2010, c. W12.2* is online at http://www.qp.alberta.ca/Laws_Online.cfm. It is not uncommon for housekeeping changes to be made to legislation prior to its coming into force. Amendments are planned for Fall 2011. Readers should update their statutes.

Comments or questions on the *Wills and Succession Act* can be directed to JUST.SuccessionLaw@gov.ab.ca

TRANSITIONAL PROVISIONS: A chart summarizing how the old law will transition to the new is found at the end of the paper.

MAJOR CHANGES TO THE LAW

The new law consolidates the *Wills Act*, *Intestate Succession Act*, *Survivorship Act*, *Dependents Relief Act* and section 47 of the *Trustee Act*.² There are also major amendments to the *Matrimonial Property Act* and some companion amendments to the *Administration of Estates Act* and *Family Law Act*.³

Key changes to the law made by the *WSA* include but are not limited to:

- Where two or more people die in circumstances where the order of death cannot be determined, for the purpose of property distribution, each is deemed to have died before the other.
- There are new Court powers allowing for correction and validation of wills and documents purporting to be wills. These provisions will apply when a death occurs after the *WSA* comes into force.
- Marriage will no longer revoke any will.

¹ *Wills and Succession Act*, SA 2010, cW-12.2.

² *Wills Act*, RSA 2000, c. W-12. *Intestate Succession Act*, RSA 2000, c I-10. *Dependants Relief Act*, RSA 2000, c. D-10.5. *Survivorship Act*, RSA 2000, c S-28. *Trustee Act*, RSA 2000, c T-8, s 47, *Matrimonial Property Act*, RSA 2000, c M-8. Unless otherwise stated, all references in this paper to these statutes are to these citations.

³ *Administration of Estates Act*, SA 2000 c A-2, *Family Law Act*, SA 2003 c F-4.5, both before and after the amendments made by Bill 22 (*2010 Family Law Statutes Amendment Act 2010 SA 2010 c 16*).

- A divorce occurring after the WSA comes into force may revoke a gift to the ex spouse. A similar rule applies to adult interdependent partners.
- On death, a surviving spouse may claim his or her share of the matrimonial property from the estate. This applies to deaths of married people occurring after the WSA comes into force.

WSA allows from some new Court applications. Key procedure changes are likely to be introduced into the Surrogate Rules ⁴and include

- Applications under the WSA will be by C1, with an affidavit in form C2
- For all applications under the WSA, and all contentious Surrogate matters, respondents will be able to file a Reply in form C2.1 accompanied by a C2 affidavit
- In the alternative Respondents can file a Demand for Notice, form C2.2

THE DETAILS: CHANGES MADE BY THE WSA⁵

All proposed changes received support from an extensive public and technical consultation process. The changes are described here, in the order they appear in the statute.

GENERAL DEFINITIONS AND DISPUTE RESOLUTION (Sections 1- 4)

- There are new definitions (s.1(1)) including
 - “Beneficiary” are those receiving a beneficial disposition from an estate.
 - “Descendant(s)” replaces the term “issue”, in referring to lineal descendants of a person.
- “Property” is defined in terms similar to that of the *Civil Enforcement Act* and the *Adult Guardianship and Trusteeship Act*. There are virtually no distinctions between real and personal property. (s. 1(1)(i))
- “Child” is defined to include *all* children of a person, regardless of whether the parents were married, and will include children who are conceived and actually in

⁴ At time of writing, these are not passed.

⁵ A longer, detailed version of this paper was prepared for the LESA Wills and Trusts Refresher in April/May 2011.

the womb at the time of the death of the person, even though they are born after the death. (s.1 (3)). The parent-child relationship, for purposes of succession is as set out in Part 1 of the *Family Law Act*. Children conceived *after* the death of a testator or intestate are not included in the definition.

- The *Dower Act*⁶ is unchanged and the rights under the *Dower Act* prevail over the will or rights on intestacy.
- Lawyers dealing must consider appropriate dispute resolution in estate matters. (s. 4)

PART 1 – SURVIVORSHIP (Sections 5 and 6)

The Act changes the rule that if two or more people die at about the same time, for property distribution purposes, the youngest is deemed to have survived. The new rule is: if two or more people die at or around the same time, and the order of death cannot be determined, the property is distributed as if each person died before the other. (s. 5(1)). This change is consistent with the *Insurance Act*.⁷ Also, if the deceaseds owned property jointly with each other, the property is deemed to be held as a tenancy in common. (s. 5(2))

PART 2 - WILLS

The law is refocused on ensuring testamentary intent is met. It will generally apply to wills made after the WSA comes into force, with some exceptions. See sections 8, 23(2) and 25(3).

Part 2 makes the following key changes to wills law:

- Definition of “disposition” is added, the term will include legacy, devise, etc. (s. 7(1) (a)). There is no distinction in the WSA between legacy, devise, bequest or similar terms.
- The legal effect of a will is clarified:
 - Unless the will provides otherwise, a disposition of property by will is a disposition of ALL the interest in a property that a person has capacity to give. (s.9 (2)).
 - The “Ademption by Conversion” rule is maintained. That is, where a testator leaves a specific gift and then disposes of the property

⁶ RSA 2000, c D-15

⁷ *Insurance Act*, RSA 2000, c I-3, ss. 599, 690.