

**Changes to the *Wills and Succession Act*  
New Applications Under Sections 36-40 & 109**

Prepared For: Legal Education Society of Alberta

*Wills & Succession Act for Legal Support Staff*

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For Presentation In:

Edmonton – November 24, 2011

Calgary – December 1, 2011

## INTRODUCTION

This section of the seminar and written materials will outline the changes to the new *Wills and Succession Act* as they apply to the preparation of Probate and Administration packages for submission to the Court. Our objective is for attendants of this seminar to return to the office able to:

- **understand** the changes in the new *Wills and Succession Act*,
- **communicate** these changes to other legal support staff, to lawyers and to clients upon return to the office, and
- **apply** these changes to the completion of probate and administration packages in accordance with the new Rules.

### Overview

The new *Wills and Succession Act* affects all applicants for probate or administration of an estate, whether they are members of the public or of the legal community. Lawyers and legal assistants who draft Wills or who apply for probate need to be aware of the changes, as well as the reasoning behind them, in order to complete their applications efficiently and in accordance with the new Rules. A working knowledge of not only *what* the changes will be but *why* they were implemented will help applicants to minimize the potential for rejected applications.

Lawyers and legal assistants also need to be able to communicate the changes to clients. Some clients have a limited understanding of Wills and Estates law, while others have information which is outdated or inapplicable (relates to another jurisdiction or another situation). Clearly communicating the new law and rules to clients helps them to better understand the legal issues they are facing and minimizes the potential for future disputes.

The Legislature has brought in new Wills and Estates legislation and rules with a view to streamline<sup>1</sup>, simplify<sup>2</sup>, modernize<sup>3</sup> and interpret<sup>4</sup> the old common-law and legislated rules. The *Wills and Succession Act* (“WSA”) combines five existing acts (the *Wills Act*, *Intestate Succession Act*, *Survivorship Act*, *Dependants Relief Act* and section 46 of the *Trustee Act*) into one, all-encompassing Act. There are obvious practical reasons for consolidating five separate pieces of legislation into one Act – the interrelations between each section of the new Act have been taken into account by the Legislature during the

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<sup>1</sup> Fourth Session of the 27<sup>th</sup> Legislature of the Province of Alberta, Alberta Hansard, 1 November 2010: online at < <http://www.assembly.ab.ca/Documents/isysquery/3e730a9d-6e0f-4182-b82c-3221d4a0fc15/12/doc/>>, accessed 12 October 2011

<sup>2</sup> Fourth Session of the 27<sup>th</sup> Legislature of the Province of Alberta, Alberta Hansard, 1 November 2010: online at < <http://www.assembly.ab.ca/Documents/isysquery/3e730a9d-6e0f-4182-b82c-3221d4a0fc15/12/doc/>>, accessed 12 October 2011

<sup>3</sup> Ibid.

<sup>4</sup> Fourth Session of the 27<sup>th</sup> Legislature of the Province of Alberta, Alberta Hansard, 9 May 2011: online at < <http://www.assembly.ab.ca/Documents/isysquery/24cba836-20ad-42c1-b32c-fd17f7baf1db/5/doc/>>, accessed 12 October 2011

drafting of the new Act, which will make it more clear to readers from the legal community and from the general public alike. The WSA aims to make dealing with Estate matters more efficient and less costly and easier for applicants to understand.

The act also reflects the Legislature's interest in modernizing laws that were last reviewed in the 1920s. Compared to their predecessors, today's Albertans are:

- changing careers more often
- living longer
- living with diminished capacity
- marrying later in life
- marrying more than once
- cohabitating before/instead of marriage
- having children later in life and adopting children
- "blending" families from prior relationships
- choosing same-sex partners and co-parenting as same-sex partners.

The new act reflects the realities of the changing faces of Alberta families.

The WSA takes effect upon Proclamation (expected in January 2012).

#### **So... What's new?**

1. **Wills are no longer invalidated by marriage** or by entering into an Adult Interdependent Partnership ("AIP"). Clients need to be made aware of this change.
2. **There have been substantial changes to the intestacy laws**, as will be presented by Michael Simon. Clients need to be advised of these changes in order to avoid false assumptions as to whom will inherit their estate if they do not have a Will.
3. **A gift in a Will** to a spouse or to an AIP is **revoked** upon the dissolution of the marriage or partnership.
4. **New definition of dependents who may claim support from the estate.** Section 73 of the WSA allows minor grandchildren and great-grandchildren for whom the deceased "stood in the place of a parent" while demonstrating a "settled intention to treat the grandchild as his or her own child" to claim support from the estate of the deceased. Other parties who may claim support from an estate include adult children (between the ages of 18 and 22) attending a post-secondary school full-time. The provisions for adult children who are unable to earn livelihood by reason of mental or physical disability (former *Dependant's Relief Act*) are also included in this section.

5. **Survivorship principles are brought in line with those in the *Insurance Act*.** For the purposes of property distribution, when two people die “at the same time or in circumstances rendering it uncertain which of them survived the other or others, then unless the Court in interpreting a Will or other instrument finds a contrary intention, all rights and interests of each of the individuals with respect to property must be determined as if that individual has survived the other or others” (WSA, section 5). “This is consistent with [sections 599 and 690 of] the *Insurance Act*. If the deceaseds owned property jointly with one another, the property is deemed to be held as a tenancy in common.”<sup>5</sup>

6. **Terminology Changes**

Three important vocabulary changes that lawyers and legal assistants should be aware of are:

- (a) “*Child*”: the definition of “*child*” is brought in line with the definition in the *Family Law Act*; namely, it includes all children of a person as well as children in the womb at the time of a person’s death. This also includes adopted children and children who were in the womb at the time of the deceased’s passing. It does not include children conceived posthumously (i.e. via *in vitro* fertilization etc.). Includes adopted children and children in the womb at the time of passing
- (b) “*Issue*”: the term “*issue*” has been replaced by “*descendants*” for reference to the lineal descendants of the deceased.
- (c) “*bequeath*”, “*bequest*”, “*devise*”, “*legacy*”: as the new Act removes earlier distinction between real and other property, these terms are no longer required in Wills drafted after the date of Proclamation. Testators can instead freely use terms such as “*I give*” or “*I leave*”.

7. **NEW APPLICATIONS TO THE COURT:**

**Sections 36 – 40 of the new *Wills and Succession Act***

**NOTE OF CAUTION: THE SECTIONS OF THE WSA, THE SURROGATE RULES AND THE FORMS WHICH FOLLOW ARE ALL DRAFT VERSIONS AND ARE USED IN THIS PAPER FOR INFORMATION AND INSTRUCTIONAL PURPOSES ONLY. DO NOT REPRODUCE OR RELY UPON THESE FORMS FOR YOUR APPLICATIONS.**

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<sup>5</sup> *Alberta Justice*, “The New *Wills and Succession Act*, SA 2010 C 12.2 – A Summary of Changes”, page 4, 27 April 2011: online at <http://justice.alberta.ca/initiatives/Documents/GuideWillsSuccessionAct.pdf>, accessed 28 October 2011