

Wills and Estates Update:

Update on the *Wills and Succession Act*

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Law and Practice Update

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**UPDATE ON THE
WILLS AND SUCCESSION ACT**

Introduction

On February 1, 2012, the Government of Alberta proclaimed the new *Wills and Succession Act* (WSA) to be in force, with the exception of s. 117. That section - which is not in force - would have made significant changes to the law of matrimonial property division on death. This paper is intended to be an overview of the changes to succession law which are now in effect as a result of the WSA, and to provide an update on the developments relating to matrimonial property division on death.

I have not attempted to do an in depth analysis of any particular part of the Act, or to review every change to succession law made by the WSA; instead I have tried to highlight the changes which I expect will be of significance to practitioners on a day to day basis in the areas of estate planning, estate litigation and family law as it is impacted by the WSA.

The *Wills and Succession Act* consolidated four previous acts into one - the former acts being the *Wills Act*, *Intestate Succession Act*, *Dependants Relief Act*, and the *Survivorship Act*, and s. 47 of the *Trustee Act* was also incorporated into the WSA. The parts of the WSA relating to those areas are proclaimed and in effect.

As many practitioners will be aware, there was considerable debate about the proposed changes to matrimonial property division on death, and as a result, the Government invited feedback from the profession and the public about whether the proposed changes were the right approach. A report of those discussions is on the Alberta Justice website. Briefly put - the feedback was mixed, and as a result, the government has announced that it will not proclaim that section. The Alberta Justice website indicates that further research will be conducted to explore some of the issues raised in the consultation process. The issue of how to advise clients in the meantime is discussed in greater detail below.

Lastly, there have been changes to the Surrogate Rules which reflect the significant changes in the succession legislation. The major changes to the Rules are also discussed below.

THE WILLS AND SUCCESSION ACT

The WSA is divided into the following parts:

- § Part 1 - Survivorship
- § Part 2 - Wills
- § Part 3 - Distribution of intestate estates
- § Part 4 - Designation of beneficiaries under plans
- § Part 5 - Family Maintenance and Support
- § Part 6 - General

The materials from Alberta Justice which were produced at the time the Act was passed and proclaimed indicate that the overall intention of the government was to simplify and consolidate the law relating to succession. Alberta Justice also indicated that the fundamental principle on which the reforms were based was that a person is free to transfer his or her property to others on death, and any interference with the person's wishes must be justified. If a person does not formally indicate how he or she wants his or her property distributed on death, it is presumed that the person wants the property to go to family members. Lastly, a person's freedom to transfer property on death is subject to satisfying the person's legal and family support obligations.

The discussion in this paper will follow the order of the legislation and will discuss each of the Parts in turn.

Alberta Justice has produced a summary of the changes which have been made by the *Wills and Succession Act*, which was most recently updated on January 23, 2012. A copy of that will be attached to this paper. In addition, the government has produced a three page transition chart, which is extremely useful. A copy of that will also be attached to this paper.