

WILLS AND ESTATES

MARCH 2012

LEGISLATION ALERT: THE NEW WILLS AND SUCCESSION ACT



FARHA SALIM

The *Wills and Succession Act* (“WSA”) came into force in Alberta on February 1, 2012. The WSA repeals and replaces significant portions of the legislation that governed wills and succession in Alberta. Some of the changes introduced by the WSA include:

1. Divorce (or the termination of an adult interdependent relationship) revokes a gift in a Will made to a former spouse or adult interdependent partner and revokes the appointment of a former spouse or partner as executor of the Will. The gift or appointment will not be revoked if a contrary intention is expressed in the Will. Under the WSA, marriage, or the entering into of an adult interdependent partner agreement, will not revoke a Will, as was previously the case.
2. When two people die in circumstances where it is not possible to determine the order of death, each person will be deemed to have predeceased the other.
3. Previously, when a Will did not comply with certain formalities set out in the legislation (for example, it was not properly signed or witnessed) the Will as a whole or certain gifts in the Will, depending on the circumstances, was deemed to be invalid. However, under the WSA, the Court can validate a non-compliant Will and validate an otherwise void gift, where the Court is satisfied that to do so would be in accordance with the intention of the testator. (Similar legislation exists in other Canadian provinces, but this is new law in Alberta.)
4. Under the WSA, the Court can rectify errors and omissions in Wills, and the Court has the power to add or delete characters, words or provisions in Wills. While the Court

has long had the power to delete portions of Wills resulting from “mistakes,” the ability to make additions to Wills in circumstances of error is new law in Alberta.

5. Under the WSA, it is possible to bring an application alleging that a transfer by a deceased person during his or her lifetime to a beneficiary under a Will (or on an intestacy, where a person dies without a Will) was intended as an advance against the share of the estate the beneficiary is to receive under a Will or on an intestacy.

6. The *Dependants’ Relief Act* permitted “dependants” of a deceased to make a claim for “proper maintenance and support.” Spouses, adult interdependent partners, minor children and adult children of a deceased who by reason of physical or mental infirmity were unable to earn a livelihood qualify as “dependants” and could bring a claim against an estate for maintenance and support in appropriate circumstances. The WSA repeals and replaces the *Dependants’ Relief Act*. While the substance of the law in this area largely remains the same, the WSA introduces a few significant changes. The WSA will replace the term “dependant” with the term “family member” and expands the class to include a) adult children under 22 who are full-time students and b) grandchildren or great-grandchildren of a deceased in respect of whom the deceased stood in the place of a parent, as new categories of persons who may bring a claim against an estate for maintenance and support. In addition, the WSA grants a surviving spouse or adult interdependent partner a temporary right of possession to the family home for three months after the death of a deceased spouse or partner, if the surviving spouse or partner does not already own the home.

One of the most significant changes proposed by the WSA concerned the division of matrimonial property on death. The Government of Alberta previously proposed amendments to the *Matrimonial Property Act* ("MPA") that would permit a surviving spouse to commence an action for a division of matrimonial property following the death of his or her spouse, in the same manner as a spouse could do on the termination of a marriage. However, the Government of Alberta recently advised that the proposed amendments to the MPA would not come into force on February 1, as the Government intends to further consider these particular provisions.

The foregoing is only a brief summary of some of the changes to the law effective February 1, 2012. The changes to the legislation will have a significant impact on Will and estate planning for Albertans, and the administration of the estates of deceased Albertans. Our Wills, Trusts and Estates department have expertise in this area and can assist if you wish to determine if the legislative changes impact your particular situation, or discuss preparing an estate plan that implements your intentions and contemplates your specific circumstances. ▲

DISCLAIMER

This Bulletin highlights only some of the recent changes to Wills and Succession legislation in Alberta and should not be interpreted as providing legal advice. Consult your legal advisor before acting on any of the information contained in this Bulletin. Lisa Statt Foy, Farha Salim or Roy Boettger, Q.C. of our Wills and Estates department are able to discuss how your specific estate planning requirements might be impacted by this legislation, and may be reached at 403 260 8500.

REPRINTS

Our policy is that readers may reprint an article or articles on the condition that credit is given to the author and the firm. Please advise us, by telephone or e-mail, of your intention to do so.

F I E L D L A W

CALGARY

400, 604 - 1 STREET
CALGARY AB T2P 1M7
PH 403 260 8500
FX 403 264 7084

EDMONTON

2000, 10235 - 101 STREET
EDMONTON AB T5J 3G1
PH 780 423 3003
FX 780 428 9329

YELLOWKNIFE

201, 5120 - 49 STREET
YELLOWKNIFE NT X1A 1P8
PH 867 920 4542
FX 867 873 4790

WWW.FIELDLAW.COM