Legislative draft of *Uniform Wills Act* propositions

1(a) Who may make a will

An individual who is the age of majority or older may make, alter or revoke a will if the individual has the mental capacity to do so.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 13(1) (Alberta)]

1(b) Canadian forces exception

An individual who is under 18 years of age may make, alter or revoke a will if the individual has the mental capacity to do so and if the individual is a member of

(a) a regular force as defined in the *National Defence Act* (Canada), or

(b) another component of the Canadian Forces and is, at the time of making the will, placed on active service under the *National Defence Act* (Canada)

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 13(2)(b) (Alberta)]

1(c) Active service

(1) A certificate signed by or on behalf of an officer purporting to have custody of the records of the force in which a member was serving at the time the will was made setting out that the member was on active service at that time is sufficient proof of that fact.

(2) If a certificate is not available, a member of a naval, land or air force is deemed to be on active service after the member has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 18 (Alberta)]

[1(d) Mariners and seamen exception]

(1) [A member of the armed forces in actual service or a sailor in the course of a voyage, may make a will in writing signed by him or her or by some other person in his or her presence and by his or her direction, without:

(a) any further formality; or

(b) any requirement as to the presence of or attestation or signature by a witness.

(2) The will of a person made pursuant to this section is not invalid because he or she was under the age of majority.]

[Source: *Wills Act*, 1996, SS 1996, c W-14.1, s. 6(1) (Saskatchewan)]

2(a) Wills must be in writing

A will is valid only when it is in writing.

[Source: *Uniform Wills Act*, s. 3]

2(b) Will must be signed by testator

To be valid, a will must contain a signature of the testator that makes it apparent on the face of the document that the testator intended, by signing, to give effect to the writing in the document as the testator's will.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 14(b) (Alberta)]

2(c) Surrogate may sign the will

A testator may sign a will, other than a holograph will, by having another individual sign on the testator's behalf, at the testator's direction and in the testator's presence.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 19 (Alberta)]

2(d) Congruence of signatures

Unless provided otherwise in this Act, a will is not valid unless:

(a) the testator's signature is made or acknowledged by the testator in the presence of two or more witnesses who are in the presence of the testator at the same time; and

(b) at least two of the witnesses in the presence of the testator:

i. attest and sign the will; or

ii. acknowledge their signatures on the will.

[Source: *Wills Act*, 1996, SS 1996, c W-14.1, s. 7(1) (Saskatchewan)]

2(e) Congruence of signatures with surrogate

If another individual signs the will on the testator's behalf,

(a) that individual's signature must be made or acknowledged by the testator and the individual in the presence of two or more witnesses who are in the presence of the testator at the same time; and

(b) at least two of the witnesses in the presence of the testator and the individual must:

i. attest and sign the will; or

ii. acknowledge their signatures on the will.

[Source: see the *Wills Act*, 1996, SS 1996, c W-14.1, s. 7(1) (Saskatchewan)]

2(f) Who may witness a will

(1) Signing witnesses to a testator's signature must be the age of majority.

[Source: *Wills, Estates and Succession Act*, SBC 2009, c 13, s. 40(1) (British Columbia) (not yet in force)]

(2) An individual may be a witness to a signature of the testator if the individual has the mental capacity to do so.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 20(1) (Alberta)]

2(g) Who may not witness a will

(1) An individual who signs a will on behalf of a testator is not eligible to witness the signature of the testator.

(2) An individual who witnesses a signature of a testator is not disqualified as a witness to prove the making of the will or its validity or invalidity only because the individual is

(a) a beneficiary under the will, or

(b) the spouse or adult interdependent partner of a beneficiary.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 20(2)-(3) (Alberta)]

2(h) Signature location

(1) A will is not invalid because the testator's signature is not placed at the end of the will if it appears that the testator intended by the signature to give effect to the will.

(2) A testator is presumed not to have intended to give effect to any writing that appears below the testator's signature.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 19(2)-(4) (Alberta)]

2(i) Holograph wills

A will, wholly in the testator's own writing and signed by the testator, is validly made without meeting the requirements set out in clauses ….

[Source: *Uniform Wills Act*, s. 6(2)]

2(j) Void gifts

A beneficial disposition that is made by will to

(a) an individual who acts as a witness to the signature of the testator,

(b) an individual who signs the will on behalf of the testator,

(c) an interpreter who provided translation services in respect of the making of the will, or

(d) the spouse or adult interdependent partner of an individual described in clause (a), (b), or (c)

is void as against the individual, the spouse or adult interdependent partner of the individual and any individual claiming under any of them.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 19(2)-(4) (Alberta)]

2(k) Void gifts may be validated

The Court may, on application, order that a disposition or appointment referred to in section 2(j) is not void if the Court is satisfied that

(a) the testator intended to make the disposition to the individual or to appoint the individual despite knowing that the individual was an individual described in section 2(j), and

(b) neither the individual nor the individual's spouse or adult interdependent partner exercised any improper or undue influence over the testator.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 40 (Alberta)]

2(l) Dispensing with formalities

(1) Despite the other provisions of this Act, but subject to this section, if a document was not made in accordance with any or all of the formalities, or is in an electronic form, or both, a court may nevertheless order that the document is valid as

(a) a will of a deceased person, or

(b) the revocation, alteration or revival of a will of a deceased person.

(2) The formalities are those established by sections 2(b), (c), (d), (e), (h) and (i).

[Source: *Uniform Wills Act*, s. 19.1]

3. Publication

[address in commentary only]

4(a) Form of Alterations

Any writing, marking or obliteration made on a will

(a) is presumed to be made after the will is made, and

(b) is valid as an alteration of the will only if

i. in the case of a [formal] will made under section [], the alteration is made in accordance with that section,

ii. in the case of a [holograph] will made under section [], the alteration is made in accordance with that section, or

iii. the Court makes an order under section [] validating the alteration.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 22(1) (Alberta)]

4(b) Validation of non-compliant alterations

The Court may, on application, order that a writing, marking or obliteration is valid as an alteration of a will, despite that the writing, marking or obliteration was not made in accordance with section 4(a) if the Court is satisfied that it reflects the testamentary intentions of the testator and was intended by the testator to be an alteration of his or her will.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 38 (Alberta); also see *The Wills Act*, C.C.S.M. c. W150, s. 23 (Manitoba)]

[**4(c) Holograph amendments to formal wills**]

[A will may be altered by a testator without any requirement as to the presence of or attestation or signature by a witness or any further formality if the alteration is wholly in the handwriting of, and signed by, the testator.]

[Source: *Wills Act*, 1996, SS 1996, c W-14.1, s. 11(3) (Saskatchewan)]

5. Discovery of obliterated text

If a writing, marking or obliteration renders part of the will illegible, and is not made in accordance with [section 4(a)] or validated by an order referred to in [section 4(a)], the Court may allow the original words of the will to be restored or determined by any means the Court considers appropriate.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 22(2) (Alberta)]

6. Dispensing power

Where, upon application, if the court is satisfied that a document or any writing on a document embodies

(a) the testamentary intentions of a deceased; or

(b) the intention of a deceased to revoke, alter or revive a will of the deceased or the testamentary intentions of the deceased embodied in a document other than a will;

the court may, notwithstanding that the document or writing was not executed in compliance with any or all of the formal requirements imposed by this Act, order that the document or writing, as the case may be, be fully effective as though it had been executed in compliance with all the formal requirements imposed by this Act as the will of the deceased or as the revocation, alteration or revival of the will of the deceased or of the testamentary intention embodied in that other document, as the case may be.

[Source: *The Wills Act*, C.C.S.M. c. W150, s. 23 (Manitoba)]

7(a) Will not revoked by marriage (Option 1)

No will or part of a will is revoked by the marriage of the testator or by the testator entering into an adult interdependent relationship.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 23(2) (Alberta)]

7(b) Will revoked by marriage (Option 2)

(1) Subject to an order under subsection (2), a will is revoked by the marriage of the testator except where

(a) there is declaration in the will that it is made in contemplation of the marriage; or

(b) the will is made in exercise of a power of appointment of real or personal property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate.

(2) A court may order that a will was not revoked by the marriage of the testator if it is satisfied that the testator made the will in contemplation of the marriage.

[Source: *Uniform Wills Act*, s. 16]

7(c) Hybrid approach to effect of marriage on a will (Option 3)

(1) A person who has made a will and who subsequently marries and dies shall be deemed to have died intestate if the person dies

(a) while married, or

(b) while any issue of a marriage of the testator subsequent to the will is still alive.

(2) Where a person is deemed under subsection (1) to have died intestate, a person who is a beneficiary under the will but who will take no part of the deceased's estate on intestacy may apply to the Court within four months after the deceased's death for effect to be given to the devise or bequest in the will.

(3) On an application under subsection (2), the Court may order that effect be given to any devise or bequest, or any part of it, contained in the will if such an order can be made without undue detriment to a person who would otherwise take any part of the deceased's estate on intestacy.

(4) Without limiting the generality of subsection (3), the Court may consider that a detriment to a person who is entitled to part of the deceased's estate on intestacy and who is a beneficiary under the will is not an undue detriment if that person will

receive, as a result of an order made under subsection (3), no less than the person would have been entitled to under the will.

[Source: *Wills Act*, RSNB 1973, c W-9, s. 15.1 (New Brunswick)]

8. (a) Failed gifts

(1) If a gift in a will cannot take effect for any reason, the property that is the subject of the gift must, subject to a contrary intention appearing in the will, be distributed:

(a) to the alternate beneficiary, if any, of the disposition, regardless of whether the will provides for the alternate beneficiary to take in the specific circumstances,

(b) if clause (a) does not apply and the deceased beneficiary was a descendant of the testator, to the deceased beneficiary's descendants who survive the testator, in the same manner as if the deceased beneficiary had died intestate without leaving a surviving spouse or adult interdependent partner,

(c) if neither clause (a) nor (b) applies, to the surviving residuary beneficiaries of the testator, if any, named in the will, in proportion to their interests, or

(d) if none of clauses (a), (b) or (c) applies, in accordance with Part 3 as if the testator had died intestate.

(2) For the purposes of subsection (1)(a) to (d), the intended beneficiary is deemed to have predeceased the testator.

[Source: *Wills, Estates and Succession Act*, SBC 2009, c 13, s. 46(1) (British Columbia) (not yet in force); *Wills and Succession Act*, SA 2010, c W-12.2, ss. 32, 33 (Alberta)]

[Commentary: Reasons a gift in a will cannot take effect may include the intended beneficiary dying before the testator, or the disposition being void, contrary to law, or disclaimed]

[Source: *Wills, Estates and Succession Act*, SBC 2009, c 13, s. 46(1) (British Columbia) (not yet in force); *Wills and Succession Act*, SA 2010, c W-12.2, ss. 32, 33 (Alberta)]

8. (b) Ademption

If

(a) a testator makes a will disposing of property to a beneficiary, and

(b) after the making of the will and before his or her death, the testator disposes of an interest in the property,

the beneficiary inherits any remaining interest the testator has in the property at the time of death unless the Court, in interpreting the will, finds that the testator had a contrary intention.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 10 (Alberta)]

[Commentary: Circumstances when the ademption provision may apply include where a testator at the time of his death:

- has a right, chose in action or equitable estate or interest that was created by a contract respecting a conveyance of, or other act relating to, property that was the subject of a devise or bequest, made before or after the making of a will;
- has a right to receive the proceeds of a policy of insurance covering loss of or damage to property that was the subject of a devise or bequest, whether the loss or damage occurred before or after the making of the will;
- has a right to receive compensation for the expropriation of property that was the subject of a devise or bequest, whether the expropriation occurred before or after the making of the will; or
- has a mortgage, charge or other security interest in property that was the subject of a devise or bequest, taken by the testator on the sale of such property, whether such mortgage, charge or other security interest was taken before or after the making of the will.]

[Source: *Succession Law Reform Act*, RSO 1990, c S. 26, s. 20(2) (Ontario)]

9. Interpretation

A will must be interpreted in a manner that gives effect to the intent of the testator, and in determining the testator's intent the Court may admit the following evidence:

(a) evidence as to the meaning, in either an ordinary or a specialized sense, of the words or phrases used in the will,

(b) evidence as to the meaning of the provisions of the will in the context of the testator's circumstances at the time of the making of the will, and

(c) evidence of the testator's intent with regard to the matters referred to in the will.

[Source: *Wills and Succession Act*, SA 2010, c W-12.2, s. 26 (Alberta)]

10(a) Conflict of laws

(1) In this Part

(a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;

(b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land.

(2) Subject to other provisions of this Part, the intrinsic validity and effect of a will, so far it relates to an interest in land, are governed by the law of the place where the land is situated.

(3) Subject to other provisions of this Part, the intrinsic validity and effect of a will, so far as it relates to an interest in movables, are governed by the law of the place where the testator was domiciled at the time of the testator's death.

10(b) Conflict of laws

As regards the manner and formalities of making a will, a will made either within or without the Province is valid and admissible to probate if it is made in accordance with the law in force at the time of its making in the place where

(a) the will was made,

(b) the testator was domiciled or had his or her habitual residence when the will was made, or

(c) the testator had his or her domicile of origin.

10(c) Conflict of laws

A change of domicile or in the habitual residence of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction.

10(d) Conflict of laws

Nothing in this Part precludes resort to the law of the place where the testator was domiciled or had his or her habitual residence at the time of making a will in aid of its construction as regards an interest in land or an interest in movables.

10(e) Conflict of laws

Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land,

succession to an interest in the thing, under a will or on an intestacy, is governed by the law of the place where the land is situated.

[Source: *Wills Act*, RSNB 1973, c W-9, ss. 36-40 (New Brunswick)]

11. Court authorized wills

(1) The power of the court to make, amend or revoke a will in the name of and on behalf of a mentally incompetent person shall be exercisable in the discretion of the court where the court believes that, if it does not exercise that power, a result will occur on the death of the mentally incompetent person that the mentally incompetent person, if competent and making a will at the time the court exercises its power, would not have wanted.

(2) Any will made or any amendment made to a will under this Act is for all purposes, including subsequent revocation and amendment, the will of the person in whose name and on whose behalf the will or the amendment is made.

[Source: *Infirm Persons Act*, RSNB 1973, c I-8, s. 11.1 (New Brunswick)]