Uniform Wills Act Propositions

1. A person of full age and capacity may make a will.

Age of majority unless active service personnel

Requirements	Province	Legislation	Sec.	Text
Testator age (recommended; change term 18 years of age or older to "age of majority")	AB	Wills and Succession Act, SA 2010, c W-12.2	13(1)	13**(1)** An individual who is 18 years of age or older may make, alter or revoke a will if the individual has the mental capacity to do so.
Marriage exception (no longer recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	13(2)(a)	**Who can make a will** 13**(2)** 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 (a) has or has had a spouse or adult interdependent partner,
		Uniform Wills Act	8(1)(a)	**Infants** **8**(1) A will made by a person who is under the age of majority is not valid unless at the time of making the will the person (a) is or has been married; **Revocation of minor's will** (3) A person who has made a will under subsection (1) may, while under the age of majority, revoke the will.

Uniform Wills Act Propositions

Forces exception (for "active service personnel") (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	13(2)(b), 18	Who can make a will **(2)** 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 (b) is a member of (i) a regular force as defined in the *National Defence Act* (Canada), or (ii) 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), or (c) is authorized by an order of the Court under section 36. Active service 18 For the purposes of sections 13(2)(b) and 17, (a) 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, and (b) if a certificate referred to in clause (a) 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.
Mariners & seamen exception (recommend including in the Act in square brackets)	Sask	Wills Act , 1996, SS 1996, c W-14.1	6(1)	**Wills by sailors or members of the armed forces** 6(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. (3) The will of a person made pursuant to this section is not invalid because he or she was under the age of 18 years.

Uniform Wills Act Propositions

Testator may "make, alter or revoke a will" (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	13	**Who can make a will** 13**(1)** An individual who is 18 years of age or older may make, alter or revoke a will if the individual has the mental capacity to do so.

Uniform Wills Act Propositions

2. Will formalities.

Formal Wills

Requirement	Province	Legislation	Sec.	Text
Will must be in writing		Uniform Wills Act	3	**Writing required** **3** A will is valid only when it is in writing.
	AB	Wills and Succession Act, SA 2010, c W-12.2	14	
Will must be signed by testator or surrogate (recommended)		Uniform Wills Act	4(1)(a)	**Signature required** **4**(1) A will is validly made if (a) it is in writing and signed by the testator, or by another person in the testator's presence and by the testator's direction,
	AB	Wills and Succession Act, SA 2010, c W-12.2	14(b)	**Requirements of a valid will** 14 To be valid, a will (b) 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, and
			19	**Signature** 19**(1)** A testator may sign a will, other than a will made under section 16, by having another individual sign on the testator's behalf, at the testator's direction and in the testator's presence.

Uniform Wills Act Propositions

Congruence in signatures (recommended) Note: congruence should also include surrogate	Sask	Wills Act , 1996, SS 1996, c W-14.1	7(1)	**Execution of a will** 7(1) Unless provided otherwise in this Act, a will is not valid unless: (a) it is in writing and signed by the testator or by another person in the testator's presence and by his or her direction; (b) it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his or her will; (c) the 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 (d) 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
Witness age (must have reached the "age of majority") (recommended)	BC	Wills, Estates and Succession Act, SBC 2009, c 13 (not yet in force)	40	***Witnesses to wills*** 40 (1) Signing witnesses to a will-maker's signature must be 19 years of age or older.
Witness capacity (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	20(1)	**Witnesses to signature** 20**(1)** An individual may be a witness to a signature of the testator if the individual has the mental capacity to do so.

Uniform Wills Act Propositions

Who may not witness a will (beneficiaries and surrogate recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	20(2), (3)	**Witnesses to signature** 20**(2)** An individual who signs a will on behalf of a testator is not eligible to witness the signature of the testator. **(3)** 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) an executor of the will, (b) a beneficiary under the will, or (c) the spouse or adult interdependent partner of an executor or a beneficiary.
	BC	Wills, Estates and Succession Act, SBC 2009, c 13 (not yet in force)	40	***Witnesses to wills*** 40 (2) A person may witness a will even though he or she may receive a gift under it, but the gift may be void under section 43 *[gifts to witnesses]*.
Signature location (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	19	**Signature** **(2)** 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. **(3)** A testator is presumed not to have intended to give effect to any writing that appears below the testator's signature.

Uniform Wills Act Propositions

Holograph wills

Requirements	Province	Legislation	Sec.	Text
1. Will must be in writing entirely in the testator's handwriting 2. Will must be signed by the testator		Uniform Wills Act	6(2)	**Holograph will** (2) 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 4(1)(b) and (c).

Uniform Wills Act Propositions

Breached formalities

Requirement	Province	Legislation	Sec.	Text
Void gifts (recommended for gifts to witness, surrogate, translator, or any of the above's spouses)	AB	Wills and Succession Act, SA 2010, c W-12.2	21(1)	**Certain dispositions are void** 21**(1)** Subject to subsection (2) and any order made under section 40, 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 under section 19(1), (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.
Void gifts may be validated (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	40	**Validation of gift to witness** 40**(1)** The Court may, on application, order that a disposition or appointment referred to in section 21(1) 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 21(1), and (b) neither the individual nor the individual's spouse or adult interdependent partner exercised any improper or undue influence over the testator. **(2)** An application under this section may not be made more than 6 months after the date the grant of probate or administration is issued unless the Court orders an extension of that period. **(3)** The Court may order an extension of the period on any terms the Court considers just.

Uniform Wills Act Propositions

How to refer to document that does not comply with wills formalities		Uniform Wills Act	19	**Court may dispense with formal requirements** **19.1**(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 referred to in subsection (3), 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.
Writing requirement cannot be dispensed with		Uniform Wills Act	19	**Court may dispense with formal requirements** **19.1**(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 referred to in subsection (3), 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) In order to exercise the authority under subsection (1), the court must be satisfied on clear and convincing evidence that the deceased person intended the document to constitute a will of the deceased person or the revocation, alteration or revival of a will of the deceased person. (3) For the purposes of subsection (1), the formalities are those established by sections 4, 5, 6, 15(c), 18 and 19. (5) This section applies [when: statement of intended application] **Comment on Paragraph (4):** Paragraph (3) defines the formalities which may be dispensed with – the requirement of writing in section 3 cannot be dispensed with. Paragraph (4) further defines, for the purpose of this section, a document in electronic form, i.e., a medium which produces a document that is visible and can be read by a person. This definition is narrower than other definitions of “electronic data” and is intended to preclude audio and video recorded wills or media that are machine readable only. An e-will (a document in electronic form) must meet the definition of paragraph (4) and meet the threshold tests of paragraph (2).

Uniform Wills Act Propositions

4. Alterations must follow the form of the document being altered.

Requirements	Province	Legislation	Sec.	Text
1. Format of amendment must follow format of will 2. Court may validate a non-compliant alteration using the dispensing power (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	22(1)(b), 38	22**(1)** 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 will made under section 15, the alteration is made in accordance with that section, (ii) in the case of a will made under section 16, the alteration is made in accordance with that section, or (iii) the Court makes an order under section 38 validating the alteration. **Court may validate non-compliant alteration** 38 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 22(1)(b)(i) or (ii), if the Court is satisfied on clear and convincing evidence that it reflects the testamentary intentions of the testator and was intended by the testator to be an alteration of his or her will.
Holograph amendments to formal will (recommend including in the Act in square brackets)	Sask	Wills Act , 1996, SS 1996, c W-14.1	11(3)	(3) 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.

Uniform Wills Act Propositions

5. Obliterated text may be discovered by any means possible.

Requirements	Province	Legislation	Sec.	Text
Court may allow words to be determined by any means considered appropriate (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	22(2)	**22 (2)** If a writing, marking or obliteration renders part of the will illegible, and is not made in accordance with subsection (1)(b)(i) or (ii) or validated by an order referred to in subsection (1)(b)(iii), the Court may allow the original words of the will to be restored or determined by any means the Court considers appropriate.

Uniform Wills Act Propositions

6. Dispensing power.

Requirements	Province	Legislation	Sec.	Text
Test: 1. court satisfaction 2. document must embody testamentary intentions (recommended)	Manitoba	*The Wills Act*, C.C.S.M. c. W150	23	**Dispensation power** 23 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.
Cannot dispense with writing requirement		*Uniform Wills Act*	19.1	**Court may dispense with formal requirements** **19.1**(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 referred to in subsection (3), 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) In order to exercise the authority under subsection (1), the court must be satisfied on clear and convincing evidence that the deceased person intended the document to constitute a will of the deceased person or the revocation, alteration or revival of a will of the deceased person. (3) For the purposes of subsection (1), the formalities are those established by

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				sections 4, 5, 6, 15(c), 18 and 19. (4) In this section, "electronic form" means, in respect of a document, data that (a) is recorded or stored on any medium in or by a computer system, (b) can be read by a person, and (c) is capable of reproduction in a visible form. (5) This section applies [when: statement of intended application] **Comment on Paragraph (4):** Paragraph (3) defines the formalities which may be dispensed with – the requirement of writing in section 3 cannot be dispensed with. Paragraph (4) further defines, for the purpose of this section, a document in electronic form, i.e., a medium which produces a document that is visible and can be read by a person. This definition is narrower than other definitions of "electronic data" and is intended to preclude audio and video recorded wills or media that are machine readable only. An e-will (a document in electronic form) must meet the definition of paragraph (4) and meet the threshold tests of paragraph (2).

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7. Revocation by law.

Options re: marriage	Province	Legislation	Sec.	Text
1. Will not revoked upon entry into marriage	AB	Wills and Succession Act, SA 2010, c W-12.2	23(2)	**(2)** For greater certainty, (a) on and after the coming into force of this section, no will or part of a will is revoked by the marriage of the testator, (b) on and after the coming into force of this section, no will or part of a will is revoked by the testator entering into an adult interdependent relationship,
	BC	Wills, Estates and Succession Act, SBC 2009, c 13 (not yet in force)		[legislation is silent regarding marriage]
2. Automatic revocation upon entry into marriage		Uniform Wills Act	16	**Revocation by marriage** **16**(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 on clear and convincing evidence that the testator made the will in contemplation of the marriage.

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3. Hybrid approach (will suspended during the life of the spouse if the testator's will pre-dates the marriage)	NB	*Wills Act*, RSNB 1973, c W-9	15.1	**Effect of subsequent marriage on will** 15.1(1)In this section "Court" means The Court of Queen's Bench of New Brunswick and includes a judge of that Court. 15.1(2)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. 15.1(3)Where a person is deemed under subsection (2) 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. 15.1(4)On an application under subsection (3), 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. 15.1(5)Without limiting the generality of subsection (4), 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 (4), no less than the person would have been entitled to under the will. 15.1(6)Notwithstanding subsection (3), the Court may, after the expiration of the period referred to in that subsection, if the Court considers it just, allow an application to be made under that subsection in respect of any portion of the deceased's estate remaining undistributed at the date of the application.

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8. Failed gifts.

Requirements	Province	Legislation	Sec.	Text
One provision applies to all failed gifts (recommended)	BC	Wills, Estates and Succession Act, SBC 2009, c 13 (not yet in force)	46(1)	***When gifts cannot take effect*** 46 (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 according to the following priorities…
Incorporate hierarchical list for treatment of failed gifts (recommended) Assumption of beneficiary pre-deceasing testator for failed gifts (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	32, 33	**Where beneficiary dies before testator** 32**(1)** If a beneficial disposition in a will cannot take effect because the intended beneficiary has predeceased the testator, whether before or after the will is made, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, the property that is the subject of the disposition must 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 greater certainty, an individual who is both a descendant of the deceased beneficiary and the adult interdependent partner of the deceased beneficiary may receive a share under subsection (1)(b) as a descendant. **(3)** Despite subsections (1) and (2), no share of the property that is the subject of the

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				disposition shall be distributed to an individual described in section 21(1) unless section 21(2) applies. **Where gift is void or contrary to law** 33**(1)** If a beneficial disposition in a will cannot take effect by reason of the disposition to the intended beneficiary being void, contrary to law or disclaimed, or for any other reason, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, the property that is the subject of the disposition must 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 intended beneficiary was a descendant of the testator, to the intended beneficiary's descendants who survive the testator, in the same manner as if the intended beneficiary had died intestate without leaving a surviving spouse or adult interdependent partner, (c) if neither clause (a) nor clause (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.
Examples of why a gift would fail (recommended to include in commentary)	BC	Wills, Estates and Succession Act, SBC 2009, c 13 (not yet in force)	46(1)	***When gifts cannot take effect*** 46 (1) If a gift in a will cannot take effect for any reason, including because a beneficiary dies before the will-maker, the property that is the subject of the gift must, subject to a contrary intention appearing in the will, be distributed according to the following priorities:

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Ademption (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	10	**Property disposed of before death** 10 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.
Ademption (recommended for commentary)	Ont.	*Succession Law Reform Act*, RSO 1990, c S. 26	20(2)	**Rights in place of property devised** (2)Except when a contrary intention appears by the will, where a testator at the time of his or her death, (a) 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; (b) 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; (c) 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 (d) 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, the devisee or donee of that property takes the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator. R.S.O. 1990, c. S.26, s. 20.

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9. Interpretation.

Requirement	Province	Legislation	Sec.	Text
Allow extrinsic evidence to determine the testator's intentions (recommended)	AB	Wills and Succession Act, SA 2010, c W-12.2	26	26 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.

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10. Conflict of laws

Requirements	Province	Legislation	Sec.	Text
1. Include nationality and habitual residence in legal systems that may determine the validity of a will with respect to moveables 2. The law of the place where property is situated should be included in the legal systems that may determine the formal validity of a will in respect of moveables 3. Wills related to immoveable property only should be	NB	*Wills Act*, RSNB, c W-9	36-40	36(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. 36(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. 36(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. 37As 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. 38A 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. 39Nothing 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.

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permitted (recommended)				40Where 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.

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11. Court authorized wills

Requirement	Province	Legislation	Sec.	Text
Permit court authorized wills under limited circumstances (recommended)	NB	*Infirm Persons Act*, RSNB 1973, c I-8	3(4), 11.1	JURISDICTION AND AUTHORITY OF COURT 3(4)The jurisdiction and authority of the court under this Act includes the power to make, amend or revoke a will in the name of and on behalf of a mentally incompetent person. MANAGEMENT AND ADMINISTRATION 11.1(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. 11.1(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.