

No. 112

1st Session, 14th Legislature, Alberta
8 Elizabeth II

BILL 112

A Bill respecting Wills

HON. MR. MANNING

Explanatory Note

General. This Bill will repeal and replace The Wills Act, being chapter 369 of the Revised Statutes, with a revised Wills Act based upon the Uniform Act recommended by the Conference of Commissioners on Uniformity of Legislation in Canada. The present Part I was first enacted by chapter 21 of the Statutes of Alberta, 1927, and anticipated much of the earlier Uniform Act which was then being prepared. As a result, there is, in Part I, little substantive change. However, clauses 9, 21(2), 23, 31, 32(a)(ii) and (iii) and clause 35 are new.

Part II relates to the conflict of laws rule with respect to wills and replaces the present provisions with a more liberal rule for conflict cases recommended by the Conference of Commissioners.

(The references hereunder to the present Act refer to chapter 369 of the Revised Statutes of 1955.)

2. "will" defined. No change from present section 2(d).

3. Devises. Cf. present sections 2(b) and (c) and 3. No substantive change results.

4. Writing required. Present section 5(a) in part.

5. Validity. Present section 5(a)(i) to (iii).

BILL

No. 112 of 1960

An Act respecting Wills

(Assented to _____, 1960)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Wills Act, 1960*".

2. In this Act, "will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

PART I

GENERAL

3. A person may by will devise, bequeath or dispose of all real and personal property, whether acquired before or after making his will, to which at the time of his death he is entitled either at law or in equity, including

- (a) estates *pur autre vie*, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;
- (b) contingent, executory or other future interest in real or personal property, whether the testator is or is not ascertained as the person or one of the persons in whom those interest may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will;
- (c) rights of entry.

4. A will is valid only when it is in writing.

5. Subject to sections 6 and 7, a will is not valid unless

- (a) it is signed at the end or foot thereof by the testator or in his name by some other person in his presence and by his direction,
- (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time, and

6. Wills of servicemen and mariners. Cf. present section 6(1) and (2).

7. Holograph will. Present section 5(b).

8. Signature. Present section 8.

- (c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

6. (1) A member of the Canadian Forces while placed on active service pursuant to the *National Defence Act*, or a member of any other naval, land or air force while on active service, or a mariner or a seaman when at sea or in the course of a voyage, may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness.

(2) For the purpose of this section a certificate signed by or on behalf of an officer purporting to have custody of the records of the force in which a person was serving at the time the will was made setting out that the person was on active service at that time, is sufficient proof of that fact.

(3) For the purposes of this section, if a certificate under subsection (2) is not available, a member of a naval, land or air force is deemed to be on active service after he 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.

7. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness.

8. (1) In so far as the position of the signature is concerned, a will is valid if the signature of the testator, made either by him or the person signing for him, is placed at or after or following or under or beside or opposite to the end of the will so that 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 will.

(2) A will is not rendered invalid by the circumstance that

- (a) the signature does not follow or is not immediately after the foot or end of the will,
- (b) a blank space intervenes between the concluding words of the will and the signature,
- (c) the signature is placed among the words of a testimonium clause or of a clause of attestation or follows or is after or under a clause of attestation either with or without a blank space intervening, or follows or is after or under or beside the name of a subscribing witness,
- (d) the signature is on a side or page or other portion of the paper or papers containing the will on which no clause or paragraph or disposing part of the will is written above the signature, or

9. Wills of infants.

(1) Present section 6(3) and section 7, but not restricted to infants of nineteen or over and in clause 9(1) (a) includes infants who have been married.

(3) Present 6(4) extended to apply to married infants.

10. Appointment by will. Cf. Present section 9.

11. Publication. Present section 10.

12. Incompetent person attesting will. Present section 11.

13. Devise to witness. Present section 12.

- (e) there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

(3) The generality of subsection (1) is not restricted by the enumeration of circumstances set out in subsection (2), but a signature in conformity with section 5 or 6 or 7 or this section does not give effect to a disposition or direction that is underneath the signature or that follows the signature or to a disposition or direction inserted after the signature was made.

9. (1) A will made by a person who is under the age of twenty-one years is not valid unless at the time of making the will the person

- (a) is or has been married,
- (b) is a member of a component of the Canadian Forces
 - (i) that is referred to in the *National Defence Act* as a regular force, or
 - (ii) while placed on active service under the *National Defence Act*,
- or
- (c) is a mariner or seaman.

(2) A certificate purporting to be signed by or on behalf of an officer having custody of the records of the force in which a person was serving at the time the will was made setting out that the person was at that time a member of a regular force or was on active service within clause (b) of subsection (1), is sufficient proof of that fact.

(3) A person who has made a will under subsection (1) may, while under the age of twenty-one years, revoke the will.

10. A will made in accordance with this Act is as to form a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will in exercise of the power be made in some form other than that in which it is made.

11. A will made in accordance with this Act is valid without other publication.

12. Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid.

13. (1) Where a will is attested by a person to whom or to whose then wife or husband a beneficial devise, bequest or other disposition or appointment of or affecting real or personal property, except charges and directions for payment of debt, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only

14. Attestation by creditor. Present section 13.

15. Executor as witness. Present section 14.

16. Revocation. Present section 17.

17. Revocation by marriage. Present section 15.

18. Not revoked by presumption. Present section 16.

19. Alteration of will. Present section 18 revised to refer specifically to holograph wills.

as it concerns the person so attesting, or the wife or the husband or a person claiming under any of them, but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity.

(2) Where a will is attested by at least two persons who are not within subsection (1) or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection.

14. Where real or personal property is charged by a will with a debt and a creditor or the wife or husband of a creditor whose debt is so charged attests a will, the person so attesting, notwithstanding such charge, is a competent witness to prove the execution of the will or its validity or invalidity.

15. A person is not incompetent as a witness to prove the execution of a will, or its validity or invalidity solely because he is an executor.

16. A will or part of a will is revoked only by

- (a) the marriage of the testator, subject to section 17,
- (b) another will made in accordance with the provisions of this Act,
- (c) a writing declaring an intention to revoke and made in accordance with the provisions of this Act governing the making of a will, or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it.

17. A will is revoked by the marriage of the testator except where

- (a) there is a 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 that 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.

18. A will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances.

19. (1) Subject to subsection (2), unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Act governing making of a will, the alteration has no effect except to invalidate words or meanings that it renders no longer apparent.

20. Revival of will. Present section 19.

21. Subsequent conveyance. (1) is present section 20.

(2) New.

22. Will construed to speak from the death. Present section 21.

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and the subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 6 or 7, the signature of the testator, are or is made

- (a) in the margin or in some other part of the will opposite or near to the alteration, or
- (b) at the foot or end of or opposite to a memorandum referring to the alteration and written in some part of the will.

20. (1) A will or part of a will that has been in any manner revoked is revived only

- (a) by re-execution thereof with the required formalities, if any, or
- (b) by a codicil that has been made in accordance with the provisions of this Act that shows an intention to give effect to the will or part that was revoked.

(2) Except when a contrary intention is shown, when a will which has been partly revoked and afterward wholly revoked, is revived, the revival does not extend to the part that was revoked before the revocation of the whole.

21. (1) A conveyance of or other act relating to real or personal property comprised in a devise or bequest or other disposition made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death.

(2) Except when a contrary intention appears by the will, where a testator at the time of his death has a right or chose in action or equitable estate or interest that was created by

- (a) a contract entered into after the making of the will and respecting real or personal property that was comprised in a devise or bequest,
- (b) a conveyance made after the making of the will and relating to real or personal property that was comprised in a devise or bequest, or
- (c) any other act done after the making of the will and relating to real or personal property that was comprised in a devise or bequest,

the devisee or donee of that real or personal property takes the right or chose in action or equitable estate or interest of the testator.

22. Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to

- (a) the real and personal property,
- (b) the right or chose in action or equitable estate or interest or the proceeds under subsection (2) of section 21.

23. Lapsed gifts. Present section 22 but includes personal property as well as real property.

24. Construing devises of land. Present section 23.

25. General disposition. Present section 24.

26. Gift of real property without limitation. Present section 25.

27. Gift to "heir". Present section 26.

23. Except when a contrary intention appears by the will, real or personal property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of the death of the devisee or donee in the lifetime of the testator, or by reason of the devise or bequest being contrary to law or otherwise incapable of taking effect, is included in the residuary devise or bequest, if any, contained in the will.

24. Except when a contrary intention appears by the will, where a testator devises

- (a) his land,
- (b) his land in a place mentioned in the will, or in the occupation of a person mentioned in the will,
- (c) land described in a general manner, or
- (d) land described in a manner that would include a leasehold estate if the testator had no freehold estate that could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates.

25. (1) Except when a contrary intention appears by the will, a general devise of

- (a) the real property of the testator,
- (b) the real property of the testator in a place mentioned in the will or in the occupation of a person mentioned in the will, or
- (c) real property described in a general manner,

includes any real property or any real property to which the description extends that he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of

- (a) the personal property of the testator, or
- (b) personal property described in a general manner,

includes any personal property or any personal property to which the description extends, that he has power to appoint in any manner he thinks proper and operates as an execution of the power.

26. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate that the testator had power to dispose of by will in the real property.

27. Except when a contrary intention appears by the will, where property is devised or bequeathed to the "heir" of the testator or of another person, the word "heir" means the person to whom the beneficial interest in the property would go under the law of the Province if the testator or the other person died intestate.

28. Words importing failure of issue. Present section 27.

29. Devise to trustee. Present section 29.

30. Idem. Present section 28.

31. Gift for charitable purpose. New.

28. (1) Subject to subsection (2), in a devise or bequest of real or personal property

(a) the words

- (i) "die without issue",
 - (ii) "die without leaving issue", or
 - (iii) "have no issue",
- or

(b) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his issue unless a contrary intention appears by the will.

(2) This section does not extend to cases where the import of the words defined in subsection (1) is

(a) "if no issue described in a preceding gift be born",
or

(b) "if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue".

29. Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property.

30. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits

(a) is not given to a person for life, or

(b) is given to a person for life but the purpose of the trust may continue beyond his life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied.

31. (1) Where a testator leaves property in trust or by outright gift for a charitable purpose that is linked conjunctively or disjunctively in the will with a non-charitable purpose, and the non-charitable purpose is void for uncertainty or for any other cause, the charitable trust or gift is valid and operates solely for the benefit of the charitable purpose.

(2) Where a testator leaves property in trust or by outright gift for a charitable purpose that is linked conjunctively or disjunctively in the will with a non-charitable

32. Lapse of time in devise. Present section 30 but subclauses (ii) and (iii) of this provision are new.

33. Lapse in gifts to children. Present section 31 but broadened to include a brother or sister in subclause (a).

34. Gift to illegitimate children. In effect present section 32.

35. Disposition of mortgaged property. New.

purpose, and the non-charitable purpose is not void, the trust or gift is valid for both purposes and where the will has not divided the property among the charitable and non-charitable purposes, the trustee or executor shall divide the property among the charitable and non-charitable purposes according to his discretion.

32. Except when a contrary intention appears by the will, where a person to whom real property is devised for what would have been, under the law of England, an estate tail or in *quasi entail*

(a) dies

- (i) in the lifetime of the testator,
- (ii) at the same time as the testator, or
- (iii) in circumstances rendering it uncertain whether that person or the testator survived the other,

and

(b) leaves issue who would inherit under the entail if that estate existed,

if any such issue are living at the time of the death of the testator, the devise does not lapse but takes effect as if the death of that person had happened immediately after the death of the testator.

33. Except when a contrary intention appears by the will, where a person dies in the lifetime of a testator either before or after the testator makes the will and that person

- (a) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death, and
- (b) leaves issue any of whom is living at the time of the death of the testator,

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator.

34. In the construction of a will, except when a contrary intention appears by the will, an illegitimate child shall be treated as if he were the legitimate child of his mother.

35. (1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in freehold or leasehold property that, at the time of his death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention, the interest is, as between the different persons claiming through the deceased, primarily

36. Trustee of undisposed residue. Present section 33.

37. Wills of land and movables. New.

liable for the payment or satisfaction of the mortgage debt, and every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary or other intention within subsection (1) by

(a) a general direction for the payment of debts or of all the debts of the testator out of his personal estate or his residuary real or personal estate, or his residuary real estate, or

(b) a charge of debts upon that estate, unless he further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

(4) In this section, "mortgage" includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money and "mortgage debt" has a meaning similarly extended.

36. (1) Where a person dies after this Act takes effect, having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect to it, unless the person so appointed executor was intended by the will to take the residue beneficially.

(2) Nothing in this section affects or prejudices a right to which the executor, if this Part had not been passed, would have been entitled, in cases where there is not a person who would be so entitled.

PART II

CONFLICT OF LAWS

37. (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 manner and formalities of making a will, and its intrinsic validity and effect, so far as it relates to an interest in land, are governed by the law of the place where the land is situated.

38. Wills relating to movables. New. Cf. present section 34 as it relates to wills of personal property by British subjects.

39. Change of domicile. Present section 36.

40. New.

41. New.

42. Application of Act.

43. Repeal of present Act and saving clause from Statutes of Alberta 1927, c. 21, s. 39.

44. Commencement.

(3) Subject to other provisions of this Part, the manner and formalities of making a will, and its intrinsic validity and effect, 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 his death.

38. As regards the manner and formalities of making a will, so far as it relates to an interest in movables, 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 when the will was made,
- or
- (c) the testator had his domicile of origin.

39. A change of domicile 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.

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

41. 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.

PART III

TRANSITIONAL AND SUPPLEMENTARY

42. (1) This Act applies only to wills made on or after the first day of July, 1960.

(2) For the purposes of this section a will that is re-executed or is republished or revived by a codicil shall be deemed to be made at the time at which it is so re-executed, republished or revived.

43. (1) Except as provided in subsection (2), *The Wills Act*, being chapter 369 of the Revised Statutes, is repealed.

(2) Chapter 369 of the Revised Statutes continues in force, as if unrepealed, in respect of wills made before the first day of July, 1960.

44. This Act comes into force on the first day of July, 1960.

No. 112

FIRST SESSION

FOURTEENTH LEGISLATURE

8 ELIZABETH II

1960

BILL

An Act respecting Wills

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
