Wills Act

CHAPTER 505 OF THE REVISED STATUTES, 1989

as amended by

2006, c. 49

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An Act Concerning Wills

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Miscellaneous

Short title

1 This Act may be cited as the *Wills Act*. R.S., c. 505, s. 1.

INTERPRETATION

Interpretation

2 In this Act,

(a) "issue" includes all lawful lineal descendants of the ancestor;

(b) "person" includes a married woman;

(c) "personal property" includes leasehold estates and other chattels real, and also moneys, shares of government and other stocks or funds, securities for money not being real property, debts, rights of action, rights, credits, goods and all other property whatsoever, that by law devolves upon the executor or administrator, and any share or interest therein;

(d) "real property" includes messuages, lands, rents and hereditaments, whether of freehold or any other tenure whatsoever, and wheresoever situated, and whether corporeal, incorporeal or personal, and any undivided share thereof, and any estate, right or interest, other than a chattel interest, therein;

(e) "testator" includes a married woman;

(f) "will" includes a codicil and an appointment by will or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament or devise of the custody and tuition of any child, and any other testamentary disposition. R.S., c. 505, s. 2.

TESTAMENTARY CAPACITY

Right to dispose of property by will

3 (1) Any person may devise, bequeath or dispose of by will, executed as in this Act provided, all real property and all personal property to which the person is entitled, either at law or in equity, at the time of the person's death and which if not so devised, bequeathed or disposed of would devolve upon the person's heirs-at-law or representatives.

(2) No will, devise, bequest or disposition heretofore or hereafter made shall be held to be invalid solely by reason of the testator not leaving any heir-at-law or any next of kin. R.S., c. 505, s. 3.

Will by minor

4 **(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 is or has been married.

(2) A person under the age of majority who has made a will may revoke the will. R.S., c. 505, s. 4.

Appointment by will

5 Any person may make a will appointing one executor or more to a will whereof the person is the executor or an appointment by will made in pursuance of a power to be executed. R.S., c. 505, s. 5.

FORM AND MODE OF EXECUTION

Formalities of execution

6 **(1)** No will is valid unless it is in writing and executed in manner hereinafter mentioned:

(a) it shall be signed at the end or foot thereof by the testator or by some other person in the testator's presence and by the testator's direction;

(b) such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(c) such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation is necessary.

(2) Notwithstanding subsection (1), a will is valid if it is wholly in the testator's own handwriting and it is signed by the testator. R.S., c. 505, s. 6; 2006, c. 49, s. 1.

Signature to will

7 Every will is, so far only as regards the position of the signature of the testator or of the person signing for the testator, deemed to be valid if the signature is so placed at, after, following, under, beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed in the will, and no such will is affected 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 word of the will and the signature;

(c) the signature is placed among the words of the testimonium clause or of the clause of attestation, follows, is after or is under the clause of attestation, either with or without a blank space intervening, or follows, is

after, is under or is beside the names or one of the names of the subscribing witness;

(d) the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or

(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,

and the enumeration of the above circumstances does not restrict the generality of the above enactment, but no signature is operative to give effect to any disposition or direction which is underneath or which follows it nor does it give effect to any disposition or direction inserted after the signature was made. R.S., c. 505, s. 7.

Execution of appointment by will

8 No appointment made by will in exercise of any power is valid unless the same is executed in the manner hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power be executed with some additional or other form of execution or solemnity. R.S., c. 505, s. 8.

Writing not in compliance with formal requirements

8A Where a court of competent jurisdiction is satisfied that a writing embodies

(a) the testamentary intentions of the deceased; or

(b) the intention of the 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 writing was not executed in compliance with the formal requirements imposed by this Act, order that the writing is valid and fully effective as if it had been executed in compliance with the formal requirements imposed by this Act. 2006, c. 49, s. 2.

Bequest or devise by soldier or sailor

9 (1) In subsection (2), "soldier" includes a member of the Air Force.

(2) Any soldier being in active service or any mariner or seaman being at sea, may dispose of his personal property in the manner in which that soldier, mariner or seaman might have done before the twenty-seventh day of March, 1840.

(3) Subsection (2) extends to any member of Her Majesty's naval or marine forces, not only when the member is at sea but also when the member is

so circumstanced that if the member were a soldier the member would be in active service within the meaning of subsection (2).

(4) A testamentary disposition of any real estate in the Province made by a person to whom subsection (2) applies and who dies after the seventeenth day of May, 1919, is, notwithstanding that the person making the disposition was at the time of making it under the age of majority or that the disposition has not been made in such manner or form as was on said day required by law, valid in any case where the person making the disposition was of such age and the disposition has been made in such manner and form that if the disposition had been a disposition of personal estate made by such a person domiciled in the Province it would have been valid.

(5) In the case of the death of any person as well before as after the said seventeenth day of May, 1919, having made a will which is or which if it had been a disposition of personal property would have been rendered valid by subsection (2), any appointment contained in that will of any person as guardian of the infant children of the testator is of full force and effect. R.S., c. 505, s. 9; 2006, c. 49, s. 3; revision corrected.

Publication

10 Every will executed in manner hereinbefore required is valid without any other publication thereof. R.S., c. 505, s. 10.

Incompetency of witness to prove execution

11 No will is invalid on account of the incompetency of the witnesses thereto to prove its execution. R.S., c. 505, s. 11.

Bequest or devise to attesting witness

12 Every devise, bequest or appointment, other than an appointment of an executor or executrix or a charge or direction for the payment of debts, to an attesting witness of the will, or to the wife or husband of such witness, is void, and such witness shall be admitted to prove the execution of the will or the validity or invalidity thereof except that, where there are two competent witnesses to the will beside such person, such devise, bequest, or appointment is not void. R.S., c. 505, s. 12; 2006, c. 49, s. 4.

Creditor as witness

13 Where by any will any real or personal property is charged with any debt and any creditor, or the wife or husband of any creditor, whose debt is so charged attests the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof. R.S., c. 505, s. 13.

Proof of execution or validity by executor

14 No person shall on account of being an executor of a will be incompetent to prove the execution of such will or to prove the validity or invalidity thereof. R.S., c. 505, s. 14.

Validity of will made

15 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. 2006, c. 49, s. 5.

REVOCATION AND ALTERATION

Change of domicile

16 No will shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same. R.S., c. 505, s. 16.

Marriage

17 Every will is revoked by the marriage of the testator except where

(a) it is declared in the will that the same is made in contemplation of such marriage;

(b) the wife or husband of the testator elects to take under the will by an instrument in writing signed by such wife or husband and filed, within one year after the testator's death, in the court of probate in which probate of such will is taken or sought to be taken; or

(c) the will is made in exercise of a power of appointment, when the real or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator or the person entitled as next of kin. R.S., c. 505, s. 17.

Alteration in circumstances

18 No will is revoked by any presumption of an intention to revoke the same on the ground of an alteration in circumstances. R.S., c. 505, s. 18.

Conditions for revocation of will

19 No will or any part thereof is revoked otherwise than by

(a) marriage as hereinbefore provided;

(b) another will executed in manner by this Act required;

(c) some writing declaring an intention to revoke the same and executed in the manner in which a will is by this Act required to be executed; or

(d) the burning, tearing or otherwise destroying the same by the testator, or by some person in the testator's presence and by the testator's direction, with the intention of revoking the same. R.S., c. 505, s. 19.

Effect of divorce or declaration of nullity

19A Notwithstanding Sections 18 and 19, except where a contrary intention appears by the will or a separation agreement or marriage contract, where, after the testator makes a will, the testator's marriage is terminated by a judgment absolute of divorce or is declared a nullity,

(a) a devise or bequest of a beneficial interest in property to the testator's former spouse;

(b) an appointment of the testator's former spouse as executor or trustee; and

(c) the conferring of a general or special power of appointment on the testator's former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator. 2006, c. 49, s. 6.

Alteration of will after execution

20 No cancelling by drawing lines across a will or any part thereof, and no obliteration, interlineation or other alteration made in any will after the execution thereof, is valid or has any effect except so far as the words or the effect of the will before such cancelling or alteration are not apparent, unless such cancelling or alteration is executed in the manner by this Act required for the execution of the will, but the will, with such cancellation or alteration as part thereof, is deemed to be duly executed if the signature of the testator, made by the testator or some other person in the testator's presence and by the testator's direction, and the subscription of the witnesses, is made in the margin or on some other part of the will opposite or near to such cancellation or alteration, or at the foot or end of or opposite to a memorandum referring to such cancellation or alteration and written at the end or some other part of the will. R.S., c. 505, s. 20.

Reviving of revoked will

21 No will or any part thereof which has been in any manner revoked is revived otherwise than by the re-execution thereof, or by a codicil executed in manner in this Act required, and showing an intention to revive the same and, when any will which has been partly revoked and afterwards wholly revoked is revived, such revival does not extend to so much thereof as was revoked before the revocation of the whole thereof unless an intention to the contrary is shown. R.S., c. 505, s. 21.

OPERATION AND CONSTRUCTION

Effect of conveyance or other act

22 No conveyance or other act made or done subsequently to the execution of a will of any real or personal property therein comprised, except an act by which such will is revoked as in this Act mentioned, prevents the operation of the will with respect to such estate or interest in such real or personal property as the testator has power to dispose of by will at the time of the testator's death. R.S., c. 505, s. 22.

Time of which will speaks

23 Every will shall be construed, with reference to the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. R.S., c. 505, s. 23.

Failed devise as part of residuary devise

24 Unless a contrary intention appears by the will such real property or interest therein as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of the devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. R.S., c. 505, s. 24.

Construction regarding leasehold estate

25 A devise of the land of the testator, of the testator in any place, in the occupation of any person mentioned in the will or otherwise described in a general manner and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estate of the testator, or his leasehold estates or any of them to which such description extends, as the case may be, as well as freehold estates unless a contrary intention appears by the will. R.S., c. 505, s. 25.

Construction of general devise or bequest

26 A general devise or bequest of the real or personal property of the testator, of the testator in any place, in the possession of any person mentioned in the will or otherwise described in a general manner shall be construed to include any real or personal property, or any real or personal property to which such description extends, as the case may be, which the testator has power to appoint in any manner the testator thinks proper, and operates as an execution of such power unless a contrary intention appears by the will. R.S., c. 505, s. 26.

Construction of devise where no words of limitation

27 Where any real property is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real property, unless a contrary intention appears by the will. R.S., c. 505, s. 27.

Interpretation of "die without issue" or like words

28 In any devise or bequest of real or personal property, "die without issue", "die without leaving issue", "have no issue" or any other words which import either a want or failure of issue of any person in the person's lifetime or at the time of the person's death or an indefinite failure of the person's issue shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of the person's issue, unless a contrary intention appears by the will by reason of such person having a prior estate tail or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise, but this Act does not extend to cases where such words so import if no issue described in a preceding gift are born or if there are no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. R.S., c. 505, s. 28.

Construction of devise to trustee or executor

29 Where any real property is devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real property, unless a definite term of years, absolute or determinable, or an estate of freehold is thereby given to the trustee or executor expressly or by implication. R.S., c. 505, s. 29.

Death of devisee of estate tail before testator dies

30 Where any person to whom any real property is devised for an estate tail, or for an estate in quasi entail, dies in the lifetime of the testator leaving issue who would be inheritable under such entail if such estate existed and any such issue are living at the time of the death of the testator, such devise does not lapse, but takes effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention appears by the will. R.S., c. 505, s. 30.

Death before testator of inheriting issue of testator

31 Where any person, being a child or other issue of the testator to whom any real or personal property is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator leaving issue and any such issue of such person are living at the time of the death of the testator, such devise or bequest does not lapse, but takes effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. R.S., c. 505, s. 31.

MISCELLANEOUS

Contract for which liable at time of death

32 Where the testator at the time of death was liable to perform any contract for the sale and conveyance of any real or personal property, the executors of the testator's will are, notwithstanding any devise or bequest of the real or personal property to which such contract refers, deemed trustees thereof so far as is necessary for performing such contract and have power to execute the necessary conveyances

for the performance thereof, and the executors hold the purchase money subject to such uses and purposes as are in such will expressed respecting such real or personal property or such purchase money, or otherwise, for the use and benefit of the estate of the testator. R.S., c. 505, s. 32.

Penalty for suppression of will

33 Every person who suppresses any will is, after thirty days from the time when such will should first have been made public, liable to a penalty of twenty dollars for each month during which such suppression continues. R.S., c. 505, s. 33.

Sale of lands willed to be sold by executors

34 **(1)** Where lands are willed to be sold by executors and part of them refuse to be executors and to accept the administration of the will, all sales by the executors that accept such administration are as valid as if all the executors had joined.

(2) Subsection (1) has the same force and effect as though the same had been contained in the *Wills Act* when originally enacted and shall be so construed. R.S., c. 505, s. 34.