Law Society of Ontario | Barreau de l'Ontario

TAB 7A

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New Court-Ordered Validity of Will under *SLRA*

Appendix

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New Court-Ordered Validity of Will under *SLRA*

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On January 1, 2022, substantial changes to the *Succession Law Reform Act*[1] ("*SLRA*") come into effect. These amendments grant the court with the power to order that a document is a valid and effective Will even if the document was not properly made or executed in accordance with the formalities under the *SLRA*.

Currently Ontario is a mandatory compliance regime with no judicial discretion to cure a Will which does not comply with the statutory formalities. The new amendments will bring Ontario in line with most provinces across Canada.

These amendments recognize that too rigid an approach to form may result in a barrier to promoting testamentary freedom and intention. Formalities should not be an end in themselves. On the other hand, too little adherence to form could forgo important safeguards for testators. Balance is needed in dispensing with the strict requirements.

The new judicial discretion should ensure that an individual's final testamentary intentions are not defeated by inadvertent or clerical errors.

In other cases across Canada applying similar legislation, courts note the distinction between a person communicating their last wishes and the specific intention to create a Will. Not every statement a person makes whether orally or in writing, about how they would like to dispose of their property denotes testamentary intention.

[1] R.S.O. 1990, c S26

This paper will address:

1. The legislation,
2. Dispensing with formal requirements,
3. What will be the test in Ontario?,
4. Application of amendments in Will challenges.

The *Succession Law Reform Act* - Current Regime

In summary, the requirements to validly execute a Will under the *SLRA* are:

- The Will must be in writing (section 3);
- The Will must be signed at the end by the testator (section 4);
- The testator must sign the Will in the presence of two witnesses (section 4);
- At least two attesting witnesses must sign or subscribe the Will in the testator's presence (section 4).

Under section 6 of the *SLRA,* an individual may also make a holograph Will, without the proper attestation or signature of a witness, provided that the Will is entirely in the testator's own handwriting and signed.

On meeting these formal requirements, the court presumes a valid testamentary instrument. It is well-established "whenever a Will is regular on its face and apparently duly executed, in the absence of evidence to the contrary, it is assumed that the requirements of the statute with reference to the formalities of execution have been complied with."[2]

[2] *CIBC Trust Corp. v Horn,* 2008 CarswellOnt 4706 at para 12

Up to January 1, 2022, Ontario has been a strict compliance regime. Even if there was no dispute that a Will expressed the testamentary intentions of the testator, our courts would not probate a Will that did not meet the *SLRA* requirements.

Strict compliance was demonstrated in *Sills v Daley*.[3] The deceased signed her Will in her hospital room awaiting surgery for a brain tumor. The Will was properly signed by one witness. The second witness in the room, the deceased's sister, refused to sign. The court was asked to validate the Will notwithstanding the fact that there was only one witness who signed the Will before the deceased.[4] The court declined to order probate of the Will stating that to "declare the Will as valid, would be to by-pass the clear provision of the Act and to create a discretion in this Court which is not found in the Act."[5]

The court in *Sills* declined to follow an earlier case *Sisson v. Park Street Baptist Church*[6]. Decades ago, in *Sisson,* the court did submit a Will to probate which was witnessed by a lawyer and his secretary, but inadvertently not signed by the lawyer.

The court in *Sills* suggested that there were important differences between the cases, although this is debatable. In *Sisson*, the Will contained only one signature because of an inadvertent error, whereas in *Sills,* the Will was missing a signature because the second witness had refused to sign. Also of note, the application in *Sisson* was unopposed, while *Sills* it was opposed.

Since the *Sills* case, the courts have consistently applied the strict formalities to validate a Will for probate.

[3] *Sills v Daley,* [2002] OJ No 5318
[4] *Sills v Daley,* [2002] OJ No 5318 at para 12
[5] *Sills v Daley,* [2002] OJ No 5318 at para 12
[6] 1998 CarswellOnt3704 (Ont Gen Div)

Amendments to the *Succession Law Reform Act*

Pursuant to Bill 245 the *Accelerating Access to Justice Act*, the new section 21.1 under the *SLRA* establishes a judicial discretion to validate a document that does not comply with the *SLRA* formalities on the condition that the document sets out the testamentary intention of the deceased.

Section 21.1 provides:

> **Court-ordered validity**
>
> 21.1 (1) If the Superior Court of Justice is **satisfied** that a **document** or writing that was **not properly executed or made** under this Act **sets out the testamentary intentions** of a deceased or an intention of a deceased to revoke, alter or revive a will of the deceased, the Court **may**, on application, order that the document or writing is as **valid and fully effective** as the will of the deceased, or as the revocation, alteration or revival of the will of the deceased, as if it had been properly executed or made.
>
> **No electronic wills**
>
> (2) Subsection (1) is subject to section 31 of the *Electronic Commerce Act*, 2000.
>
> (3) Subsection (1) applies if the deceased died on or after the day section 5 of Schedule 9 to the *Accelerating Access to Justice Act*, 2021 came into force[7]

Although this new provision is often referred to as a "substantial compliance" provision, the wording of the amendment is more accurately referred to as a "Will-validation" provision. Section 21.1 does not require any level of compliance with the formal requirements for the court to exercise its discretion and validate a Will.

[7] The *Accelerating Access to Justice Act* will also repeal sections 15(a) and 16 of the *SLRA,* thereby revoking the automatic revocation of Wills upon marriage and add new subsections under section 17(3) to treat spouses separated at the time of the testator's death like divorced spouses. Similarly, amendments to section 4 of the *SLRA* to allow for virtual witnessing of a Will, consistent with emergency orders passed by the province during the pandemic, have already come into force.

Rather, based on cases involving similarly worded legislation, the key question is whether the **document** in question demonstrates the deceased's **deliberate and final testamentary intentions.**

Interestingly, one area that was explicitly carved out of the legislation was the use of electronic signatures. Although the use of audio-visual communication tools such as zoom or skype have expanded during the COVID-19 pandemic to allow electronic commissioning of affidavits and witnessing of documents, the legislature chose to continue to guard the sanctity of the physical signature in relation to the section 21.1 curative authority.

The transitional provisions provide that these amendments apply if the deceased dies on or after January 1, 2022.

Dispensing with Formalities

There are well-recognized policy reasons to impose formal requirements on the execution of a Will.[8] Foremost is that the requirements of form provide an evidentiary function demonstrating reliable and permanent evidence of a testator's intention. This is particularly important in the context of Wills where the testator has passed away and in many cases the Will is written several years prior.

Similarly, by injecting ceremony into the process, the goal is to ensure that the testator understands the importance and seriousness of the occasion and to guard against binding agreements that are made too impulsively or without proper consideration. In today's culture, written documents are still generally understood to be more final and formal than oral declarations. For example, most people would not sign their name to the end of a document

[8] *George v Daily*, 1997 CarswellMan 57 at paras 21-27; See also Alberta Law Reform Institute – Wills: Non-Compliance with Formalities, Formal Report No. 84 June 2000.

entitled “last Will and testament” without serious thought. This formality provides the court with the comfort that the individual did consider and intend to create a Will.

The formalities also assist in creating uniformity in the language and content of many Wills. They can also serve to protect the testator from forgery or coercion, and to ensure the authenticity of the document.

Of course, strict compliance with the formalities cannot guarantee that the purposes of these safeguards is fulfilled.

The goal of the formalities should be protection. However, strict compliance can block testamentary intention and may impair the very statutory purpose of the requirements – particularly with inadvertent and clerical errors.

The legislative relaxation of strict compliance permits proof of final testamentary intentions with evidence. The goal remains to protect a person’s last wishes.

What will be the Test in Ontario?

The wording of section 21.1 is very similar to provisions found in most other provinces. There are a couple subtle differences in level of compliance. For example, the Quebec Civil Code requires that the essential elements are made and so is more of a substantial compliance jurisdiction in the true sense.[9]

The central question across almost all provincial regimes is:

> *whether the document in question demonstrates the deceased’s deliberate and final testamentary intentions.*

[9] Sections 712-715, of the *Civil Code of Quebec*, CQLR c CCQ-1991

This question highlights a critical distinction between a person's last wishes and the intention to create a Will. Not every statement a person makes whether orally or in writing, about how they would like to dispose of their property denotes testamentary intention. As found in the cases, it is entirely possible for an individual to communicate their final intentions to someone without intending that statement to stand as a Will.

The following two cases provide a helpful analysis of the key question before the court.

George v Dailey, Manitoba Court of Appeal, 1997

The oft-cited decision from the Manitoba Court of Appeal in *George v Dailey* is particularly illustrative.[10] In this case, John Daily, met with his accountant, Dale George, three months before his death and advised Mr. George that he wanted to revoke his existing Will dated October 8, 1993. He further told Mr. George that he did not want to leave his children any money as he felt they did not take care of him and were only waiting for him to die. Mr. George made notes on the 1993 Will and the next day prepared a letter which he forwarded to a lawyer, Mr. Lee, with instructions to prepare Mr. Daily's new Will.

Mr. Daily then met with Mr. Lee and confirmed that he would like to revoke his previous Will and how he would like to leave his estate. He told Mr. Lee he would like to leave a specific item of property to one of his sons, and the residue of his estate to be divided between five charities. Mr. Lee instructed Mr. Daily to obtain a medical certificate of mental competency before proceeding with the Will. Mr. Daily passed away shortly afterwards without obtaining a medical certificate. Upon Mr. Daily's death the accountant Mr. George applied to the court for advice and directions regarding the testamentary validity of the Will instructions given by Mr. Daily. The court found that those instructions could not form a valid Will, not least because there was no

[10] George v Daily, 1997 CarswellMan 57

evidence that the deceased Mr. Daily ever actually knew the letter sent from Mr. George to Mr. Lee existed.

The court held that "the term "testamentary intention" means much more than a person's expression of how he would like their property to be disposed of after death. The essential quality of the term is that there must be a deliberate or fixed and final expression of intention as to the disposal of his/her property on death." Given that testators may change their minds, instructions may be misunderstood and the fact that Mr. Daily died two months after his meeting with Mr. Lee with no intervening contact weighed against a finding of testamentary intention.

Hadley Estate, British Columbia Court of Appeal, 2016

The same approach was taken by the courts in British Columbia. In *Hadley Estate (Re),* the court held that a journal entry titled "This is my last Will" written by Ms. Hadley, a 93-year old woman, after a health scare was not, in fact, a valid Will. In considering whether the journal entry was a valid Will the court found there were no issues of a lack of capacity or undue influence, and therefore focused entirely on whether the journal entry represented Ms. Hadley's testamentary intention. Ultimately, the court concluded that, on a balance of probabilities, the journal entry did not represent a deliberate and final expression of Ms. Hadley's testamentary intention.

In reaching this conclusion, which was upheld on appeal, the judge considered the following factors. In support of a finding of testamentary intention, the judge noted that "the deceased had handwritten the note immediately after a significant health episode and in contemplation of her death, headed it "This is my last Will", signed and initialled in various places, made three bequests and left it in the safekeeping of friends."[11]

[11] *Hadley Estate Re,* 2017 BCCA 311 at para 19

Weighing against validation, the testator:

- Did not disclose the existence of the proposed Will to anyone;
- Was described as having a confused state of mind at the time;
- Did not expressly revoke her previous 2008 Will;
- Did not explain why she was cancelling previous bequests to family members;
- Later expressed a desire to "make a new Will as soon as I can" and
- In her discussions with others about making changes to the 2008 Will, she did not communicate that she had already made a Will;

While Will-validation cases are fact-driven, the case law from other provinces provides further guidance:

- The standard of proof is balance of probabilities. The onus is on the propounding party to show testamentary intention;
- The relevant time to assess testamentary intention is when the document was made;
- The document itself must have been made at the request or with the knowledge of the deceased;
- Save for Quebec, there is no requirement to meet any of the formal statutory requirements. The degree of compliance is not a separate and determinative factor;
- The application of curative provisions are separate and apart from the interpretation of a Will. A document may be a valid Will even with substantive or interpretive defects;
- At the validity stage, the court may consider extrinsic evidence with respect to the deceased's intention and the surrounding circumstances (subject to s. 13 of the Evidence Act).

The case law addressing holograph Wills is also helpful to consider. As held by the Supreme Court of Canada in *Bennett v Toronto General Trusts Corp.* ("*Bennett*"), for a holographic Will to be valid, there must be:

> a **deliberate or fixed and final expression of intention** as to the disposal of property upon death, and that it is incumbent upon the party setting up the paper as testamentary to show, by the contents of the paper itself or by extrinsic evidence, that **the paper is of that character and nature**.[12]

In *Rezaee (Re)*, the court applied *Bennett* in ordering a holograph Will be proved in solemn form. In that case, the deceased, Mr. Rezaee, was diagnosed with terminal pancreatic cancer and signed a holograph Will at a dinner in front of all the dinner guests. In considering whether the note was in fact a valid holograph Will, the court laid out the following principles:

- The question of whether a holograph paper is a valid holograph will depends on the intention of the deceased when it was written (as stated in *Bennett*);
- the holograph paper must be read as a whole and according to its ordinary and natural sense;
- The court may also consider extrinsic evidence with respect to the deceased's intention and the surrounding circumstances;
- The court must consider whether there are any “suspicious circumstances”;
- The onus to prove the deceased’s intention is on the party propounding the Will; and
- The failure to use traditional testamentary language or appoint an executor does not prevent a holograph from qualifying as a will.[13]

Further, the court highlighted that courts should be cautious of special or suspicious circumstances given the lack of formalities. This is because:

> Unlike a formal will prepared by a lawyer, notes and observations of the lawyer taking instructions, reading over the will and due execution do not take place. Even a typed will signed by the testator and witnessed by two people can provide an opportunity for at least the witnesses to be examined as to their observations when the will was signed. Again, even this modest level of scrutiny is not available for a holograph will.[14]

[12] *Bennett v. Toronto General Trusts Corp*., [1958] S.C.R. 392
[13] *Rezaee (Re)*, 2020 ONSC 7584 at paras 19-25
[14] *Rezaee (Re)*, 2020 ONSC 7584 at para 24

In *Rezaee (Re),* the deceased's friend Mr. Naftchi who was to inherit Mr. Rezaee's entire estate testified that "Mr. Rezaee wrote this holograph Will knowing that his cancer was terminal, with the intention that Mr. Naftchi would inherit his estate. To Mr. Naftchi's knowledge, Mr. Rezaee had no family living in Canada, and his family in Iran were all deceased."[15]

After reviewing the document and all the evidence, the court was satisfied that the note contained a deliberate, fixed and final expression as to the disposition of the property of the deceased on his death and validated the holograph Will.

Application of section 21.1 in Will Challenges

Section 21.1 opens the door to further litigation.

Realistically, the new curative provision will be most beneficial for estates with no Will challenge to validate those Wills subject to clerical-type errors. Of course, the onus is on the propounding party to show testamentary intention.[16]

The section 4 *SLRA* requirements are a precondition to proving a Will, but addressing these formalities is only one step in a Will challenge. A Will that meets the formalities under the *SLRA* may still be challenged on grounds of: a lack of testamentary capacity, lack of knowledge and approval of the contents of the Will, suspicious circumstances and the presence of undue influence.

After January 1, 2022, the scope of Will challenges can be expanded to involve testamentary documents that do not meet the section 4 requirements.

[15] *Rezaee (Re)*, 2020 ONSC 7584 at para 9
[16] *Rezaee (Re)*, 2020 ONSC 7584 at para 22

At the Will validation stage, subject to Will challenge proceedings or not, the court is acting in the role of probate court. Hearsay evidence of the intention of the deceased is admissible, but subject to the requirements of section 13 of the *Evidence Act* - which requires corroboration of such evidence. [17]

In addressing the admissibility of evidence during the Will validation stage, the British Columbia Court of Appeal has stated:

> Sitting as a court of probate, the court's task on a s. 58 inquiry is to determine, on a balance of probabilities, whether a non-compliant document embodies the deceased's testamentary intentions at whatever time is material. The task is inherently challenging because the person best able to speak to these intentions — the deceased — is not available to testify. In addition, by their nature, the sorts of documents being assessed will likely not have been created with legal assistance. Given this context and subject to the ordinary rules of evidence, the court will benefit from learning as much as possible about all that could illuminate the deceased's state of mind, understanding and intention regarding the document. Accordingly, extrinsic evidence of testamentary intent is admissible on the inquiry.[18]

The question of validity of a Will is a distinct analysis from interpretation of a Will.

Direct evidence from third parties about the testator's intentions is not admissible in the interpretation of a Will, except where there is equivocation within the Will itself. The situation of equivocation is addressed by Feeney, in The Canadian Law of Wills and cited by the Ontario Court of Appeal:

> There is an equivocation only where the words of the will, either when read in the light of the whole will or, more usually, when construed in the light of the surrounding circumstances, apply equally well to two or more persons or things. In such a case,

[17] *Evidence Act,* RSO 1990, c E 23, section 13 In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his or her own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

[18] *Hadley Estate Re,* 2017 BCCA 311 at para 40

> extrinsic evidence of the testator's actual intention may be admitted and will usually resolve the equivocation.[19]

Extrinsic evidence regarding the factual matrix to establish the facts and circumstances surrounding the making of a Will is admissible in addressing questions of both validation and interpretation.[20]

> [S]uch circumstances as the character and occupation of the testator; the amount, extent and condition of his property; the number, identity, and general relationship to the testator of the immediate family and other relatives; the persons who comprised his circle of friends, and any other natural objects of his bounty.

Often questions of validity and interpretation of a Will are part of the same Will challenge. Disputes involving the admissibility of evidence can become complex.

The complexity of addressing both validity and interpretation of a Will is well-demonstrated in the Ontario decisions involving *McLaughlin Estate v McLaughlin*[21]. The Court of Appeal decision demonstrated the importance of following the correct sequence of steps: validity precedes rectification. An order rectifying a Will should not be subject to subsequent attack on the basis that a Will is not valid - because the Will has not met the requisite formalities, or due to lack of testamentary capacity, lack of knowledge and approval of the contents of the Will, suspicious circumstances or the presence of undue influence.

The Court of Appeal held, implicit in an order for rectification, is a finding that the Will is valid.[22] As such, the Court of Appeal reversed the judgment of an application judge who found that the Will was not valid because, in the related rectification hearing, the judge held that the testatrix did not read or have knowledge of or approve of its contents.

[19] *Rondel v. Robinson Estate,* 2011 ONCA 493 at para 29
[20] *Rezaee (Re)*, 2020 ONSC 7584 at para 21
[21] *McLaughlin Estate v McLaughlin*, 2016 ONCA 899
[22] *McLaughlin Estate v McLaughlin*, 2016 ONCA 899 at para 5

The issue of rectification is related to, but distinct from validation. It is uncertain whether cases involving rectification will be of assistance in the Will validation assessment under new section 21.1.

Conclusion

The new section 21.1 of the *SLRA* creates a judicial discretion to validate a Will even if the document was not properly made or executed in accordance with the formalities under the *SLRA*. This amendment will lead to new applications to validate Wills, which were not previously available under the strict compliance regime.

Based on cases involving similar legislation, the key question to be considered by the courts is whether the document in question demonstrates the deceased's deliberate and final testamentary intentions. This is a fact-driven analysis of the very nature and circumstances of the making of the document itself, the expression of final wishes and the intention of the testator.

The ultimate goal is to protect a person's last wishes, and to ensure that too strict adherence to formalities does not block the testamentary intention they are intended to guard. There is no minimum level of compliance with the formalities necessary to access section 21.1. Extrinsic evidence with respect to the deceased's intention and the surrounding circumstances will be required, and is admissible.

In exercising this new discretion, our courts will likely continue to be cautious, particularly if none of the section 4 formalities and the inherent protections, are present.

Schedule "A"

Ontario

Sections 3, 4, 6 and newly amended section 21.1

Will to be in writing

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

Execution

4 (1) In this section,

"audio-visual communication technology" means any electronic method of communication which allows participants to see, hear and communicate with one another in real time.

Valid execution of will

(2) Subject to subsection (3) and to sections 5 and 6, a will is not valid unless,

(a) at its end it is signed by the testator or by some other person in his or her presence and by his or her direction;

(b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and

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

Permitted use of audio-visual communication technology

(3) A requirement in clause (2) (b) or (c) that witnesses be in the presence of the testator or in one another's presence for the making or acknowledgment of a signature on a will or for the subscribing of a will may be satisfied through the use of audio-visual communication technology, if,

(a) at least one person who acts as a witness is a licensee within the meaning of the Law Society Act at the time;

(b) the making or acknowledgment of the signature and the subscribing of the will are contemporaneous; and

(c) the requirements specified by the regulations made under subsection (7), if any, are met.

Holograph wills

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

Court-ordered validity

21.1 (1) If the Superior Court of Justice is satisfied that a document or writing that was not properly executed or made under this Act sets out the testamentary intentions of a deceased or an intention of a deceased to revoke, alter or revive a will of the deceased, the Court may, on application, order that the document or writing is as valid and fully effective as the will of the deceased, or as the revocation, alteration or revival of the will of the deceased, as if it had been properly executed or made.

No electronic wills

(2) Subsection (1) is subject to section 31 of the *Electronic Commerce Act*, 2000.

(3) Subsection (1) applies if the deceased died on or after the day section 5 of Schedule 9 to the *Accelerating Access to Justice Act*, 2021 came into force

Alberta

Section 37 of the *Wills and Successions Act*, SA 2010, c W-12.2

Court may validate non-compliant will

37 The Court may, on application, order that a writing is valid as a will or a revocation of a will, despite that the writing was not made in accordance with section 15, 16 or 17, if the Court is satisfied on clear and convincing evidence that the writing sets out the testamentary intentions of the testator and was intended by the testator to be his or her will or a revocation of his or her will.

British Columbia:

Section 58 of the *Wills, Estates and Succession Act*, SBC 2009, c 13

Court order curing deficiencies

58 (1) In this section, "record" includes data that
(a) is recorded or stored electronically,

(b) can be read by a person, and

(c) is capable of reproduction in a visible form.

(2) On application, the court may make an order under subsection (3) if the court determines that a record, document or writing or marking on a will or document represents

(a) the testamentary intentions of a deceased person,

(b) the intention of a deceased person to revoke, alter or revive a will or testamentary disposition of the deceased person, or

(c) the intention of a deceased person to revoke, alter or revive a testamentary disposition contained in a document other than a will.

(3) Even though the making, revocation, alteration or revival of a will does not comply with this Act, the court may, as the circumstances require, order that a record or document or writing or marking on a will or document be fully effective as though it had been made

(a) as the will or part of the will of the deceased person,

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

(c) as the testamentary intention of the deceased person.

(4) If an alteration to a will makes a word or provision illegible and the court is satisfied that the alteration was not made in accordance with this Act, the court may reinstate the original word or provision if there is evidence to establish what the original word or provision was.

Manitoba

Section 23 of the *Wills Act*, CCSM c W150:

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.

New Brunswick

Section 35.1 of the *Wills Act*, RSNB 1973, c W-9

35.1 Where a court of competent jurisdiction is satisfied that a document or any writing on a document 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 document or writing was not executed in compliance with the formal requirements imposed by this Act, order that the document or writing is valid and fully effective as if it had been executed in compliance with the formal requirements imposed by this Act.

Nova Scotia

Section 8A of the Wills Act S.N.S. 2006, c. 49

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

Prince Edward Island

Section 70, *Probate Act*, RSPEI 1988, c P-21

Substantial compliance

If on application to the Estates Section the court is satisfied

(a) that a document was intended by the deceased to constitute his will and that the document embodies the testamentary intentions of the deceased; or

(b) that a document or writing on a document embodies 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 all the formal requirements imposed by this Act but provided that the document or writing is signed by the deceased, 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.

Quebec

Sections 712-715, 726 of the *Civil Code of Quebec*, CQLR c CCQ-1991

General Provisions

712. The only forms of will that may be made are the notarial will, the holograph will and the will made in the presence of witnesses.

713. The formalities governing the various kinds of wills shall be observed, on pain of nullity. However, if a will made in one form does not meet the requirements of that form of will, it is valid as a will made in another form if it meets the requirements for validity of that other form.

714. A holograph will or a will made in the presence of witnesses that does not fully meet the requirements of that form is valid nevertheless if it meets the essential requirements thereof and if it unquestionably and unequivocally contains the last wishes of the deceased.

715. No one may cause the validity of his will to be subject to any formality not required by law.

Holograph Wills

726. A holograph will shall be written entirely by the testator and signed by him, without the use of technical means. It is subject to no other formal requirement.

Saskatchewan

Section 2 of the *Wills Act* 1996, SS 1996, c W-14.1

Interpretation

2 In this Act, "will" includes:

(a) a testament;
(b) a codicil;
(c) an appointment by will or by writing in the nature of a will in exercise of a power; and
(d) any other testamentary disposition.

Holograph will

8 A holograph will, wholly in the handwriting of the testator and signed by him or her, may be made without any further formality or any requirement as to the presence of or attestation or signature by a witness

Substantial compliance

37 The court may, notwithstanding that a document or writing was not executed in compliance with all the formal requirements impose d by this Act, order that the document or writing be fully effective as though it had been properly executed 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, where a court, on application is satisfied that the document or writing embodies;

(a) the testamentary intention of a deceased; or

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

Appendix

1. *CIBC Trust Corp. v Horn*, 2008 CarswellOnt 4706
2. *Sills v Daley*, [2002] OJ No 5318
3. *Sisson v. Park Street Baptist Church*, 1998 CarswellOnt3704 (Ont Gen Div)
4. *George v Daily*, 1997 CarswellMan 57
5. *Hadley Estate Re*, 2017 BCCA 311
6. *Bennett v Toronto General Trusts Corp*., [1958] SR 392
7. *Rezaee (Re)*, 2020 ONSC 7584
8. *Rondel v Robinson Estate*, 2011 ONCA 493
9. *McLaughlin Estate v McLaughlin*, 2016 ONCA 899