

## Chapter 6

### AN ACT TO AMEND THE WILLS ACT

(Assented to March 22, 2005)

The Commissioner of Nunavut, with the advice and consent of the Legislative Assembly, enacts as follows:

1. **The *Wills Act* is amended by this Act.**
2. **Subsection 2(2) is amended by striking out "Territories" and substituting "Northwest Territories".**
3. **Section 5 is repealed and the following substituted:**

Formalities of execution

5. (1) A will is validly made if
  - (a) it is in writing and is signed by the testator, or by another person in the testator's presence and by the testator's direction;
  - (b) the signature is made or acknowledged by the testator in the presence of two or more witnesses; and
  - (c) at least two of the witnesses
    - (i) are both present at the same time as the signature is made or acknowledged by the testator, and
    - (ii) sign the will, or acknowledge their signatures, in the presence of the testator, but not necessarily in the presence of each other.

When testator must be present

- (2) A will is not invalid on the ground that the testator does not see the witness sign, if the testator is otherwise present.

Place of signature

- (3) A will is not invalid solely on the ground that the signature required by paragraph (1)(a) is not at the end of the will, if it appears that the testator intended by the signature to give effect to the will.

"Own writing"

- 5.1. (1) In this section, "own writing" means handwriting, footwriting, mouthwriting or writing of a similar kind.

Formalities of execution of will in testator's own writing

- (2) A will that is wholly in the testator's own writing and signed by the testator is validly made without meeting the requirements set out in paragraphs 5(1)(b) and (c).

Will partly in own writing and partly in other written form

(3) A will that is partly in the testator's own writing and partly in printed, typewritten or other written form is validly made without meeting the requirements set out in paragraphs 5(1)(b) and (c) if

- (a) it appears that the testator intended to incorporate the printed, typewritten or other words; and
- (b) the will is signed by the testator.

**4. Section 7 is repealed.**

**5. (1) Subsection 11(3) is amended by striking out "A will" and substituting "Subject to an order made under subsection (4), a will".**

**(2) The following is added after subsection 11(3):**

Evidence will made in contemplation of marriage

(4) A court of competent jurisdiction 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.

**6. The following is added after section 13:**

**DISPENSING WITH FORMAL REQUIREMENTS**

Court may dispense with formal requirements

13.1. (1) If a document or writing on a document was not made in accordance with all or any of the formalities set out in section 5, 5.1, 6, paragraph 11(2)(c) or section 12 or 13, a court of competent jurisdiction may order that the document or writing is valid as

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

Evidence required

(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 or writing to constitute a will of the deceased person or the revocation, alteration or revival of a will of the person, as the case may be.

Application

(3) This section applies to a document or writing for which probate had not been granted before this section comes into force.

**7. Subsections 26(2) and (3) are amended by striking out "the Territories" where it appears and substituting "Nunavut".**

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