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Backgrounder

LRC 52—Report on the Making and Revocation of Wills

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This report explores a number of issues of concern to a person contemplating the execution of a will. It also discusses a range of issues that may face a Court of Probate that has been called upon to determine the validity of a will. These issues include the capacity of minors to create a will, soldiers' and mariners' wills, the international form of will, the effect of improperly executed wills, the capacity of witnesses, the designation of beneficiaries under various plans, and the formal validity of wills that violate a foreign law made relevant by British Columbia choice of law rules.

The report begins with a brief discussion of the historical origins of the leading rules regarding the formal aspects of making and revoking a will. It also briefly notes a number of succession law reform projects that have been carried out outside British Columbia. After this short introduction, the report proceeds to discuss legal issues. It begins with an analysis of the testamentary capacity of minors. The report does not recommend lowering the general age at which a person is capable to make a will, but it does recommend a drafting change to the legislation to clarify that this age is 19 years. There are a number of exceptions to this general rule. Minors who are married or who are on active service with the Canadian Armed Forces may make legal wills. The report recommends a few refinements to these exceptions, including allowing a minor to make a will in contemplation of marriage to a specific person and giving the court the authority to declare that a minor has the capacity to make a will.

Chapter three of the report examines the formal requirements that must be met to make a valid will. These formal requirements include requirements that a will be in writing, that it be signed by the testator at the end of the document, and that it be witnessed by two witnesses. The report makes a number of recommendations in connection with formal wills, privileged wills, and informal wills. A key recommendation, discussed in detail in the report, relates to a dispensing power for Supreme Court of British Columbia. In simple terms, such a power would give the court a limited jurisdiction to admit to probate as a will certain documents that have failed to meet the formal requirements of a will. The chapter also examines the implementation in British Columbia of the Convention Making Provision for a Uniform Law on the Form of an International Will.

Chapter four examines alterations made after a will has been executed and revocations of wills. The law has developed a number of strict rules and presumptions to govern the validity of alterations. The report recommends relaxation of these rules to a limited extent, to deal with the vexing situation of obliteration of parts of a will. The report also recommends extending the operation of the recommended dispensing power to cover cases of intentional revocation.

Chapter five discusses witnesses to a testator's signature on a will and makes recommendations regarding the competency of witnesses and gifts to witness. Chapter six looks at designation of beneficiaries of interests in funds or plans. Such funds or plans include life insurance plans, employee benefit plans, and registered retirement savings plans. The report contains recommendations providing for the uniformity of legal rules governing these funds or plans.

Chapter seven addresses wills and conflict of laws. In a highly mobile society like British Columbia it is not uncommon for individuals to have connections with more than one province or country. The report contains a series of recommendations to update the existing conflicts rules. Finally, chapter eight is concerned with issues of safekeeping and registration of wills. The report does not recommend any changes to the current system of optional registration of wills notices.

Further Developments

The report's recommendations have not been implemented by legislation.