## THE NEW WORLD OF WILLS AND SUCCESSION

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Believe it or not, the legislation dealing with wills and other succession issues is finally going to change in Alberta. What makes this event notable is that we have been living with, for the most part, archaic legislation which was enacted in the 1960s and which does not adequately reflect life as it is today.

For example, it is proposed that the *Intestate Succession Act* be changed such that a spouse receive all of the estate of the deceased spouse where there is not a will in existence and where any children are children of the relationship between the surviving spouse and the deceased spouse. Currently, the first $40,000 goes to the surviving spouse and the remainder is split amongst the spouse and any children, no matter how old, independent or capable those children may be. This is not what most people want or expect and the change to the legislation more accurately reflects the realities of today's world.

As well, a gift in a will to a former spouse or adult interdependent partner (common law spouse) will be revoked. This will apply only to a divorce or cessation of an adult interdependent partnership that occurs after the new legislation comes into force. Again, this is what most individuals want and expect, rather than the current situation where if, by oversight, a will is not changed upon re-marriage, chaos can ensue on the death of the formerly married testator. If an individual does not want this to occur, they will need to be diligent in the preparation of a will after the relationship is dissolved.

Similarly, a will that is signed after marriage or after entering an adult interdependent partnership will no longer be automatically revoked. This portion of the legislation will be applied on a go-forward basis only to relationships which are entered into after the legislation comes into force.

From an evidentiary basis, the Courts will also be given more discretion and latitude in both discerning and enforcing the intention of a testator. New rules regarding allowance of relevant evidence will be very welcome to most practitioners so that a testator's true intention will be more available to the Courts. This should alleviate that excruciating circumstance where everyone in the family knows the intention of the testator, but cannot put evidence of that intention before the Courts because of evidentiary restrictions.

Unfortunately, the new legislation is not slated to be proclaimed until January 2012 but everyone should be considering whether it will impact on their particular situation. If you think that you may be affected by this new legislation, contact someone in our Estates, Trusts & Taxation practice group, and they can discuss it with you further.