

## REVOCAION OF WILL LEGISLATION: CROSS-PROVINCIAL EXAMINATION

PROVINCE	LEGISLATION	IMPORTANT/RELEVANT SECTIONS	Does Marriage Revoke a will?
ALBERTA	<i>Wills and Succession Act</i> , RSA 2010, c. W-12.2	<p><u>Marriage does not revoke a will in Alberta, provided that the marriage took place on or after February 1, 2012.</u></p> <p><b>23 (2)</b> No will or part of a will, regardless of when it was made, is revoked by</p> <p>(a) a marriage of the testator that occurs on or after February 1, 2012.</p>	No
BRITISH COLUMBIA	<i>Wills and Succession Act</i> , SBC 2009, c. 13	<p><u>Marriage does not revoke a will in British Columbia</u>, however, under <i>WESA</i>, a person becomes a common law spouse after living together for two years in a “marriage-like relationship”: <i>WESA</i>, s. 2 (1)</p> <p><b>55 (1)</b>A will other than an electronic will or a part of a will other than an electronic will is revoked only in one or more of the following circumstances:</p> <p>(a)by another will made by the will-maker in accordance with this Act;</p> <p>(b)by a written declaration of the will-maker that revokes all or part of a will made in accordance with section 37 [how to make a valid will];</p> <p>(c)by the will-maker, or a person in the presence of the will-maker and by the will-maker's direction, burning, tearing or destroying all or part of the will in some manner with the intention of revoking all or part of it;</p> <p>(d)by any other act of the will-maker, or another person in the presence of the will-maker and by the will-maker's direction, if the court determines under section 58 that</p> <p>(i)the consequence of the act of the will-maker or the other person is apparent on the face of the will, and</p> <p>(ii)the act was done with the intent of the will-maker to revoke the will in whole or in part.</p>	No

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		(2)A will is not revoked in whole or in part by presuming an intention to revoke it because of a change in circumstances.	
<b>MANITOBA</b>	<i>The Wills Act</i> , CCSM c. W150, s. 17	<p>Revocation by marriage</p> <p><b>17</b> - A will is revoked by the marriage of the testator except where</p> <p>(a) there is a declaration in the will that it is made in contemplation of the marriage; or</p> <p>(a.1) there is a declaration in the will that it is made in contemplation of the testator's common-law relationship with the person the testator subsequently marries; or</p> <p>(b) the will is made in exercise of a power of appointment of real or personal property which would not, in default of the appointment, pass to the heir, executor, or administrator of the testator or to the persons entitled to the estate of the testator if the testator died intestate; or</p> <p>(c) the will fulfills obligations of the testator to a former spouse or common-law partner under a separation agreement or court order.</p>	Yes
<b>NEW BRUNSWICK</b>	<i>Wills Act</i> , RSNB 1973, c. W-9,	<p>Effect of subsequent marriage on will</p> <p><b>15.1(1)</b>In this section “Court” means The Court of Queen’s Bench of New Brunswick and includes a judge of that Court.</p> <p><b>15.1(2)</b>A person who has made a will and who subsequently marries and dies shall be deemed to have died intestate if the person dies</p> <p>(a) while married, or</p> <p>(b) while any issue of a marriage of the testator subsequent to the will is still alive.</p>	Yes
<b>NEWFOUNDLAND &amp; LABRADOR</b>	<i>Wills Act</i> , RSNL 1990, c. W-10, s. 9	Revocation by marriage	Yes

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		<p><b>9.</b> A person's will shall be revoked by his or her marriage except where</p> <p>(a) there is a declaration in the will that it is made in contemplation of that marriage; or</p> <p>(b) the will is made in exercise of a power of appointment, when the property appointed by it would not, in default of the appointment, pass to his or her executor or administrator, or to the person entitled as his or her next-of-kin, under the Intestate Succession Act.</p>	
<b>NORTHWEST TERRITORIES</b>	<i>Wills Act</i> , RSNWT 1988, c.W-5, s.11(3)	<p><i>Wills Act</i>, RSNWT 1988, c.W-5, s.11(3)</p> <p>- Revocation by marriage</p> <p><b>11 (3)</b> Subject to an order made under subsection (4), a will is revoked by marriage of the testator after it is made, except where</p> <p>(a) it is declared in the will that it is made in contemplation of that marriage; or (b) the will is made in exercise of a power of appointment and the real or personal property appointed by that means would not, in default of the appointment, pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if the testator died intestate.</p>	Yes
<b>NOVA SCOTIA</b>	<i>Wills Act</i> , RSNS 1989, c. 505, s. 17	<p>17 Every will is revoked by the marriage of the testator except where</p> <p>(a) it is declared in the will that the same is made in contemplation of such marriage;</p> <p>(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</p> <p>(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.</p>	Yes

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<b>NUNAVUT</b>	<i>Consolidation of Wills Act, RSNWT 1988, c. W-5</i>	<p>Revocation by marriage            (3) Subject to an order made under subsection (4), a will is revoked by marriage of the testator after it is made, except where (a) it is declared in the will that it is made in contemplation of that marriage; or (b) the will is made in exercise of a power of appointment and the real or personal property appointed by that means would not, in default of the appointment, pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if the testator died intestate. Evidence will made in contemplation of marriage</p> <p>(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.</p>	Yes
<b>ONTARIO</b>	<p><u>Bill 245, Accelerating Access to Justice Act, 2021</u></p> <p><i>Succession Law Reform Act, RSO 1990, c. S.26,</i></p>	<p><u>Bill 245 repeals ss. 15 (a) and 16 of the Succession Law Reform Act ["SLRA"], as a result, marriage of the testator no longer revokes a will in Ontario.</u></p> <p>Previously, ss. 15 (a) and 16 of the held that a will is revoked by a subsequent marriage of the testator.</p>	No
<b>PRINCE EDWARD ISLAND</b>	<i>Probate Act, RSPEI 1988, c P-21, s. 68</i>	<b>68.</b> Marriage revokes a will (1) Every will made by a man or woman is revoked by his or her marriage. Application of section (2) This section does not apply to a will (a) made in contemplation of a marriage of the testator which marriage actually takes place within one month after the making of the will; (b) made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of the appointment, pass to his or her heir, executor or administrator, or the person entitled as his or her next of kin, under Part IV.	Yes

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QUEBEC			No
SASKATCHEWAN	<u>Bill 175</u>  <i>The Wills Act, SSA 1996, c. W-14.1, 16 (a)</i>	<u>Bill 175, An Act to amend <i>The Marriage Act</i>, 1995 and to make consequential amendments to <i>The Wills Act</i>, 1996. As a result, marriage no longer revokes a will in Saskatchewan.</u>  <b>16 (a)</b> of the <i>Wills Act</i> , SSA has been repealed Pursuant to 16 (b) – a will is revoked by the execution of a new will or by its destruction.	No
YUKON	<u><i>Amend the Wills Act, 2020</i></u>  <i>Wills Act, RSY 2002, c.230, s.10(2)(a)</i>	<u>Bill No. 12 – <i>Amend the Wills Act, 2020</i></u> - came into force on May 1, 2021  - repealed the automatic revocation of a will by marriage pursuant to <i>Wills Act</i> , RSY, 2002, c.230, s.10(2)(a)	No

*This table is intended for the purposes of providing information and guidance only and is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive. March 2022.*