



# What We Heard: The *Wills Act* modernization

March 2020



# Background

A will is a written document setting out a person's wishes about how to deal with their property after they have died. Many Yukoners and their families rely on wills to ensure that their loved ones receive specific gifts after their death. Without a will, there can be delays, complication and uncertainty about how their property should be dealt with and who it will go to.

Yukon's *Wills Act* sets out the rules for how wills are created and implemented in the territory. The Act has not been changed since it was created almost 70 years ago. Updates are needed to ensure that wills created in Yukon continue to serve the needs of Yukoners.

The Government of Yukon asked Yukoners, First Nations governments, and the legal community to share their thoughts on a number of modernization issues. Questions were designed to get input on the following amendments being considered:

- how changes to a person's spousal status should affect their will;
- whether Yukoners are interested in using a registry for wills;
- whether to continue to accept handwritten wills; and
- whether to give the court powers to correct errors in a will and how.

# Engagement Process

## Purpose

We asked Yukoners their thoughts on how the *Wills Act* should be updated. Our goal in engaging the public, partners, and stakeholders was to learn which options reflect the needs and expectations of today's Yukoners.

## Process

An engagement process was held between November 7 and December 23, 2019. First Nations governments and stakeholders were contacted directly by email and mail with an information package, which included specific questions. A news release was also issued and an online survey was posted on EngageYukon for the public to provide their thoughts.

We have used the information gathered during this engagement to make final decisions about how to modernize the *Wills Act*.

# What We Heard

## Online Survey

During the engagement process, we received a total of 51 responses to the online survey. Respondents answered with the following:

- Would you consider using a registry if it were available?  
**Yes – 64.7%, No – 15.7%, Not sure/depends – 19.6%**
- Do you believe that a will should be voided when someone marries, unless it clearly says in the will that the will should continue past the date of marriage?  
**Yes – 39.2%, No – 45.1%, Not sure/depends – 15.7%**
- Do you believe that a will should be changed automatically by a divorce in cases where the person who made the will gave no specific instructions on what should happen if they get divorced?  
**Yes – 56.9%, No – 33.3%, Not sure/depends – 9.8%**

- If so, which of the following automatic changes would you agree with most:

(1) Any gifts to the former spouse should be cancelled, and if they were appointed as the Executor (person appointed to manage the will) their

appointment should also be cancelled, but the rest of the will should stay the same - **Option 1 – 33.3%**; or

(2) The entire will should be cancelled - **Option 2 – 21.6%**.

Respondents also answered with:

**Neither option – 13.7%, Not sure/depends – 9.8%, and No response – 19.6%**

- Which of the following statements do you most agree with:
  - (A) No change is needed: being in a common law relationship should not change a person's will, unless the will says otherwise - **Option A – 39.2%**
  - (B) Change is needed: being in a common law relationship should be treated the same as marriage, unless the will says otherwise - **Option B – 52.9%**, or
  - (C) I'm not sure if change is needed, it would depend on the change - **Option C – 7.9%**
- How much do you agree or disagree with the following statement: if a person has a common law spouse when they write their will, and later they marry the same person, their will should not be voided (cancelled) or changed by their marriage?  
**Strongly agree – 37.25%, Agree – 37.25%, Disagree – 21.5%, Strongly disagree – 2%, Neutral – 2%**
- Do you have a will or do you plan to write a will in the future?  
**Yes, I have a will – 64.7%, Yes, I plan to have a will in the future – 27.4%, Not sure/prefer not to say - 6%, No – 1.9%**
- Which of the following apply to you (check all that apply):  
**Currently married – 41.2%, Currently in a Common Law relationship – 11.8%, Have been divorced - 9.8%, Have separated from a CL spouse – 9.8%, Currently single – 23.5%, Prefer not to say – 3.9%**
- Do you or your spouse own property in another Canadian jurisdiction?  
**Yes – 23.5%, No – 64.7%, Prefer not to say – 11.8%**

- Do you or your spouse own property in a jurisdiction outside of Canada?  
Yes – 7.8%, No – 84.4%, Prefer not to say – 9.8%
- Which community do you live in?  

Whitehorse – 74.9%	Tagish – 3.9%	Ibex Valley – 3.9%
Carmacks – 1.9%	Teslin – 1.9%	Faro – 1.9%
Dawson – 1.9%	Watson Lake – 1.9%	Rural north of Whitehorse – 1.9%
Prefer not to say – 5.8%		
- What is your age range?  

18 to 29 years – 3.9%	30 to 39 years – 23.5%	40 to 49 years – 13.7%
50 to 59 years – 19.6%	60 to 64 years – 11.8%	65 years or older – 17.7%
Prefer not to say – 9.8%		

We also received comments accompanying respondent's answers. This information has been used in considering the *Wills Act* amendments.

## Discussion Document/Written Responses

During the engagement process, we received 4 written responses: 3 on the discussion document template and 1 general response to some of the questions from the discussion document.

Respondents answered the following:

- Do you believe that holographic wills should continue to be accepted as valid?  
Yes – 50%, No – 0%, Not sure – 25%, No response – 25%
- Would you consider using a registry if it were available?  
Yes – 100%

- Do you believe that a will should be voided when someone marries, unless it clearly says in the will that the will should continue past the date of marriage?  
**Yes – 25%, No – 50%, No response – 25%**
  
- Do you believe that a will should be changed automatically by a divorce in cases where the person who made the will gave no specific instructions on what should happen if they get divorced?  
**Yes – 50%, Not sure/depends – 25%, No response – 25%**
  
- Do you believe that a will should be changed automatically by a divorce in cases where the person who made the will gave no specific instructions on what should happen if they get divorced?  
**Yes – 50%, Not sure/depends – 25%, No response 25%**
  - If so, which of the following automatic changes would you agree with most:
    - (1) Any gifts to the former spouse should be cancelled, and if they were appointed as the Executor (person appointed to manage the will) their appointment should also be cancelled, but the rest of the will should stay the same - **Option 1 – 25%**; or
    - (2) The entire will should be cancelled - **Option 2 – 25%**.
 Respondents also answered with: **Not sure/depends – 25%**; and **No response – 25%**
  
- Which of the following statements do you most agree with:
  - (A) No change is needed: being in a common law relationship should not change a person's will, unless the will says otherwise – **Option A – 0%**,
  - (B) Change is needed: being in a common law relationship should be treated the same as marriage, unless the will says otherwise - **Option B –75%**, or
  - (C) I'm not sure if change is needed, it would depend on the change - **No response – 25%**

- How much do you agree or disagree with the following statement: if a person has a common law spouse when they write their will, and later they marry the same person, their will should not be voided (cancelled) or changed by their marriage?  
**Strongly Agree – 25%, Agree – 25%, No response – 50%**
- Do you believe that courts should be able to accept documents that are defectively signed or witnessed as valid wills, if the court is satisfied that the document represents the testator's intentions?  
**Yes – 25%, No response 75%**
- Do you believe that the *Wills Act* should set out a process for dealing with failed gifts so they do not automatically fall into the residue of the estate?  
**Yes – 25%, No response 75%**
- If so, would you support a process which allocates failed gifts based on the following priorities: first according to the testator's express intentions; then according to the testator's presumed intentions (including directions for residue of the estate); and, finally, following intestate succession rules.  
**Yes – 25%, No response 75%**

## What we asked

Through the online survey we asked the following questions:

1. Would you consider using a will registry if it were available?
2. Do you believe that a will should be voided when someone marries, unless it clearly says in the will that it should continue past the date of marriage?
3. Do you believe that a will should be changed automatically by a divorce in cases where the person who made the will gave no specific instructions on what should happen if they get divorced?

4. If so, which of the following automatic changes would you agree with most:
  - a. Any gifts to the former spouse should be cancelled, and if they were appointed as the Executor (person appointed to manage the will) their appointment should also be cancelled, but the rest of the will should stay the same; or
  - b. The entire will should be cancelled.
  
5. Which of the following statements do you most agree with:
  - a. No change is needed: being in a common law relationship should not change a person's will, unless the will says otherwise; or
  - b. Change is needed: being in a common law relationship should be treated the same as marriage, unless the will says otherwise; or
  - c. I'm not sure if change is needed, it would depend on the change.
  
6. How much do you agree or disagree with the following statement: "If a person has a common law spouse when they write their will, and later they marry the same person, their will should not be voided (cancelled) or changed by their marriage."

Partners and stakeholders were asked the same questions, plus the following:

- 1) Do you believe that courts should be able to accept documents that are defectively signed or witnessed as valid wills, if the court is satisfied that the document represents the testator's intentions?
  
- 2) Do you believe that Yukon's *Wills Act* should enable courts to save gifts that would otherwise fail, provided that it follows clear evidence of the testator's intentions?
  
- 3) Do you believe that the *Wills Act* should set out a process for dealing with failed gifts so they do not automatically fall into the residue of the estate?
  
- 4) If so, would you support a process which allocates failed gifts based on the following priorities: first according to the testator's express intentions; then according to the testator's presumed intentions (including directions for residue of the estate); and, finally, following intestate succession rules.



- 5) Do you believe that holographic wills should continue to be accepted as valid?
- 6) Do you believe that wills should continue to be automatically revoked by marriage, unless the testator expresses an intention otherwise?
- 7) Is there anything else that you believe should be included, or comments you would like to share?

## What's next?

Information gathered from the engagements as well as jurisdictional research and reviews from expert panel has assisted in the development of legislative amendments to the *Wills Act*.

# Participation

## Engagement Methods

- **Online survey:** A survey was available online at [engageyukon.ca](http://engageyukon.ca) from November 7 to December 23, 2019. Background information was attached to the survey, describing the purpose of the engagement and providing an overview of the proposed changes. There were a total of 52 responses to the survey.
- **Traditional media:** A media release was issued at the beginning of the engagement period. A radio interview on Wills Month also highlighted the ongoing engagement and invited people to complete the online survey.
- **Discussion document:** A discussion document with information and invitations to engage were sent directly to First Nations governments, and several stakeholders including the Law Society and Canadian Bar Association, senior organizations and others. Comments were accepted until December 23, 2019.

## Participation by the numbers

- 4 completed responses to the discussion document;
- 51 completed surveys; and
- 12 emails with comments were received by the Department of Justice.