

Comprehensive and up-to-date legal information, including the necessary forms

The Civil Code of Québec, which came into force on January 1, 1994, maintained the three types of wills recognized in the previous version of the Code, while easing certain rules. In addition to wills made before a notary—called authentic wills—the Civil Code recognizes the validity of two other types of wills, namely, holograph wills and wills made in the presence of witnesses.

However, to ensure that a holograph will or a will made in the presence of witnesses was really drawn up by the deceased and that the requirements of the law have been met, both these types of wills must be validated by the court or a notary. These wills must therefore be probated. This brochure explains how to prepare an application for the probate of a will.

The information in this brochure is complete and reflects the law in force as at June 2011.

Application for the Probate of a Will

Application for the Probate of a Will

LES PUBLICATIONS DU QUÉBEC
1000, route de l'Église, bureau 500, Québec (Québec) G1V 3V9

SALES AND DISTRIBUTION
Telephone: (418) 643-5150, Toll free: 1 800 463-2100
Fax: (418) 643-6177, Toll free: 1 800 561-3479
Internet: www.publicationsduquebec.gouv.qc.ca

Library and Archives Canada Cataloguing in Publication

Main entry under title:

Application for the probate of a will

(La justice à votre portée)

Issued also in French under title: Requête en vérification de testament.

ISBN 2-551-19728-7

1. Probate law and practice - Québec (Province). 2. Decedents' estates - Québec (Province). I: Québec (Province). Ministère de la justice. Direction des communications. II Québec (Province). Direction générale des services de justice. III Series: Justice à votre portée.

KEQ354.P7R4613 2006 346.71405'2 C2006-941355-X

This brochure was prepared by the
**Direction générale des services de justice
et des registres**

in collaboration with the
**Direction des communications
of the Ministère de la Justice du Québec.**

This edition was published by
Les Publications du Québec
1000, route de l'Église, bureau 500
Québec (Québec)
G1V 3V9

Project Coordinator - Publishing
Catherine Boulet

Production
Pascal Couture

Graphic Artist
Lucie Pouliot

Translation
Service de la traduction

All names and addresses indicated
in the sample documents are fictitious.

Legal deposit - 2006
Bibliothèque et Archives nationales du Québec
National Library of Canada
ISBN 2-551-19728-7
ISBN 2-551-19751-1 (pdf)
© Gouvernement du Québec, 2006

All rights reserved for all countries.
No part of this publication may be translated or reproduced by any
means without the authorization of Les Publications du Québec.

Table of contents

Definitions	4
Types of wills	5
Probating a will	7
Who can apply to the court for the probate of a will?	8
How to prepare an application for the probate of a will	9
How to present your application	11
Judgment	12
Explanatory notes	13
Sample Document 1 Application for the Probate of a Will	16
Sample Document 2 Affidavit by the Applicant	18
Sample Document 3 Notice of Presentation	19
Sample Document 4 Affidavit by a Person Familiar with the Writing and Signature of the Deceased	20
Sample Document 5 Affidavit by a Witness to the Will	21
Sample Document 6 Backing Sheet	22
Sample Document 7 Folding the Backing Sheet	23
Excerpts from statutes	24

THE CIVIL CODE OF QUÉBEC, WHICH CAME INTO FORCE ON JANUARY 1, 1994, MAINTAINED THE THREE TYPES OF WILLS RECOGNIZED IN THE PREVIOUS VERSION OF THE CODE, WHILE EASING CERTAIN RULES. IN ADDITION TO WILLS MADE BEFORE A NOTARY—CALLED AUTHENTIC WILLS—THE CIVIL CODE RECOGNIZES THE VALIDITY OF TWO OTHER TYPES OF WILLS, NAMELY, HOLOGRAPH WILLS AND WILLS MADE IN THE PRESENCE OF WITNESSES.

HOWEVER, TO ENSURE THAT A HOLOGRAPH WILL OR A WILL MADE IN THE PRESENCE OF WITNESSES WAS REALLY DRAWN UP BY THE DECEASED AND THAT THE REQUIREMENTS OF THE LAW HAVE BEEN MET, BOTH THESE TYPES OF WILLS MUST BE VALIDATED BY THE COURT OR A NOTARY. THESE WILLS MUST THEREFORE BE PROBATED. THIS BROCHURE EXPLAINS HOW TO PREPARE AN APPLICATION FOR THE PROBATE OF A WILL.

DEFINITIONS

Copy of an act

Is used in the Civil Code of Québec to mean an original, authentic document issued by the Registrar of Civil Status. A copy of an act (birth, marriage, civil union or death) is a complete reproduction of all the information contained in the act registering the event and the document number.

Notification

Is made by giving a copy of a proceeding or any other document to the recipient in return for a receipt, or by sending the documents by registered mail.

Service

Is made by giving a copy of a proceeding or any other document to the recipient; service is usually performed by a bailiff.

Types of wills

Prior to discussing the probating of wills, it is worthwhile to briefly review the characteristics of the three types of legal wills in Québec—namely, notarial wills, holograph wills and wills made in the presence of witnesses.

Notarial wills are drawn up by a notary and involve a number of formalities. For example, a notarial will must be made before a notary, in the presence of a witness, and must specify the date and place of its making. The original of a notarial will is kept by the notary and does not have to be probated by the court.

Holograph wills are the simplest kind of will. They cost nothing and can be only a few lines long. To be valid, a holograph will must be written entirely in the testator's hand and bear the testator's signature. Accordingly, a form, typewriter or computer cannot be used. No witness is required for this type of will. Although a holograph will does not have to be dated to be valid, the heirs will be able to tell from a date whether it is the deceased's most recent will. The heirs must have this type of will probated by the court or a notary.

Wills made in the presence of witnesses, like holograph wills, are drawn up by the testator in his or her own hand, on a typewriter or on any of the forms sold for that purpose.¹ In the case of this type of will, however, the testator must declare, in the presence of two witnesses of full age, that the document is indeed his or her will. As in the case of a holograph will, the heirs must have this type of will probated by the court or a notary.

1. *My Will*, Ministère de la Justice, les Publications du Québec, 2006, 16 pp., \$9.95.

IMPORTANT

- The formalities involved in the various types of wills must be observed by the testator; otherwise, the will may be declared invalid.
- A will that does not meet the requirements applicable to it may nonetheless be declared valid if it meets the requirements for another type of will.
- Exceptionally, a judge or clerk of the court may validate a will that does not meet all of the requirements applicable to the type of will in question, but that nonetheless meets the essential requirements for validity and contains, unquestionably and unequivocally, the last wishes of the deceased.

Probating a will

Holograph wills and wills made in the presence of witnesses must, without exception, be validated by the court or a notary. This type of will cannot be validated by the notary who received the will for deposit or by a member of that notary's firm; it must be validated by a notary from another firm.

Probate does not mean that the will cannot subsequently be contested. Rather, probate serves primarily to:

- make the will accessible for public consultation, since it is filed in the archives of the court or of the notary having probated it, as the case may be;
- establish, by all appearances, the validity of the will;
- allow for the issuance of certified true copies of the original.

IMPORTANT

- It should be noted that wills prepared or drafted by a lawyer are considered to be wills made in the presence of witnesses and, as such, must be probated. Similarly, amendments made to the initial will in a subsequent document, called a codicil, must also be probated by the court or a notary, where they are holograph amendments or amendments made in the presence of witnesses.

Who can apply to the court for the probate of a will?

An application for the probate of a will is made after the testator's death, by any interested person—generally the liquidator of the succession—or by a legal professional, that is, a notary or a lawyer acting on behalf of his or her client.

An application for the probate of a will must be filed in the Superior Court in the judicial district where the deceased was domiciled.² If the testator was not living in Québec, the application must be filed in the district where the testator died or in the district where the testator's property is located. If the application is not contested, the will is generally probated by the clerk of the Superior Court. If the application is contested, it is referred to a judge, in which case a hearing is ordinarily held before the court. You should consult a legal professional in such a case.

The application can be prepared by a legal professional or by the applicant. The following pages explain the procedure to be followed.

IMPORTANT

- If the will probate procedure seems complicated to you, if you question the will's validity or if you think your application might be contested, make sure you consult a legal professional to obtain the necessary information. In so doing, you will avoid taking needless or potentially costly action.

2. To find out in which judicial district of Québec you must present your application, consult the website of the Ministère de la Justice du Québec at www.justice.gouv.qc.ca/english/recherche/district-a.asp.

How to prepare an application for the probate of a will

To be complete, your file must contain:

- the original of your Application for the Probate of a Will (sample document 1), which must include the Affidavit by the Applicant (sample document 2) and the Notice of Presentation (sample document 3) specifying the date on which the application will be presented (use letter paper 21.25 cm x 28 cm or 8.5 in. x 11 in.);
- the original of the holograph will or the will made in the presence of witnesses;
- a copy of the testator's act of death;
- a sworn statement, also called an affidavit, by a person familiar with the writing and signature of the deceased or by a witness to the will (sample documents 4 and 5), depending on whether it is a holograph will or a will made in the presence of witnesses;
- proof of the service or notification of the application and above-mentioned supporting documents;
- the necessary backing sheets (sample document 6 and note 14).

Applications for the probate of a will must be prepared in accordance with certain legal rules. Before taking a look at the sample documents presented further along in this brochure to help you complete the accompanying forms, we suggest you read the legislative excerpts on this subject, on pages 24, 25 and 26 of the brochure. Be sure to follow all of the instructions in the explanatory notes on pages 13 to 15; otherwise, your application may be rejected.

Make a copy of each of your documents for your personal file.

IMPORTANT

- Before drawing up the documents required to apply for the probate of a will, we recommend that you read *Wills* and *Successions*, two brochures published by the Ministère de la Justice. You can obtain these publications free of charge at any Québec courthouse or by contacting the Ministère de la Justice at:

Direction des communications

Ministère de la Justice

1200, route de l'Église

Québec (Québec) G1V 4M1

Tel.: 418 643-5140

Toll free: 1 866 536-5140

E-mail: informations@justice.gouv.qc.ca

- You can also consult them on the website of the Ministère de la Justice at **www.justice.gouv.qc.ca**.

How to present your application

Once you have drawn up and obtained all of the documents needed to present your probate application to the court, take the original of your application to the office of the Superior Court, at the courthouse, along with a certified true copy of the application, identified as such by you and bearing your signature, as well as your sworn statement (i.e. “Affidavit by the Applicant”), the notice of presentation and the backing sheet, in order to have a file opened. You will be asked to pay court costs:

- in cash;
- by debit or credit card (Visa or Mastercard);
- by postal or bank money order made out to the Minister of Finance of Québec; or
- by certified cheque made out to the Minister of Finance of Québec.

You will be assigned a file number, and proof of payment of court costs will be indicated on the original of the application.

You can also have a file opened by mailing the original of the application to the courthouse, along with a certified true copy of the application, identified as such by you and bearing your signature, as well as your sworn statement (i.e. “Affidavit by the Applicant”), the notice of presentation and the backing sheet. You must also include a postal or bank money order, or a certified cheque made out to the Minister of Finance of Québec, covering the court costs payable.

If you qualify for legal aid, you will be exempted from paying the court costs upon presentation of a copy of your certificate of eligibility.

The original of your application, bearing your file number, will be returned to you by mail.

In both cases, the clerk will keep a copy of the documents for the court record, and will return the originals to you so that you can fulfil your

service and notification obligations under the law.

Be sure to make certified true copies of all your documents for each of the heirs and successors and to indicate your file number on each copy. Once you have fulfilled your service and notification obligations, the original of all the following documents must be deposited in the court: your Application for the Probate of a Will; your sworn statement (i.e. "Affidavit by the Applicant"); the Notice of Presentation; the documents supporting your application (the original of the will, the copy of the testator's act of death, and the Affidavit of a Person Familiar with the Writing and Signature of the Deceased or of a Witness to the Will); and the original of the proofs of service or notification.

Judgment



As soon as a judgment is rendered, a copy of it will be mailed to you. Once the will has been probated, it will be deposited in the office of the Superior Court. The clerk is then required to issue a copy upon request to any interested person following payment of the required costs.

Explanatory notes

- ① All proceedings (documents) must be drawn up on one side of a white paper measuring 21.25 cm x 28 cm (8.5 in. x 11 in.).
- ② All proceedings must be legibly handwritten or, preferably, typed.
- ③ The proposed layout must be strictly followed (for example, what is to be indicated on the left must be on the left).
- ④ Anything underlined in the sample documents contained in this brochure must be adapted to your specific case. For example, the name Margaret Griffin must be replaced by the name of the deceased.
- ⑤ Enter the name of the judicial district where you are filing your application. The clerk will assign a number to your file when you go to the courthouse to have one opened.
- ⑥ The names of the heirs and successors (see note 8) must be indicated on the application as impleaded parties (parties involved). If there is not enough space on the first page of the application, add an additional sheet or sheets.

The names of the heirs and successors must also appear on the backing sheet but if the available space is insufficient, instead of listing them all, you can write in the first of the names and indicate “and others” or “et al.”. In that way all the names will be included.

- ⑦ If parts of the sample documents do not apply to your situation, you must make the necessary adaptations. For instance, if you ask the clerk to be released from the applicant’s obligation to notify all of the known successors of the deceased (see note 8), you must give the reasons for the request in your application and reiterate the request in your conclusions. Under the law, the clerk can release an applicant from the obligation to serve the probate application on, or notify it to, all of the known successors of the deceased, where the clerk believes that, given the circumstances, it would be inconvenient or too expensive to do so.

8 The term “successor” has been interpreted in various ways by the courts. In some decisions rendered, the judge determined that the successors were the heirs specified in the will of the deceased who had not yet accepted the succession. In other decisions, it was determined that, despite the existence of a will, the successors also included persons who might inherit under an intestate succession (legal succession). You are advised to enquire about the position adopted by the clerk at the courthouse where you will be presenting your application. For more information on successions, refer to the brochure of that name published by the Ministère de la Justice in its *Your Rights at a Glance* collection.

9 Sworn statements, also known as affidavits, must be signed before a commissioner for oaths. The applicant’s sworn statement must be signed on or after the date of the application, not before.

The following persons are by virtue of their status, authorized to receive oaths:

- court clerks and their assistants;
- lawyers;
- notaries;
- mayors and municipal clerks and secretary-treasurers;
- justices of the peace.

10 It is up to you to determine the date of presentation of your probate application. If the application is contested, a later date will be set for a hearing.

You should contact the courthouse where you will be filing your application to find out if specific days and times have been set aside for the filing of probate applications, or if you yourself must be present on the day specified in your notice of presentation.

11 The notice of presentation must contain the names and addresses of all the persons on or to whom you will be serving or notifying your proceedings.

12 In determining the date on which you will be filing your probate application, remember that the application must be served by bailiff on, or notified to, the known heirs and successors of the deceased **at least 10 days before the date of presentation.**

- 13 You must file with the court proof of service or notification of the following documents: the probate application, the affidavits, the notice of presentation, the act of death and the will to be probated.

The minutes of the bailiff who served the documents constitute proof of service. Notification can be proved either by a receipt signed by the recipient, commonly referred to as a “receipt of copy”,³ or by an advice of receipt, issued upon request by Canada Post Corporation, bearing the signature of the recipient or of a reasonable person living at the recipient’s home or residence. Many clerks accept the receipt obtained on Canada Post Corporation’s Internet site as proof of delivery. You are advised to contact the Superior Court clerk at your courthouse to enquire about your judicial district’s position in this regard.

- 14 The backing sheet is a separate sheet attached as the last page of a document or set of documents. It is particular in that the front of the backing sheet is left blank, the information appears on the back, on one-half of the page. The entire document with the backing sheet added is then folded in two so that, as shown in sample document 7, the backing sheet becomes the title page.

A backing sheet must be added to each of the following documents:

- . the Application for the Probate of a Will (including the Affidavit by the Applicant and the Notice of Presentation);
- . the will;
- . the copy of the testator’s act of death;
- . the Affidavit by a Person Familiar with the Writing and Signature of the Deceased or the Affidavit by a Witness to the Will.

3. The text of the receipt, which must appear on or be attached to the backing sheet of the original of the application, could be worded as follows: “Receipt of copy of the application for the probate of a will, the notice of presentation and the supporting documents in file No. [enter the file number assigned by the clerk], to be held to be notification and consent to filing”. The signature should be dated so that the clerk can make sure that the 10-day deadline has been met.

Sample Document 1

Application for the Probate of a Will

Please refer to explanatory notes 1 2 3 4 and 13, which deal with general points concerning the preparation of this document, and to certain other notes indicated in specific sections herein.

CANADA
PROVINCE OF QUÉBEC
District of Montréal 5
NO. 500-14-666666-203 5

SUPERIOR COURT

IN THE MATTER OF:
Margaret Griffin, in life a
retiree domiciled and residing
at 3240, rue Durand,
Montréal (Québec) H2S 3R5
district of Montréal

George Baldwin,
domiciled and residing
at 35, boulevard Saint-Charles,
Montréal (Québec) H2S 4Q3

APPLICANT

AND

6 8

Paul Clark,
domiciled and residing at
3240, rue Durand,
Montréal (Québec) H2S 3R5

AND

Charles Clark,
domiciled and residing at
410, rue des Saules,
app. 207,
Québec (Québec) G04 2A3

IMPLEADED PARTY OR PARTIES

APPLICATION FOR THE PROBATE OF A WILL

(Art. 772 C.C.Q. and Arts. 887 et seq. C.C.P.)

To one of the honourable judges of the Superior Court sitting in and for the judicial district of Montréal, or to the clerk of that Court, the applicant sets forth the following:

1. Margaret Griffin, in life a retiree, domiciled and residing at 3240, rue Durand, Montréal (Québec) H2S 3R5, district of Montréal, died in Montréal on December 6, 2001, as specified in the original of the copy of the act of death, filed as Exhibit R-1, a copy having been remitted to the impleaded party or parties upon service (notification) of this application;
2. Margaret Griffin drew up a holograph will (will in the presence of witnesses), dated June 3, 1995, as specified in the original of the will, filed as Exhibit R-2, a copy having been remitted to the impleaded party or parties upon service (notification) of this application;
3. In her will, Margaret Griffin designated the applicant as the liquidator of her succession;
4. The impleaded parties represent all of the known heirs and successors of the late Margaret Griffin;
5. All of the known heirs and successors were summoned to the probate of the will; 7
6. The applicant submits, in support of the application, a detailed affidavit attesting to Margaret Griffin's signature (the signature of a witness to Margaret Griffin's will), filed as Exhibit R-3, a copy having been remitted to the impleaded party or parties upon service (notification) of this application;
7. The said will must be probated for all legal purposes;
8. This application is well-founded in fact and in law.

THEREFORE, MAY IT PLEASE THE COURT:

TO ALLOW this application;

TO PROBATE the holograph will (will made in the presence of witnesses) drawn up by Margaret Griffin, dated June 3, 1995 and filed in support of this application as Exhibit R-2;

TO DECLARE that the said will has been duly probated;

THE WHOLE without costs.

Montréal, December 20, 2001

George Baldwin
Applicant

Sample Document 2

Affidavit by the Applicant

Please refer to explanatory notes ① ② ③ ④ and ⑬, which deal with general points concerning the preparation of this document, and to certain other notes indicated in specific sections herein.

AFFIDAVIT

I, the undersigned, George Baldwin, accountant, domiciled and residing at 35, boulevard Saint-Charles, Montréal (Québec) H2S 4Q3, district of Montréal, solemnly affirm the following:

1. I am the applicant;
2. All of the facts alleged in this application are true.

AND I HAVE SIGNED

George Baldwin

Solemnly affirmed before me at Montréal,
this 21st day of December, 2001.

Commissioner for oaths ⑨
for the judicial district of Montréal

Sample Document 3

Notice of Presentation

Please refer to explanatory notes ① ② ④ ⑫ and ⑬, which deal with general points concerning the preparation of this document, and to certain other notes indicated in specific sections herein.

NOTICE OF PRESENTATION

⑪ TO: Paul Clark Charles Clark
3240, rue Durand 410, rue des Saules, app. 207
Montréal (Québec) Québec (Québec)
H2S 3R5 G04 2A3

Take notice that this application for the probate of a will is to be presented for adjudication before a judge of the Superior Court or to the clerk of that Court, in the district of Montréal, on January 17, 2002 ⑩ ⑫, at 10 a.m., or as soon as the case can be heard, in Room 4.10 of the Montréal courthouse, at 1 rue Notre-Dame Est.

Please govern yourself accordingly.

If you do not wish to contest the application, you need not attend on the aforementioned date.

Montréal, December 21, 2001

George Baldwin
Applicant

Sample Document 4

**Affidavit by a Person
Familiar with the Writing and Signature
of the Deceased**

Please refer to explanatory notes ① ② ③ ④ and ⑬, which deal with general points concerning the preparation of this document, and to certain other notes indicated in specific sections herein.

CANADA
PROVINCE OF QUÉBEC
District of Montréal ⑤
NO. 500-14-666666-203 ⑤

SUPERIOR COURT

AFFIDAVIT

I, the undersigned, Helen Downing, nurse, domiciled and residing at 75, rue du Côteau, app. 24, Montréal (Québec) H2S 5P4, district of Montréal, solemnly affirm the following:

1. I am not related in any way to Margaret Griffin and have no interest as a beneficiary in the latter's will;
2. I have taken cognizance of the holograph will drawn up by Margaret Griffin and submitted by the applicant as Exhibit R-2 in support of the application for the probate of a will presented by the applicant;
3. I am familiar with the writing and signature of Margaret Griffin and, to my knowledge, all of the said will was written and signed personally by the latter.

AND I HAVE SIGNED

Helen Downing

Solemnly affirmed before me at Montréal,
this 21st day of December, 2001.

Commissioner for oaths
for the judicial district of Montréal ⑨

Sample Document 5

**Affidavit by a Witness
to the Will**

Please refer to explanatory notes ① ② ③ ④ and ⑬, which deal with general points concerning the preparation of this document, and to certain other notes indicated in specific sections herein.

CANADA
PROVINCE OF QUÉBEC
District of Montréal ⑤
NO. 500-14-666666-203 ⑤

SUPERIOR COURT

AFFIDAVIT

I, the undersigned, Helen Downing, nurse, domiciled and residing at 75, rue du Côteau, app. 24, Montréal (Québec) H2S 5P4, district of Montréal, solemnly affirm the following:

1. I am a witness to the will of Margaret Griffin made on June 3, 1995;
2. The said will was signed by Margaret Griffin, in my presence and in the presence of Lorne Thompson, the other witness, and we signed as witnesses in each other's presence, at the same time, being both of full age;
3. I am not related in any way to Margaret Griffin and have no interest as a beneficiary in the said will.

AND I HAVE SIGNED

Helen Downing

Solemnly affirmed before me at Montréal,
this 21st day of December, 2001.

Commissioner for oaths
for the judicial district of Montréal ⑨

Sample Document 6

Backing Sheet

Please refer to explanatory notes ① ② ③ ④ and ⑭, which deal with general points concerning the preparation of this document, and to certain other notes indicated in specific sections herein. **Reproduce as often as necessary.**

No. 500-14-666666-203 ⑤

SUPERIOR COURT
District of Montréal ⑤

IN THE MATTER OF:

MARGARET GRIFFIN

GEORGE BALDWIN

Applicant

and

PAUL CLARK ⑥

and

CHARLES CLARK

Impleaded party or parties

APPLICATION FOR THE PROBATE OF A WILL
(including the Affidavit by the Applicant
and the Notice of Presentation)

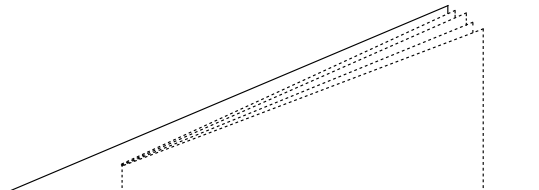
- Will
- Copy of the testator's act of death
- Affidavit by a Person Familiar with the Writing and Signature of the Deceased or Affidavit by a Witness to the Will

GEORGE BALDWIN
35, boulevard Saint-Charles
Montréal (Québec) H2S 4Q3
Tel.: (514) 873-9999
Fax: (514) 873-1010

Applicant

Sample Document 7

Folding the Backing Sheet



No. 500-14-666666-203

SUPERIOR COURT
District of Montréal

IN THE MATTER OF:

MARGARET GRIFFIN
GEORGE BALDWIN

Applicant
and
PAUL CLARK
and
CHARLES CLARK

Impleaded party or parties

APPLICATION FOR THE PROBATE OF A WILL
(including the Affidavit by the Applicant
and the Notice of Presentation)

- Will
- Copy of the testator's act of death
- Affidavit by a Person Familiar with the Writing and Signature of the Deceased or Affidavit by a Witness to the Will

GEORGE BALDWIN
35, boulevard Saint-Charles
Montréal (Québec) H2S 4Q3
Tel.: (514) 873-9999
Fax: (514) 873-1010

Applicant

Excerpts from statutes

Civil Code of Québec

Article 713

“The formalities governing the various kinds of wills shall be observed on pain of nullity.

However, if a will made in one form does not meet the requirements of that form of will, it is valid as a will made in another form if it meets the requirements for validity of that other form.”

Article 714

“A holograph will or a will made in the presence of witnesses that does not meet all the requirements of that form is valid nevertheless if it meets the essential requirements thereof and if it unquestionably and unequivocally contains the last wishes of the deceased.”

Article 726

“A holograph will shall be written entirely by the testator and signed by him without the use of any mechanical process.

It is subject to no other formal requirement.”

Article 727

“A will made in the presence of witnesses is written by the testator or by a third person.

After making the will, the testator declares in the presence of two witnesses of full age that the document he is presenting is his will. He need not divulge its contents. He signs it at the end or, if he has already signed it, acknowledges his signature; he may also cause a third person to sign it for him in his presence and according to his instructions.

The witnesses thereupon sign the will in the presence of the testator.”

Article 728

“Where the will is written by a third person or by a mechanical process, the testator and the witnesses initial or sign each page of the act which does not bear their signature. [...]”

Article 772

“A holograph will or a will made in the presence of witnesses is probated, on the demand of any interested person, in the manner prescribed in the Code of Civil Procedure.

The known heirs and successors shall be summoned to the probate of the will unless an exemption is granted by the court.”

Code of Civil Procedure

Article 862

“Proceedings in virtue of the provisions of this Book are taken by way of motion presentable 10 days after service upon or, where the law so provides, notification to the persons entitled thereto.”

Article 863

“Failing an express provision to the contrary, applications are presented to the judge or to the clerk.”

The decisions of the clerk may be reviewed by the judge on an application served within 10 days. [...].

However, an application that is contested is presented to the court. [...].”

Article 887

“Applications for the probate of a will are made before the court where the testator had his domicile or, if he had no domicile in Québec, before the court of the district in which the testator died, or in that in which he left property.”

Article 888

“Where it would be inconvenient or too expensive to call in all the known successors to a probate, the clerk may exempt the applicant from such requirement or determine the persons on or to whom service or notification will be made. [...]”

Article 890

“The probated will is deposited in the office of the court. The clerk is bound to issue certified copies of the will, of the transcription of the proof made to support the application for probate and of the judgment granting the application to every interested person who so requires. [...]”

Rules of practice of the Superior Court of Québec in civil matters

Rule 5

Designation of parties and format. “Proceeding shall be legibly written on one side of a good quality paper measuring 21.25 cm x 28 cm (8.5 x 11 inches) [...]; the nature and object of the proceeding shall be indicated on the back, with the record number and the names of the parties, the party filing it, as well as the name, address, postal code, telephone number and computer code of his attorney. [...]”

Every proceeding introductive of suit shall indicate the name, address and postal code of the parties. [...] If a party is not represented by an attorney, [...], the party shall sign the proceeding personally.”

In the same collection

Cohabitation Contract

(Ministère de la Justice)

My Will

(Ministère de la Justice)

*Joint Application for Divorce on a Draft
Agreement*

(Ministère de la Justice)

*Joint Application
for Review of Accessory Measures*

(Ministère de la Justice)

*Joint Application
for the Determination of Custody,
Access and Child Support*

(Ministère de la Justice)

My Mandate in Case of Incapacity

(Public Curator of Québec)

Printing completed
in July 2011 by CopieXpress

CANADA
PROVINCE OF QUÉBEC
District of
No.

SUPERIOR COURT

IN THE MATTER OF:

APPLICANT

AND

AND

IMPLEADED PARTY OR PARTIES

APPLICATION FOR THE PROBATE OF A WILL
(Art. 772 C.C.Q. and Arts. 887 et seq. C.C.P.)

To one of the honourable judges of the Superior Court sitting in and for the judicial district of _____, or to the clerk of that Court, the applicant sets forth the following:

1. _____, in life a _____, domiciled and residing at _____, district of _____, died in _____ on _____, as specified in the original of the copy of the act of death, filed as Exhibit R-1, a copy having been remitted to the impleaded party upon _____ of this application;
2. _____ drew up a _____, dated _____, as specified in the original of the will, filed as Exhibit R-2, a copy having been remitted to the impleaded party or parties upon _____ of this application;
- 3.
- 4.
- 5.
6. The applicant submits, in support of the application, a detailed affidavit attesting to _____, filed as Exhibit R-3, a copy having been remitted to the impleaded party or parties upon _____ of this application;
7. The said will must be probated for all legal purposes;
8. This application is well-founded in fact and in law.

THEREFORE, MAY IT PLEASE THE COURT:

- TO ALLOW this application;
- TO PROBATE the _____ drawn up by _____, dated _____ and filed in support of this application as Exhibit R-2;
- TO DECLARE that the said will has been duly probated;

THE WHOLE without costs.

Applicant

AFFIDAVIT

I, the undersigned,
domiciled and residing at

district of _____, _____, solemnly affirm the following:

1. I am the applicant;
2. All of the facts alleged in this application are true.

AND I HAVE SIGNED

Solemnly affirmed before me at
this _____.

Commissioner for oaths
for the judicial district of _____

NOTICE OF PRESENTATION

TO:

Take notice that this application for the probate of a will is to be presented for adjudication before a judge of the Superior Court or to the clerk of that Court, in the district of _____, on _____ at _____ a.m/p.m., or as soon as the case can be heard, in _____ of the _____ courthouse, at _____.

Please govern yourself accordingly.

If you do not wish to contest the application, you need not attend on the aforementioned date.

Applicant

CANADA
PROVINCE OF QUÉBEC
District of
No.

SUPERIOR COURT

AFFIDAVIT

I, the undersigned _____,
domiciled and residing at _____,
district of _____, solemnly affirm the following:

1. I am not related in any way to _____
and have no interest as a beneficiary in the latter's will;
2. I have taken cognizance of the holograph will drawn up by _____
and submitted by the applicant as
Exhibit R-2 in support of the application for the probate of a will presented by the
applicant;
3. I am familiar with the writing and signature of _____
and, to my knowledge, all of the
said will was written and signed by the latter.

AND I HAVE SIGNED

Solemnly affirmed before me at _____,
this _____.

Commissioner for oaths
for the judicial district of _____

CANADA
PROVINCE OF QUÉBEC
District of
No.

SUPERIOR COURT

AFFIDAVIT

I, the undersigned, _____,
domiciled and residing at _____,
district of _____, solemnly affirm the following:

1. I am a witness to the will of _____
made on _____;
2. The said will was signed by _____,
in my presence and the presence of _____,
the other witness, and we signed as witnesses in each other's presence, at the same
time, being both of full age;
3. I am not related in any way to _____
and have no interest as a beneficiary in the said will.

AND I HAVE SIGNED

Solemnly affirmed before me at, _____,
this _____.

Commissioner for oaths
for the judicial district of _____

No.

SUPERIOR COURT

District of

IN THE MATTER OF:

Applicant

and

and

Impleaded party or parties

-

Applicant