Mi'kmaw Wills & Estates:

A Guide For Nova Scotia Mi'kmaq

Book One: How to Write a Will

Revised March 2012

IMPORTANT

This publication contains general information and educational material about Wills and Estates to assist you in writing your own Will. We have avoided technical legal jargon in order to provide a practical plain language publication accessible to non-lawyers. It does not provide specific legal advice. You may have a very unique set of circumstances, and should you have specific legal questions about your Will or your Estate, we recommend that you speak to a lawyer.

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Introduction

Before colonization, the Mi'kmaq had their own laws and spiritual beliefs regarding death and worldly possessions. The Mi'kmaq believed in both the spirit world and the physical world. When a person was to be returned to the spirit world the family buried him or her with possessions, so that those possessions would follow their owner into the next world. As a result, there were few worldly possessions to pass on to the next generation.

Although, the Mi'kmaq maintain their culture, heritage, and traditions, today we do not bury our loved ones with all their possessions. People now have things that they wish to pass on to friends and family when they die. Writing a Will is the best way to ensure that a person's final wishes will be followed. The *Indian Act* establishes rules for making Wills that apply to all **Status Indians** who are **Ordinarily Resident on Reserve.**

Status Indian: A person who is registered, in accordance with the *Indian Act,* in the Indian Registry system that is maintained by AANDC.

Ordinarily Resident on Reserve: This means that the person has a) never lived away from the reserve; or b) lived off the reserve for a period of time in order to attend school, work, to receive medical attention, or to serve in the military; or, c) lived off-reserve for most of their life, but moved to the reserve and was living on the reserve at the time of death. AANDC has the jurisdiction over the estates of Status Indians who are ordinarily resident on reserve.

Part One

Is this guide for you?

This booklet will give you the information you need to write your own Will. You may use this guide as a tool to prepare your **Will** if:

- You are a Status Indian;
- You live on the reserve;
- You are 19 years of age or older;
- You have **Testamentary Capacity**;
- You do not own **Property** off-reserve.

However, it is recommended that you talk to a lawyer before writing your own Will if:

- You are divorced or are in the process of a divorce. A divorce does not cancel a Will. If you want to remove your former spouse from your Will, you must change your Will or he or she may have a right to claim part of your **Estate**.
- You are planning to marry, as marriage revokes your prior Will unless your Will stated that it was made in "contemplation of marriage."
- You start a business.
- You own property located off the reserve.
- You own a great deal of property such as land holdings, large bank accounts, investments, etc.

Please see page 17 for more information on hiring a lawyer.

You should use this booklet if you are a Status Indian living off-reserve or a non-Status Indian living on the reserve, as the Indian Act does not apply in these situations.

What Is a Will?

A Will is a written document that explains how you would like your Estate to be distributed upon your death. A valid Will must:

Will: A legally binding document by the deceased that describes how he or she wants his or her property to be distributed and debts paid after death. The document will also name an Executor, who will be responsible for carrying out the deceased's final wishes.

Testamentary Capacity: The legal requirement that a person making a Will must have the ability to know and understand what it means to make a Will as well as know what Property they own and how they would like to give it away.

Property: Land, possessions, and other items over which a person has legal ownership. A person must have legal ownership of any items he or she wishes to leave to someone in his or her Will. This means that he or she is recognized and is held responsible by law as the owner of the property. There are two forms of property: Real Property and Personal Property.

Estate: Any property the deceased owned at the time of his or her death (i.e. home, car bank accounts, household goods, investments etc.). The deceased's debts also form part of his or her Estate.

A. Be Written

Your Will cannot be audio taped or videotaped. The *Indian Act* states that any written document that gives away your possessions and that is signed by you can be accepted as a Will.

B. Be signed and dated

Signing and dating your Will is important. Your signature and the date make a statement that confirms that the Will's contents are a reflection of your wishes at the time you made it.

If you have difficulty reading and writing, you must still sign your Will by placing an "X" in the space next to your name. But before you sign it, it is important to have two witnesses who are not Beneficiaries to your Will present to read it aloud to you. Once this is done, the witnesses must watch you making your "X" mark or signature.

It is good practice for you to sign your initials at the bottom of every page of your Will. This makes it difficult for someone to tamper with your Will.

C. Be Witnessed

The *Indian Act* does not require that your Will be witnessed. However, it is recommended that you have it witnessed by two people to avoid disputes.

You should not have family members or **Beneficiaries** sign as your witnesses. Additionally, each witness must be at least 19 years old and be present when you and the other witness sign and date the Will. Witnesses don't need to know the contents of your Will; they only need to know that it is your Will and that it states your wishes.

D. Give away your **Assets**

Give away your Assets to specific people upon your death.

Why Do I Need a Will?

Making a Will is a personal decision. Having a Will can ensure that your family does not have to make decisions during a difficult time. A Will can give you control over what happens to your Property. A Will can enable you to:

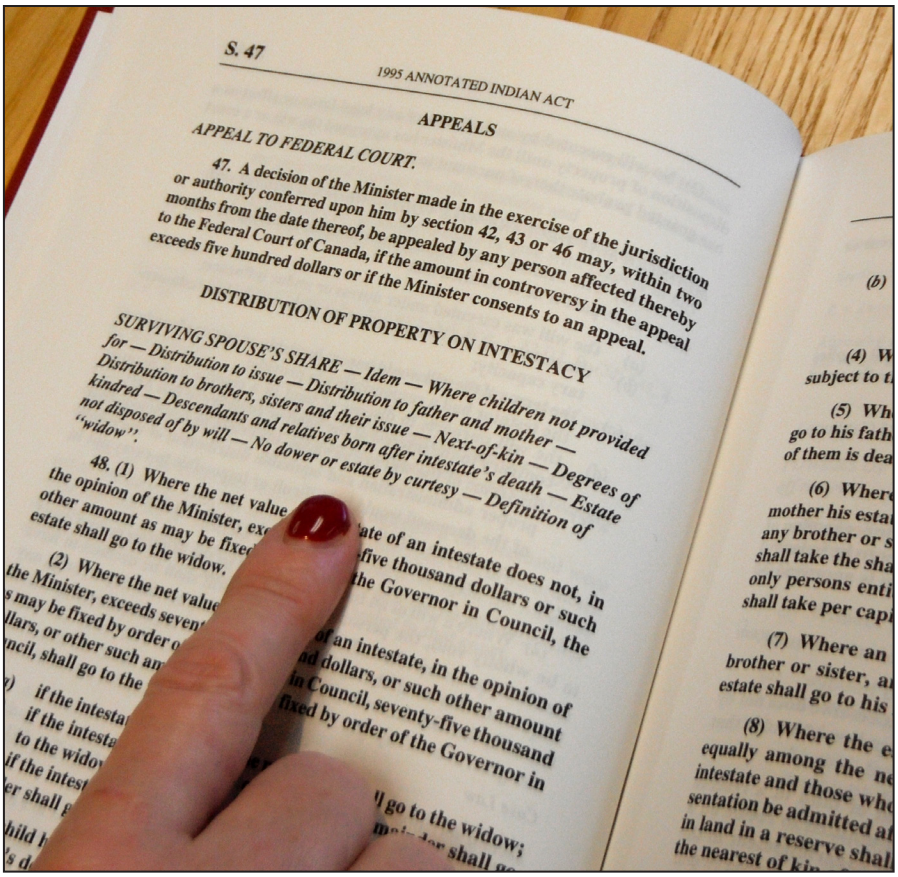
Beneficiary: A person who is given a gift or who inherits under a Will. There can be more than one beneficiary.

Assets: Everything a person owns, including Real and Personal Property such as land, vehicles, bank accounts, pensions, jewelry, art, crafts, household goods, etc.

- Protect your history, culture and traditions;
- Choose how and where you wish to be buried;
- Choose your **Executor**;
- Choose your Beneficiaries;
- Choose who will care for your young children;
- Prevent family conflicts;
- Lessen the involvement of AANDC:
- Settle your Estate quickly.

What Happens if I Don't Have a Will?

If you don't have a Will, the law says that you have died **Intestate**, and the *Indian Act* will determine who will act as an Executor of your Estate and who will receive your Assets. The *Indian Act* contains rules about how the Estate will be divided. Generally, an Estate under $75,000.00 is distributed to the surviving spouse. If the Estate is more than $75,000.00 the spouse will receive the first $75,000.00 and the remainder is divided amongst the spouse and children. Please see section 48 of the *Indian Act* for more detailed information.



Executor: The person named in a Will to carry out the Will's instructions or to administer an estate. More than one Executor can be named in a Will.

Intestate: Means that a person has either died without making a Will or has made a Will that is not valid.

Part Two

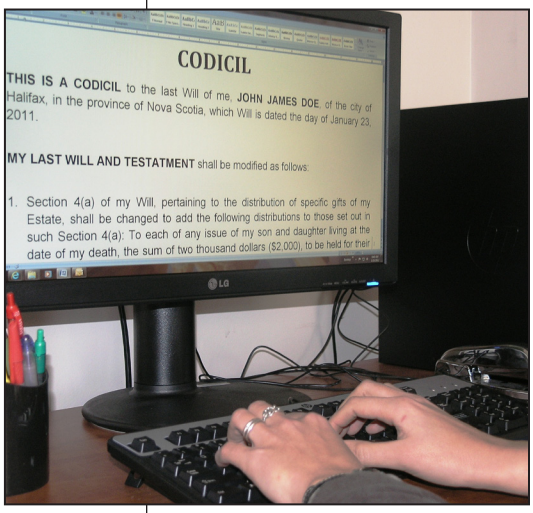
Writing Your Will

How to Start Writing Your Will

Generally, when writing your Will we suggest that you:

1. State that you are writing your Will and then insert your name and address. In brackets include, any nicknames by which you are also known. For example, "This is My Last Will and Testament of me, [insert your name] (nickname), of [Address]".
2. Insert a statement that states you cancel or revoke all previous Wills and **Codicils.**
3. State the name of the person that you want to act as your Executor as well as an Executor, just in case your first choice is not able to act. For example, "I appoint [name of person], of [Address], as Executor of my Will. If he or she is unwilling to act, I appoint [name of person], of [Address], as Executor of my Will.
4. State that you want all of your debts, funeral and **Testamentary Expenses** paid.
5. Identify all of your Assets and the people you wish to leave them to. It is also important to list an alternate **Beneficiary** for each gift you plan on leaving someone, just in case the person you have named in the first instance has died before you.

Codicil: A legal document that amends a Will. A codicil becomes part of the Will and must be signed, witnessed and dated in the same manner as the Will.



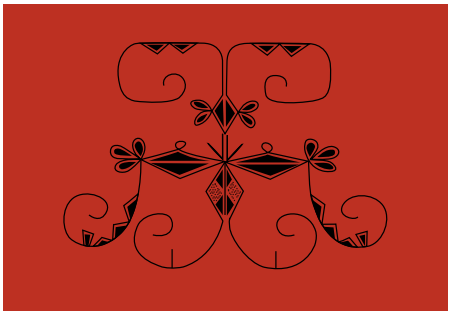
Who Should I Choose to Be My Executor and What Are They Responsible for?

An Executor is the person you name to carry out the instructions in your Will after your death. A family member can act as your Executor. He or she should be someone who can handle responsibility at a difficult time, and someone who has the good health and presence of mind to settle your affairs. Be sure to ask the person you wish to name, if he or she is willing and able to act as your Executor.

Being an Executor is an important job. He or she must file your final Income Tax Return, make sure all of your debts are paid, complete an inventory of all of your Assets, and then distribute the Assets as instructed by your Will. An Executor can be held responsible if he or she distributes your Assets to your loved ones before paying your debts.

Testamentary Expenses: The expenses that your Executors will need to pay to carry out your instructions in your Will.

Beneficiary: A person who is given a gift or who inherits under a Will. There can be more than one beneficiary.



Part Three
Giving Away Your Property

What Are My Assets?

The Assets of your Estate can include your home, land, bank accounts, investments, household goods, personal possessions and even your debts. Sometimes it is easy to think that you have nothing of value that anyone would want after you die. However, your family and friends will always cherish your gift no matter what it is. Don't worry about the size or nature of the gift; it is enough for a loved one to know that you thought enough of them to include them in your Will.

A. What if I Have a Certificate of Possession?

The *Indian Act* says that as a band member you can have lawful possession of a piece of land on your reserve. However, the land must be given to you by your Chief and Council through a **Band Council Resolution** (BCR). When your Chief and Council have approved giving you a piece of land through a BCR the Minister of Aboriginal Affairs and Northern Development Canada (AANDC) will send you a **Certificate of Possession** (CP) which shows that you have lawful possession of that particular piece of land.

You may gift a CP in your Will. However, you should find out if your interest in the **Property** is held solely in your name, as a **Joint Tenancy**, or as a **Tenancy in Common**. If the CP is held in Joint Tenancy, it will transfer automatically to the surviving Joint Tenant(s) (i.e. whoever is listed on the CP with you), and cannot be left to someone in your Will. If your CP is solely in your name or as a Tenancy in Common, it is part of your Estate and can be given to a person or persons of your choice.

If you have an interest in a CP that you are able to give away in your Will, there are rules in the *Indian Act* that limit who can inherit it. The *Indian Act* states that a CP cannot be transferred to a non-band member. If you leave a CP to a non-band member the property will be offered for sale to another band member. If a band member wishes to purchase the CP and the Minister has approved the sale, the money received will be given to the non-band member you have named as the Beneficiary of your CP in your Will. If no one purchases the property within six months, the CP is then given to the band at no cost. However, the Minister can decide whether or not to compensate the non-band member for the property.

Band Council Resolution: Refers to a written resolution of the Council adopted at a duly convened meeting.

Certificate of Possession: A document prescribed under the *Indian Act* confirming that a Status Indian is legally entitled to occupy and possess a specific piece of reserve land defined in the document.

Property: Land, possessions, and other items over which a person has legal ownership. A person must have legal ownership of any items he or she wishes to leave someone in his or her will. This means that he or she is recognized and is held responsible by law as the owner of the property. There are two forms of property: Real Property and Personal Property.

Joint Tenancy: A form of ownership in which two or more people own the same property. If one of the joint owners dies, the other owner(s) automatically receives the deceased person's share of the property.

Tenancy in common: A form of ownership by which two or more people hold ownership over the same piece of property. Each co-owner of the property can hold equal or unequal shares of the property. If one of the owners dies, his or her share of the property is passed on to a person of their choosing, independent of the other co-owner.

B. What Can I Do With a Band Owned Home?

If your home and the land that you live on are owned by your band, they cannot be included in your Will. You cannot give away something that is not yours. However, because of your attachment to your family home, you may request that the Chief and Council assign your home to another band member.

For example, you might write, "I am aware that the house I live in is a band-owned home, but I would like to request that Chief and Council allow my grandchild (full legal name) to take over living in my house at (complete address)."

Each band will have its own policies, customs, and traditions to consider when determining housing allotments.

C. What if I Have a Veteran's Allotment?

After the Second World War, returning Veterans were promised certain benefits such as land, training, grants, and loans in recognition for their service to Canada. A Veteran's Allotment (VA) is an interest in land that was given as part of this benefit program. AANDC administered the benefit program for Status Indian Veterans until 1976.

During the administration process, confusion arose as to whether or not Status Indian Veteran's benefits included entitlement to land. This confusion arose when some Veterans submitted benefit applications to AANDC and their interest was recorded as a VA whereas other Veterans interests were not. Some Indian Agents allotted portions of reserve land to Veterans on the mistaken belief that this was necessary in order for Veterans to receive other financial benefits, such as loans and grants for Veterans provided by the federal government. But not every Indian Agent did this and as a result, the recordkeeping was inconsistent.

Although, these allotments were given in error, some Veterans and communities relied on the Indian Agent's promise and acted on the assumption that Veterans were, in fact, entitled to a portion of their reserve. However, the difficulty with VAs is that each community treated them differently. This difficulty became apparent when Status Indian Veterans wanted to formalize their interest in the land with a CP. Typically, Veterans approached their Chiefs and Councils for a CP. In some cases, with the consent of the community members, Chiefs and Council requested that AANDC issue a CP for the VA. In other cases, Chiefs and Councils negotiated a cash settlement or gave a CP for a different or smaller piece of land than was promised by the

A Note on Matrimonial Real Property On Reserve:

Each province and territory defines matrimonial real property and the way such property will be distributed upon the breakup of the marriage or the death of a spouse. The *Indian Act* does not address the division of matrimonial real property on reserve. To address this gap, the federal government has proposed a new law titled The Family Homes on Reserves and Matrimonial Interests or Rights Act. This legislation is still being discussed, and will change the way that on-reserve property is distributed at the end of a relationship or death of a spouse.

Indian Agent. In other communities, however, these VAs were never recognized and Veterans received nothing.

If you received a CP for your VA, you may pass this on to someone in your Will. If you were promised a VA by your Indian Agent but it was not formalized by your band, you should contact your band and AANDC to find out how they will deal with your VA.

Residue: The balance of the estate once all specific gifts have been given and all debts have been paid.

D. What Can I Do With My RRSPs, Pensions, or Life Insurance Policies in My Will?

Your Registered Retirement Savings Plans (RRSP), Tax Free Savings Accounts (TFSA), Pension Plans, and Life Insurance Policies, usually contain a Beneficiary designation on the form you filled out, that identifies who will receive the proceeds of those plans. You can direct these proceeds to a particular person, charity, or to your Estate.

If you directed the proceeds to a person or a charity the proceeds will not form part of your Estate. However, if you have directed that these proceeds be paid to your Estate, the funds of those policies will become an Asset of your Estate and can be distributed in the same manner as you have provided for under the **Residue** clause of your Will. If you have a lot of debt and you are unsure if there is enough money in your Estate to pay it off, it may be a good idea to name your Estate as a Beneficiary of some of these funds as it could help in paying off those debts.

Whatever you decide to do with the funds of these policies, make sure your Will and policies are consistent. If there is a discrepancy between a Beneficiary named on the policy and a Beneficiary identified in your Will you may want to contact your policy provider to make the change.

If you do have a RRSP, TFSA, Pension Plan, or Life insurance Policy, consult with a lawyer for guidance based on your specific circumstances.

E. What Can I Do With Money or a Settlement That Was Awarded by the Courts That I Have Not Received Yet?

If you are entitled to a legal settlement or have been awarded a judgment by the courts and have not received the proceeds yet, you should name the person you wish to receive this money in your Will. If you do not do this, the settlement or judgment monies will be distributed under the Residue clause.

How Do I Distribute Assets under My Will?

All of the **Assets** described above can be distributed under two categories in your Will: Specific Gifts and Residue.

Assets: Everything a person owns, including Real and Personal Property such as land, vehicles, bank accounts, pensions, jewelry, art, crafts, household goods, etc.

A. Specific Gifts

A Specific Gift is where you give a Beneficiary a specific sum of money, specific item of property, land or personal possessions (everything described above) or a well defined group of property (e.g. "my coin collection").

To give a Specific Gift to a Beneficiary describe the item that you wish to give in detail. For example, you might write, "I give to my daughter, [full name] of [address], the basket that I received from my mother." Be specific, if you have a collection of baskets then be sure to describe which one your daughter is to receive.

You must also be careful not to be too specific about items in your Will. The best example of this is a vehicle, you might currently drive a Ford F150, so in your Will you state, "I give my Ford F150 truck to my son, James." But what if you own a Volkswagen and not a Ford when you die? If the gift to James specifically mentions a "Ford F-150," then the Volkswagen would not go to James. A better way to Will this gift would be to say: "I give the primary vehicle I drive at the time of my death to my son, James." This allows James to inherit any vehicle you own.

Specific Gifts can also include cash gifts. To distribute a cash gift you can state in your Will "I give $1,000.00 to my son, [full name], of [Address]."

You do not have to list every item that a person is to receive under your Will. If you have a large list of particular items that you want to leave to a number of different people, you can create a Memorandum and make your Executor aware of it. You should refer to your Memorandum in your Will by stating, "It is my wish that when you are distributing my Property both **Real** and **Personal**, that you will be guided by any Memorandum that I may leave during my lifetime."

Real Property: An interest in land, a home or building.

Personal Property: A person's personal possessions, such as household goods, vehicles, jewelry etc.

B. Residue Clause

If there are no clear instructions on how items are to be distributed in your Will or Memorandum (ie. for any items that are not specifically listed), the items fall into the Residue of your Estate, to be distributed as you have instructed under the Residue clause.

The Residue clause is where you list the Beneficiaries that are to receive what is left in your Estate. For example, it is what your husband or wife, your children, or your grandchildren would receive after all of your debts are paid, and after all Specific Gifts are paid and/or distributed. The Residue of your Estate is usually made up of all of your cash, bank accounts, investments, sale proceeds, etc. Any Property that remains in your Estate that has not been gifted to a particular person can be sold or will fall into the Residue clause to be distributed to those Beneficiaries you have listed.

You can give the Residue of your Estate to anyone, including charities, churches, friends, and/or extended family members. You can give it all to one person, or you can instruct that the Residue be divided among a number of people. Generally, when a person is married with children, they give the Residue of their Estate to their husband or wife, but if he or she is not living then they instruct their Executor to divide the Residue equally among their children.

If you do not have a Residue clause in your Will your remaining Assets will be distributed in accordance with the Intestate provisions of the *Indian Act*. Under the *Indian Act* the first $75,000.00 goes to the surviving spouse. If the Estate is more than $75,000.00 the amount greater than $75,000.00 is divided among the surviving spouse and children. For more information please see section 48 of the *Indian Act*.

Part Four

Providing For Your Family

There are two major issues to consider if you are the parent of **Minor** children. The first is who will care for them when you die. The second is how will their financial needs be met.

Minor: A person who is under 19 years of age.

Who Will Care for My Children if I Die?

When one parent dies, children are usually cared for by the surviving parent. However, if you and your spouse both die, or if you are a single parent, you will need to appoint a **Guardian** to care for your children.

Guardian: The person named in a Will or appointed by the courts to care for Minor children or Mentally Incompetent dependants of the deceased.

A Guardian will make day-to-day decisions about your child's maintenance and care, including health care, education and activities. A Guardian could be a Godparent, a relative, or a friend of the family - anyone you trust. You can appoint whomever you wish, but the appointment is considered to be a recommendation so it is not legally binding until an application for guardianship has been made to, and has been confirmed by the Supreme Court of Nova Scotia.

Trust: A trust is an arrangement whereby property (including cash) is managed by a person(s) (i.e. a Trustee) for the benefit of another. The Trust is created by the deceased and must be managed according to the terms and conditions of the trust document, which in the case of Wills and estates is the Will itself.

How Will the Financial Needs of My Children Be Met?

Once you have appointed a Guardian for your children, you must think about how to meet their financial needs. Your Will must provide for a Minor child even if that child does not live with you. Your biological or adopted children cannot be "cut out" of your Will.

Any Assets that are left to Minor children must be left to them in **Trust**. Trusts protect any money or Assets that would be left to a child upon their parents' death until the child reaches the age of majority (19 years of age).

Trustee: An individual or organization who holds title to property and manages that property on behalf of another person in accordance with the terms of the trust arrangement.

You should appoint a **Trustee** to manage your child's money or Assets in your Will. If you don't appoint a Trustee, AANDC will ask a family member to fulfill that role. The Trustee who agrees to act is required to follow certain rules to protect your child's Assets for their future.

If a family member or the person you appoint won't act as the Trustee, then AANDC will step in and fulfill that role. AANDC will place any

money that your child is entitled to into a Trust account. This money is then held for that child until he or she is 19 years of age. Regardless of who acts as Trustee, the goal is to protect your child's Assets. If you appoint a Trustee through your Will, you can be specific about how the Assets should be used to benefit your child. The Assets held in Trust are meant to be protected to provide a foundation for your child's future. The Guardian who cares for your child cannot use the money in Trust for your child to benefit themselves.

How Can I Provide for an Adult Dependant Who Cannot Take Care of Themselves?

The treatment of any Assets that you leave to an adult dependant who is **Mentally Incompetent** is essentially the same as the treatment of Assets belonging to Minors.

The Minister of AANDC has mandatory jurisdiction over the Assets of Mentally Incompetent Indians. The Minister must approve the appointment of a Trustee to manage their Assets. Trustees must follow certain rules and standards for managing those Assets. Money is released as necessary for the dependant's maintenance and care, and their Assets may be sold in order to provide for ongoing care in the future.

Mentally Incompetent: The *Indian Act* defines a Mentally Incompetent Indian as someone who has been declared mentally defective or incompetent for the purposes of any laws of the province in which that person lives. According to Nova Scotia's *Incompetent Persons Act*, this means someone who, because of a mental infirmity, cannot manage their own affairs. See *Incompetent Persons Act,* R.S.N.S. 1989, c. 218.

Part Five

Now That Your Will Is Complete

Can My Will Be Challenged?

Yes. The *Indian Act* states that your loved ones are allowed to challenge your Will. They can challenge the way it was written, or they can challenge a particular choice that was made with the giving of a gift. You do not want your final instructions to be disregarded because of a challenge to your Will which is why it is important to take special care when writing your Will and to have more than one witness when signing your Will.

Your Will or part of your Will can be declared invalid in the following circumstances:

1. You did not have **Testamentary Capacity** when making your Will.

2. You did not make the Will of your own free will. For example, you were threatened or pressured into making it.

3. You have not provided for a child and/or person that was financially dependant on you or that you were responsible for.

4. Your Will is unclear or confusing. For example, your will states: "I give my car to my neighbour," without giving the name of your neighbour.

5. You have set out terms in your Will that are against public policy. For example, "Give half of my Estate to my son, James, but only if he marries an Aboriginal woman."

Testamentary Capacity: The legal requirement that a person making a Will must have the ability to know and understand what it means to make a Will as well as know what Property they own and how they would like to give it away.

Where Should I Store My Will?

The original signed Will is the one that will be used to settle your Estate. You need to keep your Will safe from fire, water, or any other kind of damage. You can store your Will in a number of places: a safety deposit box at your bank, or a fireproof safe at home. Banks will normally let your Executor access your safety deposit box to retrieve your Will. Your Executor needs to be able to locate and access your Will after your death, so it is important to let him or her know where your Will is being kept so that your instructions can be carried out. You can also let a family member or someone you trust know where your Will is being kept.

What if I Need to Change My Will?

If you wish to change your Will, you may do so by either drafting a **Codicil** or by making a new Will. It is not acceptable to simply cross out a part of your Will. For this reason, it may be easier for you to simply draft a new Will. If you make a new Will, make sure you destroy the old one.

Codicil: A legal document that amends a Will. A codicil becomes part of the Will and must be signed, witnessed and dated in the same manner as the Will.

You should always make a new Will if you are making multiple and/or major changes to your existing Will, or if you are making changes to the Residue clause of your Will. To be clear, Codicils should only be used when making a minor change. Whatever you decide, it is important to let your Executor know what you have done with your existing Will.

Part Six

Other Estate Planning Tools

A Will is meant to ensure the proper distribution of your possessions following your death. However, there are other documents that can help you plan for the good management of your Estate and your well being prior to your death. The most common of these tools are a **Power of Attorney** and a **Personal Directive**.

Power of Attorney

A Power of Attorney is a legal document that is written and signed by you and witnessed. It is also a good idea to have it **Notarized** and witnessed in the same manner you would a Will. This document gives another person the authority to manage your affairs if you become incapable of acting for yourself. These affairs include, but are not limited to: managing your Property, paying your bills, accessing your bank accounts, collecting your pay, managing your investments, etc.

If you are incapable of making financial decisions for yourself, you should know that your spouse or child do not automatically get the power to manage your financial affairs unless your Assets are held jointly. You must give a person the power to act on your behalf through a Power of Attorney. You can appoint more than one person to act as your attorney so that one person is not making all the decisions on their own.

The *Indian Act* gives the Minister of AANDC exclusive jurisdiction to manage the affairs of Mentally Incompetent Indians and Minor children. However, over the last several years AANDC's goal has been to empower First Nation members to administer these affairs on their own. As such, if you state that your Power of Attorney is to continue when you become Mentally Incompetent and you have appointed someone to manage your affairs then it is unlikely that AANDC will get involved. If you do not have a Power of Attorney in place and you have become Mentally Incompetent, your spouse or family members will need to get a medical certificate from two doctors stating that you have become Mentally Incompetent. Once they have received these certificates they should then contact AANDC to make them aware of your incapacity and ask that the Minister appoint someone to act on

Power of Attorney: Is a legal document that lets you give another person authority to make financial decisions on your behalf.

Personal Directive: Is a legal document that allows you to name a person you trust to make personal and health care decisions for you when you are not capable of making these decisions.

Notarized: The act of officially certifying a legal document by a notary public. The purpose of having a legal document notarized is to ensure the authenticity of the document.

your behalf. Alternatively, they can make a court application to the Supreme Court of Nova Scotia and ask that the court appoint someone as your Guardian.

Personal Directive

A Personal Directive is a document that is witnessed and signed by you. Some people refer to this document as a "Living Will," but a Living Will is not legally recognized nor is it enforceable in Nova Scotia whereas a Personal Directive is.

Through a Personal Directive you are able to express how your personal care decisions, including health care, are to be made for you when you are not mentally capable of making those decisions on your own. Additionally, a Personal Directive allows you to name a person you trust to make those decisions for you when you are no longer able to do so. The person named is called your "Delegate". You can only name one delegate. However, you should name an alternate delegate just in case the first delegate you named is unwilling or unable to act.

Your delegate will make all decisions related to your health care. These decisions include but are not limited to the following: hygiene, safety, comfort, nutrition, hydration, residence, clothing, etc. Your delegate will also decide if you require home care and will be responsible for making the appropriate arrangements for you, or they can decide that you require full time care in a nursing home.

If you do not appoint a delegate the Supreme Court of Nova Scotia will appoint your next of kin and if he or she is unable, they will appoint your nearest relative or a Public Trustee to make these decisions for you. These people might not be people you trust to carry out your wishes or to make any decision concerning your well being. They may not know what you wanted to happen if an important decision had to be made and more importantly, they may not know your cultural values and beliefs which would help them in making decisions.

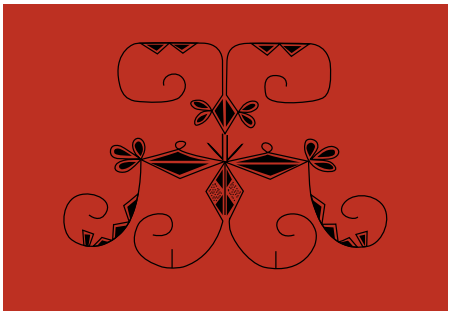
If you choose to do so, you can insert specific directions into your Personal Directive (e.g. do not resuscitate). If these instructions are clear and specific to any decision that needs to be made they must be followed. However, if they are unclear and non-specific, your delegate will have the authority to make that decision on your behalf.

Burial Instructions

Because your Will may not be read until after your funeral, it is not recommended that you place your burial or **Salite** requests in your Will. It is a good idea to write these instructions down in a separate document. For example, in a letter to your family. Be sure to tell your family or friends that you do have instructions and where these instructions are located. If you do decide to include burial or Salite instructions in your Will, tell your family members or your Executor so that they know to look at the Will before the funeral.

Salite: A community celebration of life held following a funeral during which an auction is held to raise money to help the relatives of the deceased and to contribute to burial and funeral costs.

Malakowe'jk cemetery, historical Mi'kmaq burial site.



Part Seven

Hiring A Lawyer to Write Your Will

Writing your Will can be overwhelming, and it may not be something you are comfortable doing yourself. You may need a lawyer who practices in Wills and Estates and who has knowledge of the rules that apply to the Wills of Status Indians who are Ordinarily Resident on Reserve.

Lawyers often bill their clients on an hourly rate, but some lawyers will bill you a flat fee for their service. Some lawyers also charge for disbursements - faxing, phone calls, photocopying, postage fees, etc, and so be sure to ask your Lawyer what their fee structure is so there are no surprises. When you hire a lawyer, you should receive a retainer letter in which the lawyer agrees to provide a legal service to you and sets out how you will be billed. If the fees change, your lawyer should advise you immediately and obtain instructions from you before doing any more work on your Will. A retainer letter is the best way to make sure you are both clear in your expectations and obligations as a lawyer and a client. When you go to see a lawyer for the first visit, you should bring along any information necessary to draft your Will. You will be asked a lot of questions, and you will need to be completely honest in your answers. You must speak up if you do not understand your lawyer.

Here are some questions you may want to ask at the initial visit:

- How long have you been practicing law?
- How long have you been practicing in Wills and Estates?
- Do you have experience in drafting Wills for Status Indians living on reserve?
- How long will it take to draft my Will?
- What are the complications that might arise in drafting my Will? Could these complications result in additional fees?
- Do you bill on an hourly rate or on a flat fee?

Make sure to discuss the next steps if you have decided to hire this lawyer.

For more information on how to hire a lawyer, contact the Nova Scotia Barristers' Society at (902) 422-1491 or visit them online at www.nsbs.org.

For More Information

Aboriginal Affairs and Northern Development Canada
10 Wellington, North Tower
Gatineau, Quebec

Postal Address:
Ottawa, Ontario K1A 0H4

Toll-Free: 1-800-567-9604
Website: http://www.aadnc-aandc.gc.ca/eng/1100100010002

Band Governance & Estates of Lands and Trust Services
P.O. Box 160
40 Havelock St.
Amherst, Nova Scotia B4H 3Z3

Toll-Free: 1-800-567-9604
Tel: 1- 902-661-6200

Legal Information Society of Nova Scotia
5523 B Young Street
Halifax, NS

Toll-Free: 1-800-665-9779
Tel: 1-902-454-2198
Website: http://www.legalinfo.org/

The Confederacy of Mainland Mi'kmaq
PO Box 1590
Truro, NS B2N 5V3

Toll-Free: 1-877-892-2424
Tel: 1-902-895-6385
Website: www.cmmns.com

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About the Authors

Angeline Gillis, B.A. LL.B., was born in Sydney, Nova Scotia and was raised in East Bay, Nova Scotia. Although a member of the Eskasoni First Nation, Angeline and her siblings were raised off reserve by her parents, Fred Gillis and Donna Stevens. She is the granddaughter of the late Andrew J. Stevens, a former Keptin of the Sante' Mawi'omi.

Angeline earned her undergraduate degree from Dalhousie University in 2005 and her LL.B from the Schulich School of Law (formerly Dalhousie Law School) in 2009. After completing her articling with Boyne Clarke Barristers and Solicitors, Angeline was called to the Bar in June 2010, having performed her affirmation in both English and Mi'kmaq. She then went on to become a Senior Will & Estate Planner with Scotia Private Client Group. Angeline has worked in various areas of law; however, her primary focus has been in Wills, Estates and Trusts.

Angeline began practicing with The Confederacy of Mainland Mi'kmaq in October 2011 as a Wills & Estates Legal Advisor. In addition to her work with The Confederacy, Angeline also maintains her own practice as a Barrister & Solicitor. In her free time, Angeline sits as the Vice President and is a coach for the Sackville Storm Minor Basketball Association She is also a member of the Canadian Bar Association, Halifax's Estate Planning Counsel, and is commissioned as a Notary Public.

Shelly Martin, B.A. (Hons), M.A., LL.B., was born in Halifax, N.S. and raised in nearby Mount Uniacke. A member of the Millbrook First Nation, she was raised off reserve by her parents, grandparents, many aunts, uncles and cousins.

After completing undergraduate and graduate degrees in history, Shelly enrolled at the Schulich School of Law (formerly Dalhousie Law School) in 2003. After articling with Boyne Clarke Barristers and Solicitors, Shelly was called to the Bar in October 2007, the first Mi'kmaq to swear her oath in English and Mi'kmaq under the new *Legal Professions Act*. Shelly began practicing with The Confederacy of Mainland Mi'kmaq in 2007. In addition to her work as Chair of the Justice Committee for the Halifax Aboriginal People's Network, Shelly sits on the Advisory Council of the Indigenous Blacks and Mi'kmaq Initiative at the Schulich School of Law and is a member of the board of the Halifax and Region Military Family Resource Centre. She currently resides in Fall River with her son, James, and her daughter, Meadow.

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THIS IS THE LAST WILL AND TESTAMENT of me, **ANGELA JUNE JACK**, of 83 Abenaki Road, Millbrook First Nation, in the Province of Nova Scotia.

REVOCATION

1. **I HEREBY REVOKE** any former Wills and Codicils and other testamentary dispositions that I have made.

APPOINTMENT OF EXECUTOR/EXECUTRIX

2. **I APPOINT** my brother, **JOHN ALEXANDER JACK ("JOHN")**, of **MILLBROOK FIRST NATION**, in the Province of Nova Scotia, to be the Executor and Trustee of my Will. **IF JOHN** should die before me, or is unable or unwilling to act as my Executor and Trustee, then **I APPOINT** my sister, **HOLLY ANN JACK ("HOLLY")**, of **LOWER SACKVILLE**, in the Province of Nova Scotia, to be the Executrix and Trustee of this my Will.

DEBTS

3. **I DIRECT** that my Executor pay all my just debts, funeral and testamentary expenses, death taxes, and all related expenses as soon as is convenient after my death.

DISTRIBUTION OF PROPERTY

4. **I DIRECT MY EXECUTOR TO DISTRIBUTE** all of my assets and property as follows:

a) **Specific Gifts** –

i. To distribute my 2010 Honda Civic or the primary vehicle I own at the time of my death, to my brother, **JOHN**, of Millbrook First Nation, if he survives me for a period of 30 days. If my son fails to survive me, this gift shall fall into the residue of my estate.

ii. To Pay and/or transfer the sum of $5000.00, to my sister, **MARGARET JANE JACK ("MARGARET")**, if she survives me for a period of 30 days. If my daughter fails to survive me, this gift shall fall into the residue of my estate.

b) **Residue** – To divide the residue of my estate into two equal shares and distribute them as follows:

i. Fifty percent (50%) - to my son, **ROBBIE ROBERTSON JACK ("ROBBIE")**, of Millbrook First Nation, Province of Nova Scotia, if he survives me for a period of thirty (30) days, for his own use absolutely; and,

ii. Fifty percent (50%) - to my daughter, **ROBIN GALE ROBINSON ("ROBIN")**, of Millbrook First Nation, Province of Nova Scotia, if she survives me for a period of thirty (30) days, for her own use absolutely.

In the event that my son, **ROBBIE**, or my daughter, **ROBIN**, should predecease me, or die within 30 days of my death, I direct my Executor to divide that child's share among his or her children in equal shares. If any of my children should predecease me leaving no children, my Executor shall pay or transfer that child's share to his or her surviving sibling.

GUARDIANSHIP

5. **I APPOINT** my sister, **HOLLY** and her husband, **KEVIN JOHN MARTIN ("KEVIN")**, or the survivor of them, to be the guardians of any minor children of mine who are alive at the time of my death.

IN WITNESS WHEREOF I have subscribed my name to this my Last Will and Testament, this 15th day of June, 2012.

_____

Angela June Jack

We the witnesses were present at the request of **ANGELA JUNE JACK** when she signed her Last Will and Testament. We then signed as witnesses in her presence and in the presence of each other.

_____

Gayda Phillips

_____

Michael Phillips

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