

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

Rules of the Supreme Court, 1986

**PRACTICE NOTE
P.N. (TD) No. 2011-01**

DATE ISSUED: August 8, 2011

RULES AFFECTED: Rule 56

EFFECTIVE DATE: August 8, 2011

PREVIOUS PRACTICE NOTES REVISED: N/A

The following Practice Note was filed with the Rules Committee of the Trial Division, and is published pursuant to Rule 4.04 of the *Rules of the Supreme Court, 1986*.

APPLICATIONS TO RESEAL QUEBEC NOTARIAL WILLS

Background and Purpose

1. Notarial wills are unique to Quebec. They are executed before a notary of the Latin tradition (not the same as a notary public) and entered with the Registre des dispositions testamentaires et des mandats du Quebec (“RDTMQ”). There are strict requirements relating to the preparation and execution of a notarial will. The RDTMQ contains a register of all notarial wills that have been executed on or after January 1, 1961.
2. Witnessed and holograph wills have also been permitted to be filed with the RDTMQ since 1978.
3. When a person passes away in Quebec, a search is done of the RDTMQ and the most recent will for the deceased is listed.
4. If the last will found by the search is a notarial will, the search certificate provided by the RDTMQ is considered proof that it was the last will of the deceased unless someone makes an application to contest that will in accordance with the laws of Quebec. As a result, notarial wills do not require the formal process of probate in Quebec.
5. Due to the unique nature of notarial wills, there has been some confusion as to the appropriate application (i.e. ancillary letters or resealing) when a deceased had a notarial will in Quebec with property in Quebec and now the executor (known as a liquidator in Quebec) wishes to distribute property owned by the deceased in this province.

Practice Note

6. Henceforth, unless otherwise ordered, where a person passes away:
- a. with property in Quebec as well as Newfoundland and Labrador; and
 - b. the last will of the deceased was a notarial will prepared in Quebec and was filed in the RDTMQ,

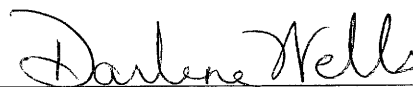
the applicant shall apply for resealing in Newfoundland and Labrador in order to distribute the property located within the province.

7. The following documents should be included with such an application:
- a. notarized copy of the death certificate;
 - b. notarized copy of the will;
 - c. original or a notarized copy of both of the search certificates from the RDTMQ;
 - d. an affidavit of the liquidator of the estate in Quebec stating that:
 - i. no one has contested the notarial will as being the last will of the deceased; and
 - ii. the estate has been distributed in accordance with the will;
 - e. an affidavit of the applicant verifying the facts on which the applicant relies (as is required in the normal course).
8. The judge reviewing the application may request further documentation as required.

Authorized by:



David B. Orsborn
CHIEF JUSTICE OF THE SUPREME COURT
OF NEWFOUNDLAND AND LABRADOR,
TRIAL DIVISION



for REGISTRAR OF THE SUPREME COURT
OF NEWFOUNDLAND AND LABRADOR