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**UNIFORM LAW CONFERENCE OF CANADA**

***UNIFORM WILLS ACT* - INTERNATIONAL WILLS  
FINAL REPORT OF THE WORKING GROUP**

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[1] In its project on the new *Uniform Wills Act (Uniform Act)*, which was adopted by the Conference in 2014, the working group concentrated on the topics of creation, revocation, meaning, and validation of wills. It did not deal with Part III of the now withdrawn *Uniform Wills Act (withdrawn Uniform Act)* which was adopted by the Conference in 1974 and which implements the *Unidroit Convention providing a Uniform Law on the Form of an International Will (the Convention)*. Nine provinces have enacted Part III since Canada acceded to the Convention in 1977.

[2] In August 2015, Peter J.M. Lown, Q.C. presented a report to the Conference which examined issues relating to the incorporation of the provisions on international wills of the withdrawn Uniform Act to the *Uniform Act*. The Conference resolved to create a working group on international wills and directed the working group to prepare amendments to the *Uniform Act* on the implementation of the Convention in accordance with the directions received by the Civil Section for its consideration at the 2016 meeting. The Working Group is composed of Peter J.M. Lown, as chair and Valérie Simard (Justice Canada – Constitutional, Administrative and International Law Section).

[3] The first issue examined in the 2015 report related to the need to ensure that the uniform provisions on international wills comply with the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention (Drafting Principles)* which were adopted by the Conference in 2014. The Conference recommended that the new provisions should be consistent with the Drafting Principles.

[4] The second issue was one of policy and related to the requirement in Part III of the withdrawn Uniform Act that a registration system be created for the deposit of international wills. Article VII of the Convention provides that the safekeeping of an international will is governed by the law under which the person authorized to act in connection with an international will was designated. Article 8 of the Convention's annex sets out a rule that is applicable in the absence of a mandatory rule pertaining to the safekeeping of wills. Of the nine jurisdictions which enacted Part III of the withdrawn Uniform Act, only two enacted its provisions on the registration system. The Conference recognized that the practice of depositing the will of a living person has fallen into disuse and that many jurisdictions no longer offer deposit services. The Conference therefor recommended against including a section establishing a registration system for international wills in the *Uniform Act*.

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[5] The working group prepared draft provisions on international wills and comments (Annex) which are now submitted to the Conference. In preparing these provisions, the working group consulted with jurisdictions through the Conference's Civil Section Steering Committee. It also consulted the jurisdictional representatives of the two jurisdictions that had enacted provisions on registration and they agreed that the draft text on registration should be bracketed. Finally, the provisions prepared by the working group were reviewed by English and French drafters. The working group now submits the provisions on international wills and comments to the Conference.

[6] The provisions follow the numbering of the *Uniform Act*.

[7] Contrary to the withdrawn Act, the provisions do not include a section on definitions because, according to the Drafting Principles, such a section is not necessary in this case.

[8] Section 20 follows the Drafting Principles and gives force of law to the Convention. It implements Article I of the Convention which provides that the States party to the Convention shall introduce into their laws the rules regarding international wills set out in the Annex to the Convention. It provides two options for enacting jurisdictions. The first option may be adopted by jurisdictions to which the Convention does not yet apply if they plan on requesting that Canada make a declaration extending its application to their jurisdiction. The second option should be adopted by jurisdictions to which the Convention already applies or, in the circumstances detailed in the comment to section 20, by jurisdictions to which the Convention does not yet apply.

[9] Section 21, which addresses the validity of wills under other laws, is a restatement of section 48 of the withdrawn Uniform Act but is redrafted following modern drafting practices.

[10] Section 22, which designates who is authorized to act in connection with international wills, is similar to section 49 of the withdrawn Uniform Act but adds a point of clarification with respect to the required qualifications of the authorized person and is redrafted following modern drafting practices.

[11] Sections 23 and 24 address a system of registration and safekeeping for international wills. These sections are in brackets. Their enactment is not recommended to jurisdictions that have not enacted the provisions on the registration system of the withdrawn Uniform Act. The bracketed provisions allow the two jurisdictions that enacted the registration system to continue their system for the safekeeping of international wills registered therein. Subsection 23(2) is consistent

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with the Conference's recommendation against the establishment of a registration system and provides that no international will may be registered on and after the date of entry into force of the *Uniform Act*. Jurisdictions that enact section 23 would also have to enact section 24 which sets out how the information on international wills and the wills contained in the system may be disclosed.

[12] Section 25 is a commencement provision that offers three options which are drafted in accordance with the Drafting Principles. Section 25 is designed to apply to the entire *Uniform Act*.

## Annex

### ***UNIFORM WILLS ACT - INTERNATIONAL WILLS***

#### **Force of Law**

##### Option A

**20.** The *Convention Providing a Uniform Law on the Form of an International Will*, including its Annex, set out in the schedule, has force of law in [*jurisdiction*] from the date determined under its Article XIII(2).

##### Option B

**20.** The *Convention Providing a Uniform Law on the Form of an International Will*, including its Annex, set out in the schedule, has force of law in [*jurisdiction*].

#### **Comment**

Section 20 implements Article I of the Convention which provides that parties to the Convention shall introduce into their laws the rules regarding international wills set out in the Annex to the Convention.

Options A and B are drafted in accordance with the recommendations set out in Principle 7 – Force of Law of the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* (Drafting Principles) adopted by the Uniform Law Conference of Canada in 2014.

Option A may be adopted by jurisdictions to which the Convention does not yet apply if they plan on requesting that Canada make a declaration extending its application to their jurisdiction. Together, this Option and Option A of section 25 allow jurisdictions to bring their Act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. Jurisdictions may select this Option to avoid problems linked to coordinating the day on which the Act enters into force with the day on which the Convention applies to it at international law.

A jurisdiction selecting Options A of sections 20 and 25 should note that this approach is not entirely transparent as, on the face of the Act, it is not apparent if the Convention has started applying or not. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the Act.

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A lengthy period between the coming into force of the law and the Convention for the jurisdiction may tip the balance in favour of Option B, if it is considered that Option A may mislead the public or courts as to the application of the Convention.

Option B should be adopted by jurisdictions to which the Convention already applies. As mentioned in the preceding paragraph, Option B may also be adopted by jurisdictions to which the Convention does not apply. Paired together, Option B of section 20 and Option B or C of section 25 ensure that the Convention will not have effect in these jurisdictions by legislation before it applies to them at international law. These jurisdictions must be able to bring their Act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada officials to coordinate the day on which the Act enters into force with the day on which the Convention applies to them at international law.

**Validity of wills under other laws**

**21** Nothing in sections 20 to 25 affects the validity of a will that is valid under the laws other than sections 20 to 25 that are in force in [*jurisdiction*].

**Comment**

This section appears in the withdrawn *Uniform Wills Act* as section 48, but was redrafted following modern drafting conventions.

**Authorized persons**

**22** All members of [*name of Law Society or Society of Notaries*] who are authorized to practice law in this subject area in [*jurisdiction*] are designated as persons authorized to act in connection with international wills.

**Comment**

This section appears in the now withdrawn *Uniform Wills Act* (withdrawn Uniform Act) as section 49. It has been amended to clarify that the members must be authorized to practice law in this subject area in the jurisdiction. It implements Article II of the Convention.

**Registration system**

**23(1)** The system of registration [*add if appropriate: and safekeeping*] of international wills established under [*reference to relevant section in repealed wills legislation*] is continued as a system of safekeeping.

(2) On and after the coming into force of this section, no will shall be registered in the system referred to in subsection (1).

**Disclosure of information in system**

**24** No international will deposited in the system continued by section 23, and no information about a will deposited in the system, shall be released from the system except to a person who satisfies the registrar that

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- (a) the person is the testator; or
- (b) the person is authorized by the testator to obtain the will or the information; or
- (c) the testator is dead and the person is a proper person to have access to the information or custody of the will for the purpose of the administration of the estate of the testator or is the agent of such a person.

**Comment**

The Convention does not require the establishment of a registration system for the registration and safekeeping of international wills. However, Article VII of the Convention allows the establishment of such a system by providing that “[t]he safekeeping of an international will shall be governed by the law under which the authorized person was designated.” Section 52 of the withdrawn Uniform Act required the establishment of a registration system and section 55 set out to whom the information contained therein could be disclosed. Jurisdictions may wish to note that under Part III of the withdrawn Uniform Act, only one jurisdiction enacted sections 52 and 55 and established a system for the registration of international wills and one jurisdiction enacted these sections and established a system for the registration and safekeeping of international wills.

At its annual meeting in 2015, the Conference recognized that the practice of depositing the will of a living person has fallen into disuse and that some jurisdictions no longer offer deposit services and recommended against including a section establishing a registration system in the new *Uniform Wills Act (Uniform Act)*. Following this recommendation, jurisdictions that have implemented the Convention without enacting section 52 of the withdrawn Uniform Act and jurisdictions that have not yet implemented the Convention should not enact sections 23 and 24.

Jurisdictions that enacted section 52 of the withdrawn Uniform Act and established a registration system may enact subsection 23(1) to continue it for the safekeeping of international wills registered therein. Subsection 23(2) is consistent with the Conference’s recommendation against the establishment of registration systems and provides that no international will may be registered on and after the date of entry into force of the *Uniform Act*. Jurisdictions that enact section 23 would also have to enact section 24 which sets out how the information contained in the system may be disclosed

Section 24 combines subsections 55(1) and (2) of the withdrawn Uniform Act. Clauses (a) and (b) of these subsections are identical and were easily combined. Clauses (c) of subsections 55(1) and (2) are different in that (2)(c) provides that the person to whom the will can be released if the testator is dead is either a proper person to have custody of the will or the agent of such person, whereas clause (1)(c) limits the release of information about a will deposited in the system only to the proper person. Clauses (c) of subsections 55(1) and (2) were combined into subsection 24(c), which allows the release of the information about a will deposited in the system and the will itself to



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both the proper person and the proper person’s agent. This is the case because it was thought that including the agent in both cases was appropriate.]

**Commencement**

Option A – Commencement on assent before Convention applies to jurisdiction or where Convention already applies to jurisdiction

**25.** This Act comes into force on [assent/*insert the date of assent to Act*].

Option B – Commencement on proclamation on day on which Convention applies to jurisdiction or where Convention already applies to jurisdiction

**25.** This Act comes into force on [proclamation/ the date to be set by the Government].

Option C – Commencement on a specified day which is day on which Convention applies to jurisdiction

**25.** This Act comes into force on [*insert date on which the Convention applies to jurisdiction*].

**Comment**

The commencement provision is designed to apply to the entire Uniform Act and not only to sections 20 to 25. Jurisdictions to which the Convention already applies should have their entire Act commence at the same time to ensure the uninterrupted application of the Convention in their internal law. Jurisdictions to which the Convention does not apply may have sections 20 to 24 commence when appropriate following the commencement of the Act’s other sections. These jurisdictions would have to amend the commencement provision to indicate when sections 20 to 24 are to commence.

Three options are available with respect to the commencement provision. These options are drafted in accordance with the recommendations set out in Principle 16 of the Principles for Drafting. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A

For jurisdictions in which the Convention does not yet apply, Option A can be combined with the Option A set out in Section 20 – Force of Law so that the Convention will only have force of law on the day on which it starts applying to the jurisdiction.

- Option A of the uniform commencement provisions combined with Option A of section 20 – Force of Law avoids the necessity for the federal and provincial or territorial governments to coordinate the international application of the Convention to a jurisdiction and the commencement of the Act, thereby eliminating the risk that it will not have commenced when the Convention starts applying to the jurisdiction.

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- Jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

For jurisdictions to which the Convention already applies, Option A can be combined with Option B of section 20.

For a jurisdiction choosing to bring its Act into force on assent, section 25 would not be needed if its acts automatically come into force on assent unless otherwise provided.

### Option B

For jurisdictions to which the Convention does not yet apply, Option B allows the Act to commence on proclamation on the date on which the Convention applies to the jurisdiction.

- When the Act commences on proclamation on the date on which the Convention applies to the jurisdiction, Option B would be combined with Option B of section 20.
- Jurisdictions selecting Option B when the date on which the Convention will apply to the jurisdiction is not yet known must ensure that the proclamation will be issued on the date on which the Convention will start applying. Proclaiming the Act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- Option B may be needed for those jurisdictions where additional steps are necessary such that it is problematic to bring the Act into force with Option A.
- Option B would be combined with Option A of the section 20 if proclamation is issued before the convention starts applying to the jurisdiction.

Jurisdictions to which the Convention already applies and which elect to have their Act commence upon proclamation would also combine this Option with Option B of section 20 – Force of Law.

### Option C

For jurisdictions to which the Convention does not apply, Option C allows the Act to commence on the day specified in the commencement provision, which is the day on which the Convention applies to the jurisdiction.

- This option would be combined with Option B of section 20.
- Jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known.

Jurisdictions to which the Convention already applies and which elect to have their Act commence on a specified date under Option C would also combine this Option with Option B of section 20 – Force of Law.

*Uniform Wills Act - International Wills – Final Report***Schedule****Convention providing a Uniform Law on the Form of an International Will  
(Washington, D.C., 1973)****CONVENTION PROVIDING A UNIFORM LAW  
ON THE FORM OF AN INTERNATIONAL WILL**

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

**Article I**

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

**Article II**

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad insofar as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

**Article III**

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

**Article IV**

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

**Article V**

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1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.
2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

## Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.
2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

## Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

## Article VIII

No reservation shall be admitted to this Convention or to its Annex.

## Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.
2. The Convention shall be subject to ratification.
3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

## Article X

1. The Convention shall be open indefinitely for accession.
2. Instruments of accession shall be deposited with the Depositary Government.

## Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.
2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

## Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.
2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

## Article XIII

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1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.
2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.
3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

## Article XIV

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

## Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

## Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.
2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;

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(h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX  
UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.

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2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

## Article 7

1. The date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

## Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

## Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

## Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE  
(Convention of October 26, 1973)

1. I, ..... (name, address and capacity), a person authorized to act in connection with international wills
2. Certify that on ..... (date) at ..... (place)
3. (testator) ..... (name, address, date and place of birth) in my presence and that of the witnesses
4. (a) ..... (name, address, date and place of birth)
- (b). ..... (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

\*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason .....

– I have mentioned this declaration on the will

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\* – the signature has been affixed by ..... (name, address)

7. (b) the witnesses and I have signed the will;

8. \* (c) each page of the will has been signed by .....  
and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses  
as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the  
law under which I am acting;

11. \* (f) the testator has requested me to include the following statement  
concerning the safekeeping of his will: .....  
.....

12. PLACE

13. DATE

14. SIGNATURE and, if necessary, SEAL

\* To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the  
testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall  
be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will  
under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its  
international origin and to the need for uniformity in its interpretation.