

INTERNATIONAL WILLS - Report and Amendments to Uniform Act

Presenter: Peter Lown

The ULCC's *Uniform Wills Act* (uniform Act) was adopted by the Conference in 2014 and addresses issues related to the creation, revocation, meaning, and validation of wills. In 2015, the Conference created a working group on international wills and directed it to prepare amendments to the uniform Act which would implement the *UNIDROIT Convention on providing a Uniform Law on the Form of an International Will* (the "Convention"). This would be the last outstanding piece of the uniform Act to be developed.

Mr. Lown presented the report of the working group, which contains draft uniform provisions as well as commentary. The provisions give force of law to the Convention, offering two options: one for those jurisdictions to which the Convention does not yet apply but who want to request that Canada extend its application to their jurisdiction, and the second that could be adopted by jurisdictions to which the Convention already applies.

The working group recommended against including a section establishing a registration system for international wills in the uniform Act, since generally speaking, the practice of depositing the will of a living person has fallen into disuse in Canada. While currently there are three jurisdictions with legislation requiring an international will to be registered (only two of which are in force), those jurisdictions were consulted and confirmed that registration is rare. Accordingly, the working group prepared two options for those jurisdictions: either the registry could be abolished, or provisions could be introduced that clarify that new registrations will not be accepted and that the jurisdiction

only has a custodial obligation to keep safe existing registered documents.

The draft uniform provisions also set out options for implementation to reflect whether or not the Convention is in force in the relevant jurisdiction. A delegate commented that section 22 appears to inadvertently give those who may not have the ability to practice law a broader authority than they otherwise have. Mr. Lown noted the comment and agreed that was not the intention; he agreed to make the minor changes necessary to clarify section 22.

RESOLVED:

THAT the report of the working group be accepted; and

THAT the recommended amendments to the *Uniform Wills Act* regarding Implementation of the *UNIDROIT Convention Providing Uniform Law on the Form of an International Will* and commentaries, as amended according to the direction of the Conference, be adopted and recommended to the jurisdictions for enactment.