

APPENDIX S1
(See page 32)

The following is recommended by the Uniform Law Conference of Canada for enactment as a Uniform Act.

An Act to amend the Wills Act

1. The Wills Act is amended by adding thereto at the end thereof, the following Part and Schedule:

PART IV
International Wills

Definitions

45. In this Part

- (a) “convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the schedule to this Act;
 - (b) “effective date” means the latest of
 - (i) the day on which, in accordance with Article XI of the convention, the convention enters into force,
 - (ii) where, at the time of signature or ratification, the Government of Canada has declared that the convention extends to the province, the day that is six months after the date on which the Government of Canada deposits with the Government of the United States of America an instrument of ratification of the convention, or
 - (iii) the day that is six months after the date on which the Government of Canada submits to the Government of the United States of America a declaration that the convention extends to the province;
- (Note: If at the time of enactment the dates mentioned in subclause (i) or (ii) or both have passed without being applicable to the enacting province, one or both of those clauses may be deleted)
- (c) “international will” means a will that has been made in accordance with the rules regarding an international will set out in the Annex to the convention;
 - (d) “registration system” means a system for the registration, or the registration and safekeeping, of international wills established under section 52 or pursuant to an agreement entered into under section 53;

- (e) “registrar” means the person responsible for the operation and management of the registration system.

Application of convention

46. On, from and after the effective date, the convention is in force in the province and applies to wills as law of the province.

Rules regarding an international will

47. On, from and after the effective date, the rules regarding an international will set out in the Annex to the convention are law in the province.

Validity of wills under other laws

48. Nothing in this Part detracts from or affects the validity of a will that is valid under the laws in force within the province other than this Part

Authorized persons

49. All members of _____ (*name of Law Society or Society of Notaries*) are designated as persons authorized to act in connection with international wills.

Request to ratify convention

50. The (*Provincial Secretary or other provincial minister*) shall request the Government of Canada (to ratify the convention and) to submit a declaration to the Government of the United States of America declaring that the convention extends to (*enacting province*).

(Note: The words “to ratify the convention and” would be unnecessary if Canada had, at the time of the enactment, already ratified the convention)

Effective date determined

51. As soon as the effective date is determined, (*the Provincial Secretary or other provincial minister*) shall publish in the Gazette a notice indicating the date that is the effective date for the purposes of this Part.

Registration system

52. The Attorney General shall establish a system of registration or registration and safekeeping of international wills.

Agreements re registration system

53. With the approval of the Lieutenant Governor in Council, the Attorney General for and on behalf of Her Majesty in right of (*enact-*

ing province) may enter into an agreement with the government of another province or a minister or official of the government of another province relating to the establishment of a system of registration or registration and safekeeping of international wills for (enacting province) and that other province, and for the joint operation of that system, or relating to the exchange of information contained in a system established under section 52 and a similar system established for that other province.

Joint system in lieu of provincial system

54. Where a registration system is established pursuant to an agreement entered into under section 53, the Attorney General is relieved of his obligation under section 52.

Disclosure of information in system

55.(1) Information contained in the registration system concerning the international will of a testator shall not be released from the system except in accordance with an agreement made under section 53 or except to a person who satisfies the registrar that

- (a) he is the testator; or
- (b) he is a person who is authorized by the testator to obtain such information; or
- (c) the testator is dead and the person is a proper person to have access to the information.

Release of will held for safekeeping

55.(2) Where the registration system provides for the safekeeping of international wills, an international will of a testator deposited in the system shall not be released except to a person who satisfies the registrar that

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

Use of registration system

56.(1) Where a member of (*name of Law Society or Society of No-*

aries) has acted during any month in respect of one or more international wills in his capacity as a person authorized to act in connection with international wills, the member shall, on or before the 10th day of the next month, file or cause to be filed with the registrar, in a sealed envelope, a list on a form prescribed under the regulations, certified by him or his agent, setting out the name, address and description of the testator and the date of execution of each international will in respect of which he so acted, and the registrar shall enter the information in the registration system.

Failure to register not affecting validity

56.(2) The failure of a member of the (*name of Law Society or Society of Notaries*) to comply with subsection (1) in respect of an international will does not affect the validity of the international will.

Regulations

57. The Lieutenant Governor in Council may make regulations respecting the operation, maintenance and use of the registration system, and without limiting the generality of the foregoing, may make regulations

(a) prescribing forms for use in the system; and

(b) prescribing fees for searches of the registration system.

(Note: Sections 52 to 57 may be brought into force on proclamation. Section 56 should not come into force until the registration system has been established.)

(Note: Consideration should be given in each jurisdiction enacting this Part as to changes that may be required to section 43 of the model *Wills Act* or any equivalent provision of the local *Wills Act*)