

UNIFORM WILLS ACT – Report

Presenters: Peter Lown, Q.C., Alberta Law Reform Institute

Sandra Petersson, Alberta Law Reform Institute

Ms. Petersson provided a brief history of the existing *Uniform Wills Act*, which was first advanced in 1929 and reflected much of the English *Wills Act* of 1835. The *Uniform Wills Act* was revised in 1953, and subsequently has been adopted in nine Canadian jurisdictions. Over the years, however, the ULCC has undertaken a number of projects and recommended policy changes to the *Uniform Wills Act*. Similarly, legislative reforms have taken place across Canada and the Commonwealth. Modern Canadians may no longer be well-served by legislation that reflects pre-Victorian principles. As such, instead of simply revising the existing Act, it is time to draft a new and modern *Uniform Wills Act* from scratch.

Prof. Lown identified four main planks that could form the starting point of a review:

1. How to make a will (formal validity, authentication, corroboration, etc.).
2. How to change a will, by alteration or revocation. Address the question of what kind of changes in circumstances automatically revoke a will.
3. How to deal with changes in property or beneficiaries. Address issues related to the failure of a gift, such as lapse, disclaimer, forfeiture, renunciation, etc.
4. How to ascertain the testator's intention.

A chart was provided to delegates which identifies a number of issues that may be ripe for review, including

1. whether rules regarding the testamentary capacity of minors should be revised;
2. whether the law should provide for statutory wills for those who lack testamentary capacity;
3. whether oral wills should be recognized, and in what circumstances;
4. whether electronic wills should be recognized in their own right, or under a statutory dispensing power;
5. whether holograph wills should be recognized, and in what circumstances;
6. whether pre-printed will forms are valid wills;
7. whether a will is valid if the testator's signature is located somewhere other than at the end of the document;

8. how many witnesses are required and must all witnesses be concurrently present with the testator at the time of signing;
9. whether a will must be published in order to be valid;
10. whether the rules regarding incompetence of witnesses should be revised;
11. whether a disposition to a person who was a witness to the will be void.

Delegates suggested that the working group also review issues related to the use of new media in the making of wills, as well as the importance of portability of wills to reflect today's highly mobile society. Also, the materials put together by the Civil Section working group on Wills and Succession Conflict Provisions would be incorporated into this project.

Prof. Lown proposed that the next step in this project would be to develop briefing materials and conduct a consultation, with the goal of developing a more formal policy statement for approval by the Conference.

RESOLVED:

That a working group be formed to prepare a new *Uniform Wills Act* in accordance with the direction of the Conference, and report back to the Conference at its 2011 meeting.