

Uniform Law Conference of Canada (ULCC)

Toronto, Ontario

August 10 – 14, 2014

Civil Section Minutes

UNIFORM WILLS ACT RENEWAL – Act and Commentaries

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

Peter Lown presented the draft *Uniform Wills Act* and commentaries for consideration and adoption.

He said the working group and legislative counsel developed the draft *Uniform Wills Act* as a standalone Act, but its provisions can be inserted into existing provincial and territorial legislation. He said further that the working group has not yet addressed Part III of the current *Uniform Wills Act*, which deals with international wills.

In reviewing the provisions of the draft uniform legislation, Mr. Lown said all the earlier directions of the Conference were reflected in the draft and that the working group also made some policy choices in some areas. For example, the draft legislation does not abolish a holograph will and the direction of the Conference on the location of signatures on a will is followed. Also, the working group has decided to abolish the publication requirement, which means that in the draft legislation, there is no requirement that a will be published to be valid.

The draft Uniform Act, which contains a definition of a will, states that “an individual who has reached the age of majority may make, alter or revoke a will if the individual has the mental capacity to do so”. However ‘mental capacity’ is not defined, leaving it to the court to decide. It provides for formal requirements for a will to be valid and also exceptions for military personnel and sailors to comply with these requirements in certain circumstances.

The court is given the authority under the draft Uniform Act to:

- Make, amend or revoke a will on behalf of a mentally incompetent individual.
- Give effect to a will or alterations to a will.
- Restore a beneficial disposition that is void.

Mr. Lown presented to the Conference three options on how to deal with automatic revocation of a will as a result of a subsequent marriage or divorce.

- Option 1 provides that entry into a marriage or other spousal relationship does not revoke the will, but on divorce or termination any beneficial dispositions to the former spouse are deemed revoked unless the court finds a contrary intention of the testator.
- Option 2 deems a will to be revoked on the subsequent marriage or spousal relationship of the testator except in certain circumstances.
- Option 3 provides for deemed intestacy on a subsequent marriage or spousal relationship if certain tests are met, unless the court grants relief.

He said the working group prefers the first option because it does the least damage to the terms of the existing will – its application results in removing any benefit provided by the will to the former spouse or partner. The Conference adopted the working group's preferred option.

The draft uniform legislation also deals with the issue of failed gifts, updating the whole area of the law relating to lapse, ademption and disqualification. It also updates the conflict of laws rules relating to succession, for example, by distinguishing between land moveable property, and articulating clear rules for the validity and effect of a will.

In finalizing the draft, the working group was urged to be cognizant of the implication of bijural application of the uniform legislation. References to real and personal property in the draft uniform legislation are not relevant to definition of property in the Quebec's *Civil Code* and need to be adjusted accordingly. Mr. Lown said the working group was aware of this problem and would make adjustments as needed.

During discussion, Conference members suggested a number of changes to the draft legislation including the following:

- Refer to province or territory in the new Uniform Act and not province only.
- Review the French version to track the meaning of section 8 in the English version.
- Provide a heading for section 12 – “validation and electronic form”.
- Check for consistency of language in section 12 and the implication of the use of “married testator” in section 14.

The Conference adopted these changes and directed that the working group take them into account in revising the draft legislation.

On Part III of the current *Uniform Wills Act*, which implements the *Unidroit Convention providing a Uniform Law on the Form of an International Will*, the Conference directed that it should be redrafted in accordance with the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention*.

RESOLVED:

THAT the report of the Working Group be accepted;

THAT the Working Group make the necessary changes to the draft Uniform Act and commentaries to reflect bijural terminology and to ensure consistency between the English and French versions;

THAT the directions of the Civil Section be incorporated into the Uniform Act and commentaries and circulated to the jurisdictional representatives. Unless two or more objections are received by the Projects Coordinator by November 30, 2014, the Uniform Wills Act should be taken as adopted as a Uniform Act and recommended to jurisdictions for enactment; and

THAT upon its adoption, the existing *Uniform Wills Act* be repealed.