

Minutes of the Civil Section, 2019

E-WILLS

Presenter: Peter Lown

Mr. Lown started his presentation by addressing the absence of the chair of the working group, Margaret Hall. Ms. Hall was unable to continue as chair of the working group due to a death in her family. At this time, a new chair for the working group has not been identified.

Mr. Lown noted that the ULCC had hoped to have access to consultation material from the United Kingdom on this subject, however, that information was deemed confidential until it is incorporated into a report. It was further noted, through a scoping statement to delegates, that the intention of the e-wills project is not to change (i) formalities, (ii) rules relating to testamentary capacity and intention, (iii) rules relating to fraud and undue influence, and (iv) the rules relating to affidavits of execution.

Two questions were put to the delegates. First, should the electronic medium be accepted? Second, should there be a unique identifier with respect to an electronic signature? An ancillary issue, of how an electronic will might be revoked, was also raised. Mr. Lown spoke to the use of electronic means in other aspects of day to day life (examples included online banking, filing of CPD credits), and queried what reason there could be to not extend the ability to make a will electronically.

The delegates discussed the questions identified, and it was noted that there was general support for the working group to move forward with work on electronic wills. With respect to acceptance of the medium, delegates queried what an electronic holographic will might look like and how exactly an electronic will would be defined (should there be video wills). The delegation from Quebec noted that it would be important to have a notary from Quebec on the working group so that the particularities of civil law can be discussed while moving forward with this initiative.

In discussing the issue with respect to electronic signatures, it was noted that Canada is party to the *Convention to Providing Uniform Law on the form of an International Will*. It was noted that there is no case law in Canada on this Convention. Delegates also noted the importance on taking into account individuals with disabilities when working on electronic wills, particularly, that there is a need to have a technologically neutral form, as to not preclude individuals with disabilities from participating.

There were no comments on the ancillary issue of revocation.

RESOLVED:

THAT the report of the working group be accepted;

THAT the working group continue its work in accordance with the recommendations and directions of the Conference that it should be possible for a will to be prepared in electronic form

and make necessary amendments to the *Uniform Electronic Commerce Act*, the *Uniform Wills Act* and the Quebec Civil Code; and

THAT the working group report back to the Conference at the 2020 meeting.