

**APPENDIX S**  
*(See Page 32)*

**Convention providing for a Uniform Law in the Form of an  
International Will and Registration of Wills**

REPORT OF THE SPECIAL COMMITTEE

Attached hereto are preliminary drafts of proposed amendments to the Uniform Wills Act. The drafts cover two matters that may be dealt with separately:

- (1) Application of Convention on International Wills, and
- (2) The system for registration or safekeeping of wills.

Because the Convention on International Wills contemplates, although does not require, a system for registration or safekeeping of wills, the two matters are related and may be dealt with at the same time.

*Application of convention*

The draft provisions relating to the Convention on International Wills are prepared as a new Part to the Uniform Wills Act.

The definitions in the draft are inserted to make the draft a little simpler. The definition of "effective date" is based on the terms of the Convention itself and relates to the date on which, under the Convention, the Convention would become effective in a country ratifying the Convention.

Section 46 of the draft would make the Convention apply in the enacting province. I think this is necessary as there are some provisions of the Convention which should apply in the province, e.g. Article III, even though the province itself is not a contracting party. I think application in the province is sufficient. The province should not attempt to put itself in the position of the contracting party by implying that the Convention binds the province because there are aspects of the Convention which are beyond the powers of the province, e.g. Articles IX, XII, XIII, XIV, etc.

Section 47 makes the rules set out in the Annex to the Convention law in the province. It seems to me that a straightforward statement of this kind is less likely to be misconstrued than to attempt to enact the rules as separate sections of the Act. By adopting the rules, in their context as the Annex to the Convention, I think they will be more likely to be interpreted in that context. It seems to me that this also meets the requirements of Article I (1) of the Convention.

Section 47 is added for discussion purposes. It may not be necessary. However, it occurred to me that Article I (2) of the rules contains the germ of the idea I am attempting to set out in this section.

Section 49 is necessary for the purposes of Article II (1) of the Convention. I assume that lawyers or notaries would be authorized persons, but others may also be designated.

There may be objection to section 50. I think the courts should be authorized and encouraged to look at the commentaries available on this Convention. If this were enacted it would be necessary to have the commentaries available in the libraries. No special provision has been inserted respecting the availability of these commentaries. Hopefully this could be looked after without legislation.

Section 51 relates to the draft provisions on the system for registration or safekeeping of wills. It creates certain obligations on the designated authorized persons. It may be necessary to add a provision making it clear that failure to register the will does not invalidate it. However, I believe that the way the section is drafted there should be no question of invalidity raised.

Section 52 was also inserted for discussion purposes. It raises the problem of the effect of the legislation with respect to wills executed before the legislation is enacted.

Section 53 may not be necessary. Presumably the Legislature could pass a resolution to the same effect. However, if it were contained in the legislation it might serve to bring to the attention of the future governments the necessity of taking international action in the event of the repeal of the provisions relating to international wills.

Section 54 is added to provide public information as to the effective date for the purposes of the new Part.

#### *System for Registration and Safekeeping of Wills*

The draft provisions relating to a system for registration and safekeeping of wills are prepared as a new Part to the Uniform Wills Act. Sections 55, 56, 57 and 58 are self-explanatory.

Section 59 might well be dealt with in regulations respecting the system. I feel that it is better to deal with the matter in the legislation rather than in the regulations. It will contribute to confidence in the system if the standards of disclosure are set out in the Act rather than the regulations. There may be more limitations required on the disclosure of information in the system or the restrictions on the release of wills held for safekeeping. However, I think that as section 59 is

drafted would be workable and perhaps any further restrictions might make the system so restrictive that it would not be reasonably workable.

Section 60 places an onus on solicitors or notaries to file lists of wills in the registration system. Without some onus of this type, I do not feel that the registration system would work. Again it may be necessary to provide that the failure to register a will does not affect its validity. However, I do not believe that this is necessary because the onus is so strictly on the professional person who assists in the preparation or execution of the will.

Section 61 would allow the Lieutenant Governor in Council to require solicitors to register wills which were received by them for safe-keeping prior to the coming into force of the section. This may never be used, however, it seems to me that it might be a way of updating the registration system fairly quickly.

Sections 62 and 63 are self-explanatory.

Rae H. Tallin  
for the Special Committee

August, 1974

### **Proposed New Part IV of The Wills Act**

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, or
  - (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 6 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 6 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 would be deleted

(c) “rules regarding an international will” means the rules set out in the Annex to the convention.

*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 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.

*Aids in interpretation*

50. For the purpose of assisting in the interpretation and construction of the convention and the rules regarding an international will, the courts may refer to analyses thereof contained in the Report to Ministry of Justice, Government of Canada on Diplomatic Conference on Wills, Washington, D.C., October 16-26, 1973, made by the chief of the Canadian delegation to that conference and to the final report of the rapporteur of that conference.

*Registration and safekeeping*

51. After a system of registration or registration and safekeeping of wills is established under section 56 or 57, each member of (*name of law society or society of notaries*) who acts as an authorized person in respect of an international will made within the province shall register the will or cause it to be registered in the system and every person who fails to comply with this section is guilty of an offence and liable,

on summary conviction to a fine not exceeding \$—.

*Wills made prior to effective date.*

52. A will that was made

- (a) before the effective date and whether before or after the date this section comes into force;
- (b) in a country or a territorial unit of a country in which, at the time the will was made, the rules regarding an international will are law; and
- (c) in compliance with the rules regarding an international will;

shall be treated and dealt with, as to formal validity, as though it had been made after the effective date.

*Request to ratify convention*

53. 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 the province.

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

*Effective date determined*

54. 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.

**Proposed New Part V of The Wills Act**

*Definitions*

55. In this part

- (a) “solicitor” (*or notary*) means a member of the society;
- (b) “registration system” means a system for the registration or the registration and safekeeping of wills established under section 56 or pursuant to an agreement entered into under section 57;
- (c) “registrar” means the person responsible for the operation and management of the registration system.

*Registration system*

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

*Agreements re registration system*

57. With the approval of the Lieutenant Governor in Council, the Attorney General for and on behalf of Her Majesty in right of may enter into an agreement with the government of another province or territory of Canada or a minister or official of the government of another province or territory of Canada relating to the establishment of a system of registration or registration and safekeeping of wills for the province and that other province or territory of Canada, and for the joint operation of that system or relating to the exchange of information contained in a system established under section 56 and a similar system established for that other province or territory.

*Joint system in lieu of provincial system*

58. Where a registration system is established pursuant to an agreement entered into under section 57, the Attorney General is relieved of his obligation under section 56.

*Disclosure of information in system*

59.(1) Information contained in the registration system concerning the will of a testator shall not be released from the system except

- (a) to the testator himself after he has submitted evidence that satisfies the official charged with the operation and management of the system that he is the testator who made the will; or
- (b) to another person after he has submitted evidence that satisfies the official charged with the operation and management of the system that the testator who made the will is dead.

*Release of wills held for safekeeping*

(2) Where a system established under section 56 or pursuant to an agreement made under section 57 provides for the safekeeping of wills, a will deposited in the system shall not be released except to a person who submits evidence that satisfies the official charged with the operation and management of the system that

- (a) the testator who made the will is dead; and

- (b) the person to whom the will is released 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*

60. Every solicitor (*notary*) shall, before the 10th day of each month, file 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 will

- (a) in the execution of which he has assisted during the preceding month; or
- (b) that has been deposited with him during the preceding month for safekeeping

*Requirement for filing list of wills previously deposited*

61. The Lieutenant Governor in Council may, by regulation, require every solicitor (*notary*) to file with the registrar, in a sealed envelope, a list on a form prescribed under the regulations and certified by the solicitor (*notary*) or his agent, indicating the name, address and description of the testator, and the date of the execution of, each will that was deposited with him during such period prior to the coming into force of this section as the Lieutenant Governor in Council may specify for safekeeping.

*Offence*

62. Every solicitor who fails to comply with section 60 or 61 is guilty of an offence and liable, on summary conviction, to a fine not exceeding \$

*Regulations*

63. 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;
- (b) prescribing periods in respect of which lists must be filed under section 61.
- (c) prescribing fees for searches of the registration system.

## SCHEDULE

**Convention Providing a Uniform Law  
on The Form of an International Will**

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

## Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

## Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad insofar as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

## Article III

The capacity of the authorized person to act in connection with an

international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

#### Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

#### Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

#### Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

#### Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

#### Article VIII

No reservation shall be admitted to this Convention or to its Annex.

#### Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.
2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different sys-

tems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

#### Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned

#### Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII,

paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;

(h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX

**Uniform Law on the  
Form of an International Will**

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person

to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.

2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.

2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I,.....(name, address and capacity),  
a person authorized to act in connection with international wills
2. Certify that on . . . . .(date) at .....(place)

3. (testator) ..... (name, address, date and place of birth)

in my presence and that of the witnesses

4. (a) ..... (name, address, date and place of birth)

(b)..... (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed

\*(2) the following a declaration of the testator stating that he was unable to sign his will for the following reason ..... — I have mentioned this declaration on the will — the signature has been affixed by .....(name, address)

7. (b) the witnesses and I have signed the will;

8. \*(c) each page of the will has been signed by. .... and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. \*(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

- 12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

\*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.