

## 2000 Victoria BC

### Civil Section Documents Uniform Wills Amendment Act 2000

1 Section 16 of the Uniform Wills Act is repealed and the following substituted:

#### **Revocation by marriage**

16.(1) Subject to an order under subsection (2), a will is revoked by the marriage of the testator except where

(a) there is declaration in the will that it is made in contemplation of the marriage; or

(b) the will is made in exercise of a power of appointment of real or personal property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate.

(2) A court may order that a will was not revoked by the marriage of the testator if it is satisfied on clear and convincing evidence that the testator made the will in contemplation of the marriage.

*Comment: This section, amended in accordance with the change approved at the Year 2000 ULC, allows a court to provide relief from the otherwise automatic revocation of certain wills. It provides a dispensing power on the same evidentiary basis proposed by the amendments to section 19.1.*

2 Section 19.1 is repealed and the following substituted:

#### **Court may dispense with formal requirements**

19.1 (1) Despite the other provisions of this Act but subject to this section, if a document, or writing on a document, was not made in accordance with any or all of

the formalities referred to in subsection (3), a court may nevertheless order that the document or writing is valid as:

(a) a will of a deceased person, or

(b) the revocation, alteration or revival of a will of a deceased person.

(2) In order to exercise the authority under subsection (1), the court must be satisfied on clear and convincing evidence that the deceased person intended the document or writing to constitute a will of the deceased person or the revocation, alteration or revival of a will of the person, as the case may be.

(3) The formalities that apply for the purposes of subsection (1) are those established by sections 4, 5, 6, 15 (c), 18 and 19.

(4) This section applies [when: statement of intended application.]

***Comment:*** *This section, amended in accordance with the change approved at the Year 2000 ULC, allows a court to dispense with the formal requirements of the Act.*

*The components of the amendment presented are:*

*(1) An evidentiary standard is added, requiring that the court be not merely “satisfied” but rather “satisfied on clear and convincing evidence”. This is intended to have effect equivalent to that provided in article 714 of the Quebec Civil Code, which requires that a document “unquestionably and unequivocally contains the last wishes of the deceased”. It is also consistent with the most recent common law proposals contained in Restatement of the Law Third (1999) §3.3.*

*(2) The formal requirements to which this dispensing power applies are expressly identified.*

*(3) It is recognized that a statement of intended application will be needed, although this may vary from jurisdiction to jurisdiction. For example, the section could be limited such that it applies “only in respect of a person who dies after the section comes into force.” Or it could apply only to “deceased persons for whom a will had not been admitted to probate before the section comes into force”. The option of having it apply in relation to all documents would, of course, raise difficulties respecting estates that were already in or through probate.*