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UNIFORM LAW CONFERENCE OF CANADA

**UNIFORM WILLS ACT - INTERNATIONAL WILLS
(2016)**

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Uniform Wills Act - International Wills (2016)

Force of Law

Option A

20. The *Convention Providing a Uniform Law on the Form of an International Will*, including its Annex, set out in the schedule, has force of law in [*jurisdiction*] from the date determined under its Article XIII(2).

Option B

20. The *Convention Providing a Uniform Law on the Form of an International Will*, including its Annex, set out in the schedule, has force of law in [*jurisdiction*].

Comment

Section 20 implements Article I of the Convention which provides that parties to the Convention shall introduce into their laws the rules regarding international wills set out in the Annex to the Convention.

Options A and B are drafted in accordance with the recommendations set out in Principle 7 – Force of Law of the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* (Drafting Principles) adopted by the Uniform Law Conference of Canada in 2014.

Option A may be adopted by jurisdictions to which the Convention does not yet apply if they plan on requesting that Canada make a declaration extending its application to their jurisdiction. Together, this Option and Option A of section 25 allow jurisdictions to bring their Act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. Jurisdictions may select this Option to avoid problems linked to coordinating the day on which the Act enters into force with the day on which the Convention applies to it at international law.

A jurisdiction selecting Options A of sections 20 and 25 should note that this approach is not entirely transparent as, on the face of the Act, it is not apparent if the Convention has started applying or not. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the Act.

A lengthy period between the coming into force of the law and the Convention for the jurisdiction may tip the balance in favour of Option B, if it is considered that Option A may mislead the public or courts as to the application of the Convention.

Option B should be adopted by jurisdictions to which the Convention already applies. As mentioned in the preceding paragraph, Option B may also be adopted by jurisdictions to which the Convention does not apply. Paired together, Option B of section 20 and Option B or C of section 25 ensure that the Convention will not have effect in these jurisdictions by legislation before it applies to them at international law. These jurisdictions must be able to bring their Act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada officials to coordinate the day on which the Act enters into force with the day on which the Convention applies to them at international law.

Validity of wills under other laws

21 Nothing in sections 20 to 25 affects the validity of a will that is valid under the laws other than sections 20 to 25 that are in force in [*jurisdiction*].

Comment

This section appears in the withdrawn *Uniform Wills Act* as section 48, but was redrafted following modern drafting conventions.

Authorized persons

22 All members of [*name of Law Society or Society of Notaries*] who are authorized to practice law in this subject area in [*jurisdiction*] are designated as persons authorized to act in connection with international wills.

Comment

This section appears in the now withdrawn *Uniform Wills Act* (withdrawn Uniform Act) as section 49. It has been amended to clarify that the members must be authorized to practice law in this subject area in the jurisdiction. It implements Article II of the Convention.

[Registration system]

23(1) The system of registration [*add if appropriate: and safekeeping*] of international wills established under [*reference to relevant section in repealed wills legislation*] is continued as a system of safekeeping.

(2) On and after the coming into force of this section, no will shall be registered in the system referred to in subsection (1).

Disclosure of information in system

24 No international will deposited in the system continued by section 23, and no information about a will deposited in the system, shall be released from the system except to a person who satisfies the registrar that

- (a) the person is the testator; or
 - (b) the person is authorized by the testator to obtain the will or the information;
- or

(c) the testator is dead and the person is a proper person to have access to the information or custody of the will for the purpose of the administration of the estate of the testator or is the agent of such a person.

Comment

The Convention does not require the establishment of a registration system for the registration and safekeeping of international wills. However, Article VII of the Convention allows the establishment of such a system by providing that “[t]he safekeeping of an international will shall be governed by the law under which the authorized person was designated.” Section 52 of the withdrawn Uniform Act required the establishment of a registration system and section 55 set out to whom the information contained therein could be disclosed. Jurisdictions may wish to note that under Part III of the withdrawn Uniform Act, only one jurisdiction enacted sections 52 and 55 and established a system for the registration of international wills and one jurisdiction enacted these sections and established a system for the registration and safekeeping of international wills.

At its annual meeting in 2015, the Conference recognized that the practice of depositing the will of a living person has fallen into disuse and that some jurisdictions no longer offer deposit services and recommended against including a section establishing a registration system in the new *Uniform Wills Act (Uniform Act)*. Following this recommendation, jurisdictions that have implemented the Convention without enacting section 52 of the withdrawn Uniform Act and jurisdictions that have not yet implemented the Convention should not enact sections 23 and 24.

Jurisdictions that enacted section 52 of the withdrawn Uniform Act and established a registration system may enact subsection 23(1) to continue it for the safekeeping of international wills registered therein. Subsection 23(2) is consistent with the Conference’s recommendation against the establishment of registration systems and provides that no international will may be registered on and after the date of entry into force of the *Uniform Act*. Jurisdictions that enact section 23 would also have to enact section 24 which sets out how the information contained in the system may be disclosed

Section 24 combines subsections 55(1) and (2) of the withdrawn Uniform Act. Clauses (a) and (b) of these subsections are identical and were easily combined. Clauses (c) of subsections 55(1) and (2) are different in that (2)(c) provides that the person to whom the will can be released if the testator is dead is either a proper person to have custody of the will or the agent of such person, whereas clause (1)(c) limits the release of information about a will deposited in the system only to the proper person. Clauses (c) of subsections 55(1) and (2) were combined into subsection 24(c), which allows the release of the information about a will deposited in the system and the will itself to both the proper person and the proper person’s agent. This is the case because it was thought that including the agent in both cases was appropriate.]

Commencement

Option A – Commencement on assent before Convention applies to jurisdiction or where Convention already applies to jurisdiction

25. This Act comes into force on [assent/*insert the date of assent to Act*].

Option B – Commencement on proclamation on day on which Convention applies to jurisdiction or where Convention already applies to jurisdiction

25. This Act comes into force on [proclamation/ the date to be set by the Government].

Option C – Commencement on a specified day which is day on which Convention applies to jurisdiction

25. This Act comes into force on [*insert date on which the Convention applies to jurisdiction*].

Comment

The commencement provision is designed to apply to the entire Uniform Act and not only to sections 20 to 25. Jurisdictions to which the Convention already applies should have their entire Act commence at the same time to ensure the uninterrupted application of the Convention in their internal law. Jurisdictions to which the Convention does not apply may have sections 20 to 24 commence when appropriate following the commencement of the Act's other sections. These jurisdictions would have to amend the commencement provision to indicate when sections 20 to 24 are to commence.

Three options are available with respect to the commencement provision. These options are drafted in accordance with the recommendations set out in Principle 16 of the Principles for Drafting. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A

For jurisdictions in which the Convention does not yet apply, Option A can be combined with the Option A set out in Section 20 – Force of Law so that the Convention will only have force of law on the day on which it starts applying to the jurisdiction.

- Option A of the uniform commencement provisions combined with Option A of section 20 – Force of Law avoids the necessity for the federal and provincial or territorial governments to coordinate the international application of the Convention to a jurisdiction and the commencement of the Act, thereby eliminating the risk that it will not have commenced when the Convention starts applying to the jurisdiction.
- Jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

For jurisdictions to which the Convention already applies, Option A can be combined with Option B of section 20.

For a jurisdiction choosing to bring its Act into force on assent, section 25 would not be needed if its acts automatically come into force on assent unless otherwise provided.

Option B

For jurisdictions to which the Convention does not yet apply, Option B allows the Act to commence on proclamation on the date on which the Convention applies to the jurisdiction.

- When the Act commences on proclamation on the date on which the Convention applies to the jurisdiction, Option B would be combined with Option B of section 20.
- Jurisdictions selecting Option B when the date on which the Convention will apply to the jurisdiction is not yet known must ensure that the proclamation will be issued on the date on which the Convention will start applying. Proclaiming the Act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- Option B may be needed for those jurisdictions where additional steps are necessary such that it is problematic to bring the Act into force with Option A.
- Option B would be combined with Option A of the section 20 if proclamation is issued before the convention starts applying to the jurisdiction.

Jurisdictions to which the Convention already applies and which elect to have their Act commence upon proclamation would also combine this Option with Option B of section 20 – Force of Law.

Option C

For jurisdictions to which the Convention does not apply, Option C allows the Act to commence on the day specified in the commencement provision, which is the day on which the Convention applies to the jurisdiction.

- This option would be combined with Option B of section 20.
- Jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known.

Jurisdictions to which the Convention already applies and which elect to have their Act commence on a specified date under Option C would also combine this Option with Option B of section 20 – Force of Law.