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**UNIFORM LAW CONFERENCE OF CANADA**

***UNIFORM WILLS ACT (2015)***  
(as amended 2016; 2021)

**As consolidated – February 2022**

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**UNIFORM WILLS ACT (2015)**  
**(as amended 2016; 2021)**

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## PART 1 - INTERPRETATION AND APPLICATION

### Definitions

1 In this Act,

“**audiovisual communication technology**” includes assistive technology for individuals with disabilities « **technologie de communication audio-visuelle** »;

“**communicate**” includes to communicate using audiovisual communication technology that enables individuals to communicate with each other by hearing and seeing each other and by speaking with each other « **communiquer** »;

**COMMENT:** The definition of “communicate” embraces the elements of hearing, seeing and speaking - two-way communication, even if supported by technology which enables a person with disabilities to do so.

“**beneficiary**” means a person who receives or is entitled to receive a beneficial disposition of property under a will « **bénéficiaire** »;

“**Court**” means the superior court of [the province or territory] « **tribunal** »;

“**disposition**” includes a bequest, a legacy, a devise and the conferral or exercise of a power of appointment « **disposition** »;

“**electronic**” includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means and “**electronically**” has a corresponding meaning « **électronique** »;

“**electronic form**”, in relation to an electronic will, other document or writing, or other marking or obliteration, means a form that is

- (a) electronic,
- (b) readable as text at the time the electronic will, document, writing, marking or obliteration is made,
- (c) accessible in a manner usable for subsequent reference, and
- (d) capable of being retained in a manner usable for subsequent reference « **forme électronique** »;

**COMMENT:** The definition of “electronic form” is defined so as to be used throughout the Act when referring to electronic wills. It builds on the elements of use of the electronic medium capable of being stored, and accessible for future reference, all of which are present in the Uniform Electronic Commerce Act. For the purpose of the execution of wills it adds that the will must be readable as text at the time of execution. This has the deliberate effect of precluding, at the present time, video wills.

“**electronic signature**” means information in electronic form that a person has created or adopted in order to sign a document and that is in, attached to or associated with the document « **signature électronique** »;

“**electronic will**” means a will that is in electronic form « **testament électronique** ».

[“**spouse**” means [insert here the appropriate definition of “spouse” for the jurisdiction « **conjoint** »];

“**virtual presence**” means the circumstances in which 2 or more individuals in different locations communicate at the same time to an extent that is similar to communication that would occur if all the individuals were physically present in the same location and “**virtually present**” has a corresponding meaning; « **présence virtuelle** »;

**COMMENT:** The definition of “virtual presence” allows remote witnessing where the testator and witnesses can communicate as effectively as if they were all in the same location. This concept was adopted, with slight modifications, by most jurisdictions in emergency orders dealing with the COVID-19 pandemic.

The concept of “virtual presence” and remote execution can be equally applied in notarial wills, most common in Quebec. The Uniform Law Commission in the U.S. has developed uniform legislation for remote Notarial execution generally, and the Uniform Electronic Wills Act applies also to notarial wills, which are authorized in several states.

Remote execution of notarial documents has been authorized in many jurisdictions under emergency orders during the COVID-19 pandemic. It is currently under consideration for permanent authorization in Quebec:

[Ministerial Order 2020-010](#) of the Minister of Health and Social Services dated 27 March 2020/  
[Arrêté numéro 2020-010](#) de la ministre de la Santé et des Services sociaux en date du 27 mars 2020:

An interesting aspect of notarial electronic wills signed remotely in Quebec relates to the location of the data relating to the signature of the notaire. The signature of the notaire appears on the document, along with the date and the location of the notarization, but the information relating to the authentication of the signatures of the testator and witness appear in the notaire’s log which is not part of the document, but is accessible. In many ways, access to the log operates in a similar way to an affidavit of execution by a witness in common law.

Notarial practice in Quebec has also developed some unique terminology accurately describing the specific functions of a notaire. For example, rather than remote “execution” of a document, the notaire would simultaneously receive the signatures of the testator and witness to the document – “reception au distance”. The details of Quebec Notarial practice are not necessarily reflected in the French language version of the Uniform Act. They were, however, clearly before the working Group.

“**will**” includes a writing that

- (a) alters or revokes another will, or
  - (b) on the death of the testator, confers or exercises a power of appointment
- « **testament** ».

(2015 s. 1; Am. 2021 s. 1)

### **Electronic signature**

2(1) For the purposes of sections 7, 8 and 19,

- (a) a reference to a signature includes an electronic signature and a reference to a document being signed includes the document being signed electronically, and
  - (b) a requirement for the signature of a person is satisfied by an electronic signature.
- (2) An electronic will is conclusively deemed to be signed if the electronic signature is in, attached to or associated with the will so that it is apparent the testator intended to give effect to the entire will.

[\(2021 s. 2\)](#)

**COMMENT:** These provisions are taken directly from the Uniform Electronic Commerce Act where they have not disclosed any particular difficulties. It is important to note the variations that this provision allows. An individual may create an electronic version of their stylized signature, may adopt a mark or symbol representing their signature, or may use a process by which a document is validated as to signature by a third-party provider. In the latter case, the signature is attached to, rather than placed on the document. The latter process may have implications for later provisions on the location of the signature, alterations, or revocation by destruction.

## PART 2 - MAKING, ALTERING AND REVOKING A WILL

[\(2021 s. 3\)](#)

### Age of majority

3 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.

[\(2015 s. 2\)](#)

**COMMENT:** The act establishes the age of majority as the basis of legal capacity to make a will. This is combined with the common-law requirements that a testator must have an appropriate understanding of the document, its dispositive nature, and the persons being included or excluded as beneficiaries. The common-law requirements of testamentary capacity are not repeated or codified in the statute. Previous exceptions relating to married minors are not carried forward.

### Formal requirements for wills other than electronic wills

[\(2021 s. 4\)](#)

- 4(1) A will, other than an electronic will, is valid if
- (a) it is in writing,
  - (b) it contains the signature of the testator or of another individual who signed on the testator's behalf at the testator's direction and in the testator's presence, and
  - (c) the requirements of subsection (2) or (3), whichever is applicable, are met.
- (2) If the testator signed the will, the signature must have been made or acknowledged by the testator in the presence of two or more witnesses who were present at the same time and at least two of the witnesses, in the presence of the testator, must have
- (a) attested and signed the will, or
  - (b) acknowledged their signatures on the will.

(3) If another individual signed the will on behalf of the testator, the signature must have been made or acknowledged by that individual and acknowledged by the testator in the presence of two or more witnesses who were present at the same time and at least two of the witnesses, in the presence of that individual and the testator, must have

- (a) attested and signed the will, or
- (b) acknowledged their signatures on the will.

(2015 s. 3; Am. 2021 s. 5)

**COMMENT:** This section sets out the basic requirements of formal validity: a written document, signed by the testator, witnessed by two witnesses. Subsection (2) modernizes the wording relating to witnesses to ensure that the signature or acknowledgment of the testator is in the presence of both witnesses at the same time. Subsection (3) requires that the formalities of subsection (2) also apply where a person signs on behalf of the testator

### Formal requirements for electronic wills

5(1) An electronic will is valid if

- (a) it is in electronic form,
- (b) it is signed
  - (i) by the testator with the electronic signature of the testator, or
  - (ii) by another individual with the electronic signature of the individual if that individual signed on the testator's behalf at the testator's direction and in the testator's presence, and
- (c) the requirements of subsection (2) or (3), whichever is applicable, are met.

(2) If the testator signed the will, the electronic signature must have been made or acknowledged by the testator in the presence of two or more witnesses who were present at the same time and at least two witnesses must have, in the presence of the testator,

- (a) attested and signed the will, or
- (b) acknowledged their electronic signatures in, attached to or associated with the will.

(3) If another individual signed the will on behalf of the testator, the electronic signature must have been made or acknowledged by that individual and acknowledged by the testator in the presence of two or more witnesses who were present at the same time and at least two of the witnesses must have, in the presence of that individual and the testator,

- (a) attested and signed the will, or
- (b) acknowledged their electronic signatures in, attached to or associated with the will.

(4) In this section, a requirement that signing take place in the presence of another individual, or while individuals are present at the same time, is satisfied if the signing takes place while the individuals are in each other's virtual presence.

(5) For certainty, nothing in this section prevents some of the individuals described in this section from being physically present and others from being virtually present when signing the electronic will.

**COMMENT:** Subsection 5(1) to (5) apply the earlier definitions, and the elements of validity to an electronic will: a document signed by the testator or someone on their behalf and witnessed by two persons in the presence of the testator and each other.

The extension of the formal validity requirements in section 5 to electronic wills does not alter any other requirements for a valid will. Like any will-maker, an individual making an electronic will must have the requisite testamentary capacity, and the legal test for testamentary capacity is the same for all will-makers. Similarly, like any will, an electronic will is invalid if the will-maker did not have knowledge of and approve its contents, or if the electronic will is procured through fraud or undue influence, and the legal tests to be applied are the same for all wills. The revisions to the Uniform Wills Act (2015) also do not alter any laws relating to void gifts (e.g. on public policy grounds) or the jurisdiction of a court to vary or amend a will after the death of the will-maker. That is to say, except for the formal requirements in this section that are particular to electronic wills, the formal and essential validity of an electronic will is determined in the same manner as wills other than electronic wills.

If a jurisdiction amends its governing statute to permit electronic wills, the jurisdiction may also amend its rules governing the probate process and its requirements, in particular the prescribed form of any required affidavits from witnesses or other persons to support the due execution of the electronic will. The amendments to the Uniform Wills Act (2015) do not deal with changes to probate procedures or requirements.

- (6) If an electronic will is signed by the testator and witnesses while any one of them is virtually present, the place of making the will is the location of the testator.
- (7) An electronic will is a will for all purposes of the enactments of **[the province or territory]**.

[\(2021 s. 6\)](#)

**COMMENT:** The working group considered the question of whether a requirement that electronic wills be witnessed by a lawyer or notary should be adopted. This requirement has been suggested in response to concerns about a heightened risk of fraud posed by the use of e-wills (through the wrongful use of e-signatures) and the potential for undue influence in this context. In the event a will is challenged on the basis of a will-maker's testamentary capacity, a lawyer or notary witness would be also be able to provide evidence of the will-maker's coherence and understanding at the relevant time.

In addition, it has been suggested that requiring a lawyer or notary witness would make frivolous or non-serious e-wills less likely (the theory being that the relative ease of making an e-will would otherwise encourage frivolous will-making). On the other hand, a lawyer/notary requirement for will-making would be a significant deviation from the traditional law of wills, which has always allowed for a testator to make her or his will without professional involvement. This approach is consistent with the principle of testamentary freedom and facilitates access to justice for persons who do not have access to legal professionals because of cost or other reasons. To create a lawyer/notary requirement for e-wills only would construct the e-will as a special and distinct form of instrument, rather than a will in a different form (and therefore subject to the law relating to wills generally and equivalent to the traditional written will).

Furthermore, the risk of fraud, undue influence, and lack of testamentary capacity is not confined to e-wills made without lawyer or notary presence. Traditional written wills made without the involvement of legal professionals are also, perhaps equally, vulnerable. There is no substantive evidence that fraud, undue influence, or issues of testamentary capacity are more likely in relation to e-wills than other wills. Whatever its form, the validity of a will can be challenged where these

concerns arise, and “homemade” wills of all kinds will always be more susceptible to challenge than wills made with professional involvement. After considering these factors, the Committee decided not to recommend that e-wills require a lawyer or notary witness.

### **[Signing in counterpart**

**6(1)** Subject to subsection (2), if a testator and witnesses are in each other’s virtual presence when the testator makes a will, the will may be made by signing complete and identical copies of the will in counterpart.

**(2)** When a will is signed in counterpart, none of the copies of the will being signed must be in electronic form.

**(3)** Copies of a will in counterpart are deemed to be identical even if there are non-substantive differences in the format of the copies.]

[\(2021 s. 6\)](#)

**COMMENT:** This practice (a will is signed in counterpart) was developed under emergency orders for the COVID-19 pandemic in 2020. Since lawyers and clients could not be in the same location, this practice combines “virtual presence” in which each person, testator and witnesses, would sign an identical document, with regular execution of a document. The composite of the three documents represents the fully executed will. Use of this practice is more likely in hardcopy wills, but could occur for an electronic will where the parties are in “virtual presence” but do not have document sharing capacity.

Jurisdictions should consider how to reduce the "bulk" of hard copy documentation in the Probate process.

### **Witnesses**

**7(1)** An individual may sign a will as a witness to a signature of the testator if the individual

- (a) has the mental capacity to do so, and
- (b) has reached the age of majority.

**(2)** An individual who signs a will on behalf of a testator is not eligible to witness the signature of the testator.

**(3)** An individual who signs a will as a witness to a signature of a testator is not ineligible as a witness to prove the making of the will or its validity or invalidity only because the individual is

- (a) a beneficiary under the will, or
- (b) the spouse of a beneficiary.

[\(2015 s. 4\)](#)

**COMMENT:** The act requires competent witnesses – those who have the mental capacity to understand what witnessing entails and have reached majority. An individual who signs for the testator cannot also act as a witness. A person who receives a benefit under a will is not disqualified as a witness, but their benefit is presumed to be set aside pursuant to section 19.

### **Signature**

**8(1)** A will is not invalid because the testator’s signature is not placed at the end of the will if

(a) it appears on the face of the will that the testator intended by the signature to give effect to the will, or

(b) the will is signed with an electronic signature associated with [or attached to] the electronic will that requires an electronic signature verification process.

(2) A testator is presumed not to have intended to give effect to any writing that appears below the testator's signature.

(3) The references in subsections (1) and (2) to a testator's signature include the signature of an individual who signed on behalf of the testator in accordance with section 4 or 5.

[\(2015 s. 5; Am. 2021 s. 7\)](#)

**COMMENT:** Subsection (1) includes a general saving provision for the location of the signature. While a signature at the end would normally import finality and closure, a signature intended to give effect to the document and evident on the face of the document as doing so, will not be invalid. This saving provision could also rebut the presumptive invalidity in subsection (2).

Traditionally, the law required the testator's signature to be at "the end or foot" of the will, so as to indicate finality of both the document and the approval process. Over time, as the courts dealt with many variations of placement of the signature, a rule developed that the signature should normally be at the end, but another location could be accepted if it was clear that the testator intended to give effect to the will by the signature.

The provisions of section 8 worked well for conventional hardcopy wills. They also work equally well for electronic wills where the electronic signature is physically placed into the file at a specific location. But what about a signature process that validates the file, is attached to or associated with the file, but does not have a specific location within the file? The definition of "electronic signature" is inclusive of this kind of signature process, which is currently in use within certain applications and may be developed further, becoming more widely used, in the future.

The working group wanted to avoid creating signature requirements for electronic wills that were overly restrictive in terms of electronic signature technology, while meeting the objectives of the traditional signature placement rule. One option considered was to exclude electronic wills from the signature placement requirements in section 8. This option would ensure maximum responsiveness to changes in technology, but would not address the traditional rule objectives. The second option considered was to adjust section 8 subsection 1 to accommodate this process. The third option was to assume the process was already implicitly dealt with in section 8 subsection one. With the inclusion of subsection (2), the working group chose an approach that accommodates current and future electronic signature technology while satisfying the rationale for the electronic placement rule.

### **Exception to witnessing requirements – holograph will**

9(1) A will may be made without complying with section 4(1)(c) and (2) if it is made wholly by the testator's own writing and signed by the testator.

(2) For certainty a will made under subsection (1) may not be an electronic will.

[\(2015 s. 6; rep & repl. 2021 s.8\)](#)

**COMMENT:** This section continues the common practice in many jurisdictions of providing for holographic wills— wills made wholly in the testator's hand writing and signed by him or her.

There is no specific saving provision for partially written or typed documents. Those documents may be validated under section 17.

### Exceptions for military personnel and sailors

- 10(1)** In this section, “Canadian Forces member” means an individual who is
- (a) a member of a regular force as defined in the National Defence Act (Canada), or
  - (b) a member of another component of the Canadian Forces who is placed on active service under the National Defence Act (Canada).
- (2)** Despite section 3, an individual who is under the age of majority may make, alter or revoke a will if the individual has the mental capacity to do so and is, at the time of making the will, a Canadian Forces member [or a sailor in the course of a voyage].
- (3)** Despite section 4(1)(c), an individual who has the mental capacity to do so may make, alter or revoke a will without complying with section 4(2) or (3) if, at the time of making the will, the individual is a Canadian Forces member or a member of any other naval, land or air force on active service [or who is a sailor in the course of a voyage].
- (4)** For the purposes of this section,
- (a) a certificate signed by or on behalf of an officer purporting to have custody of the records of the force in which a member was serving at the time the will was made setting out that the member was on active service at that time is sufficient proof of that fact, and
  - (b) if a certificate referred to in clause (a) is not available, a member of a naval, land or air force is deemed to be on active service after the member has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service.
- (5)** A will made under this section may not be an electronic will.

(2015 s. 7; Am. 2021 s. 9)

**COMMENT:** This section continues but clarifies exceptional provisions relating to military personnel. The requirements for majority in section 3 and two witnesses in sections 4(2) and (3) can be displaced if the individual is a member of the Canadian forces placed on active service. This wording, and the evidentiary process described in subsection 4, updates the provisions to dovetail with the *National Defense Act*.

### Alterations

- 11** An alteration made on or to a will is valid only if
- (a) in the case of a will made under section 4, the alteration is made in accordance with that section,
  - (b) in the case of a will made under section 5, the alteration is made in accordance with that section, or
  - (c) in the case of a will made under section 9, the alteration is made in accordance with that section.

(2015 s. 8; Am. 2021 s.10)

**COMMENT:** This area of the law has produced jurisprudence that might stretch the imagination – where a mere alteration has been found to be a will in itself and therefore capable of amending a prior document. Section 11 makes it clear that alterations to a will must follow the format of the

will being altered. A section 4 will alteration requires the signature of the testator and witnesses. A section 9 will alteration must be in the handwriting of and signed by the testator. It is envisaged that these requirements will be strictly adhered to, so that acceptance of anything that falls short would require validation under section 17.

Alterations must follow the form of the will being altered. This section does not allow for a mix and match scenario of conventional, electronic, holograph or military wills.

### **[Holograph alterations**

**12(1)** Notwithstanding section 11(a), a will may be altered without complying with section 4(1)(c) if the alteration is wholly in the testator's own writing and signed by the testator.

**(2)** For certainty, this section does not apply to an electronic will.]

[\(2015 s. 8.1\)](#); Am. [2021 s. 11](#))

### **[Mentally incompetent individuals**

**13(1)** The Court may, in its discretion, on application, make, amend or revoke a will on behalf of a mentally incompetent individual if the Court is satisfied on clear and convincing evidence that if it does not exercise its power to do so, a result will occur on the death of the mentally incompetent individual that the mentally incompetent individual, if competent and making a will at the time the Court exercises its power, would not have wanted.

**(2)** A will, amendment or revocation made under subsection (1) is deemed for all purposes, including subsequent revocation and amendment, to be the will of the individual on whose behalf the will, amendment or revocation is made.]

[\(2015 s. 8.2\)](#)

**COMMENT:** Section 12 provides options for those jurisdictions that wish to provide further discretion for holographic alterations.

Section 13 allows the court to intervene on behalf of a mentally incompetent person. The threshold however is very high, in that the court may only intervene to avoid a result that the person, if competent, would not have wanted.

Both are optional only.

### **Publication requirement abolished**

**14** There is no longer any requirement at law that a will must be published in order to be valid.

[\(2015 s. 9\)](#)

**COMMENT:** While it is probable that there has not been a publication requirement for a very long period of time, this section finally and formally puts the issue to rest.

### **Revocation of a will other than an electronic will**

**15(1)** A will or part of a will, other than an electronic will, is revoked only in one or more of the following circumstances:

- (a) by another will made by the testator;
  - (b) by a written declaration of the testator that revokes all or part of a will made in accordance with section 4;
  - (c) by the testator, or an individual in the presence of the testator and by the testator's direction, burning, tearing or destroying all or part of the will in some manner with the intention of revoking all or part of it.
- (2) For certainty,
- (a) the will referred to in subsection (1) (a) may be an electronic will or a will other than an electronic will, and
  - (b) the written declaration referred to in subsection (1) (b) may be in electronic form and signed with an electronic signature or not be in electronic form.
- (3) A will is not revoked in whole or in part by presuming an intention to revoke it because of a change in circumstances.

[\(2021 s. 12\)](#)

**COMMENT:** This is a new but uncontroversial addition taken from the Wills and Succession legislation of several jurisdictions. It was inadvertently omitted in 2015 and is now corrected.

### **Revocation of an electronic will**

**16(1)** An electronic will or part of an electronic will is revoked only in one or more of the following circumstances:

- (a) by another will made by the testator;
  - (b) by a written declaration of the testator that revokes all or part of a will made in accordance with section 5;
  - (c) by the testator, or an individual in the presence of the testator and by the testator's direction, deleting one or more electronic versions of the will or of part of the will with the intention of revoking it;
  - (d) by the testator, or an individual in the presence of the testator and by the testator's direction, burning, tearing or destroying all or part of a paper copy of the will in some manner, in the presence of a witness, with the intention of revoking all or part of the will.
- (2) For certainty,
- (a) the will referred to in subsection (1) (a) may be an electronic will or a will other than an electronic will, and
  - (b) the written declaration referred to in subsection (1) (b) may be in electronic form and signed with an electronic signature or not be in electronic form.
- (3) For certainty, an inadvertent deletion of one or more electronic versions of a will or of part of a will is not evidence of an intention to revoke the will.
- (4) In this section, a requirement that an individual take an action in the presence of another individual, or while individuals are present at the same time, is satisfied if the action is taken while the individuals are in each other's virtual presence.
- (5) A will is not revoked in whole or in part by presuming an intention to revoke it because of a change in circumstances.

[\(2021 s. 12\)](#)

**COMMENT:** This section paraphrases the conventional methods of revocation: another will or a formally valid declaration of revocation. However, it adapts some provisions of conventional wills which are premised on the existence of an original hard copy document. It is virtually impossible to identify an “original” electronic document and the Act does not try to do so. Instead, the Act keys on the intention to revoke, coupled with a symbolic act. Accidental deletion of a file, computer crash or corruption of a storage medium may happen with no intention to revoke, in which case there may be access to back up devices or storage media. However, the testator who, with the intention to revoke, deletes the file (or all the files), destroys the storage medium has clearly revoked by combining clear intention and physical act.

There may be some exceptional circumstances where the testator has used an “electronic vault” to store the will. Usually, these types of services will require password access, and a two-part authentication process to alter or delete the will. In these circumstances, going through those hoops would be fairly clear evidence of an intention to revoke.

It is important to bear in mind how this amended legislation treats electronic wills, that is, to create a parallel pattern between the conventional and electronic medium. We do not create provisions for electronic wills unless it is mandated by the medium. Over time, practices have developed for the safeguarding of the “original” conventional paper will – the original is retained by a lawyer, kept by the testator in the safety deposit box or security safe. Once stored, the will might be digitized for ultimate access. Most jurisdictions (except Ontario) have abandoned their will registries, and encouraged other methods of safekeeping. In Quebec, all notarial wills received by a notary are registered in the Register of Testamentary Dispositions of the Chambre des notaires.

We expect that as the use of electronic wills grows, so too will develop practices that create a virtual original – one version stored in a particular location with copies clearly marked as copies provided to the necessary parties. The effect of these practices will be to increase the burden of proof to show that the destruction of a copy was clearly and knowingly intended to be a revocation. Rather than rely on destruction, it might be more advisable for a person wishing to revoke to create a formally valid document expressing that intention.

We encourage entrepreneurial third parties to develop and test these safekeeping practices, so they can become part of best practices. They are not included in the legislation so as not to unduly inhibit the technology or freeze the practices at a certain point in time. The legislation enables but does not prescribe.

## PART 3 - GIVING EFFECT TO A WILL

### Validation power for non-compliant wills

17 Where, on application, the Court is satisfied on clear and convincing evidence that a written document embodies the testamentary intention of a deceased individual, the Court may order that the written document is fully effective as the will of the deceased individual, despite that the document was not made in accordance with section 4(1) (b) or (c), 5(1) (b) or (c) or 9 or is in an electronic form.

[\(2015 s. 10; Rep. & Repl.; 2021 s. 13\)](#)

**COMMENT:** This section allows the court to accept as valid a document that is defectively signed or witnessed or is not a holograph, provided the court is satisfied on clear and convincing evidence, that the document embodies the testamentary intention of the deceased.

### Validation power for non-compliant alterations

**18** Where, on application, the Court is satisfied on clear and convincing evidence that any writing or other marking or obliteration on or in a written document embodies the intention of a deceased individual to revoke, alter or revive a will of the deceased individual or the testamentary intention of the deceased individual embodied in a written document other than a will, the Court may order that the writing, other marking or obliteration is fully effective as the revocation, alteration or revival of the will of the deceased individual or of the testamentary intention embodied in that other written document, despite that the writing, other marking or obliteration was not made in accordance with section 11(a), (b) or (c), whichever is applicable, or is in an electronic form.

[\(2015 s. 11; Rep & Repl.; 2021 s. 14\)](#)

**COMMENT:** This section extends the dispensing power of section 17 to alterations in a document.

**[2015 s. 12 Rep. 2021 s. 15]** [\(2021 s. 15\)](#)

### Void dispositions

**19(1)** Subject to any order made under subsection (2), a beneficial disposition that is made by will to any of the following individuals is void as against the individual, the individual's spouse and any other individual claiming under either of them:

- (a) a witness who signs the will under section 4(2) or (3) or 5(2) or (3),
- (b) an individual referred to in section 4(1) (b) or 5(1) (b) who signs the will on behalf of the testator,
- (c) an interpreter who provided translation services in respect of the making of the will.

**(2)** The Court may, on application, order that a beneficial disposition referred to in subsection (1) is not void if the Court is satisfied that

- (a) the testator intended to make the beneficial disposition to the individual despite knowing that the individual was an individual described in subsection (1), and
- (b) neither the individual nor the individual's spouse exercised any improper or undue influence over the testator.

**[(3)** An application under subsection (2) may not be made more than 6 months after the date the grant of probate or administration is issued unless the Court orders an extension of that period.

**(4)** The Court may order an extension of the period on any terms the Court considers just.]

[\(2015 s. 13; Am. 2021 s.16\)](#)

**COMMENT:** This presumptively sets aside a benefit given by a will to a number of individuals, where the validity of the document would clearly be called into question by the self-interest of these individuals. The list includes witnesses, a person who signs on behalf of the testator or a person who translates the document for the testator.

However, such a disposition can be validated if the person takes an active step to do so, and can show that the testator clearly intended to benefit the person, despite their status as witness, signor or translator, and it is clear that no improper or undue influence was exercised over the testator by that person.

### **Effect of subsequent marriage or divorce (Option 1)**

*Option 1 provides that entry into a marriage or other spousal relationship does not revoke the will, but on divorce/termination any beneficial dispositions to the former spouse are deemed revoked unless the Court finds a contrary intention of the testator.*

**20A(1)** No will or provision of a will is revoked by the testator marrying or entering into a spousal relationship.

**(2)** If a married testator makes a will and before the testator's death, the marriage is terminated by a divorce judgment or found to be void, or if a testator who is in a spousal relationship other than a marriage makes a will and before the testator's death, the spousal relationship terminates, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, any provision in the will that

- (a) gives a beneficial interest in property to the testator's former spouse, whether personally or as a member of a class of beneficiaries,
- (b) gives a general or special power of appointment to the testator's former spouse, or
- (c) appoints the testator's former spouse as an executor, a trustee or a guardian of a child

is deemed to have been revoked and, for the purposes of clauses (a) to (c), the will is to be interpreted as if the former spouse had predeceased the testator.

### **Effect of subsequent marriage or divorce (Option 2)**

*Option 2 deems a will to be revoked on the subsequent marriage/spousal relationship [or divorce/termination] of the testator except in circumstances described in clause (a) or (b) and where the Court orders otherwise under s.(2) [or (4)].*

**20B(1)** If, after making a will, the testator enters into a marriage or other spousal relationship, the will is deemed to be revoked unless

- (a) there is a declaration in the will that it is made in contemplation of the marriage or other spousal relationship;
- (b) the will is made in the exercise of a power of appointment of real or personal property that, if the appointment were not made, would not pass to the heirs, executor or administrator of the testator or to the persons entitled to the estate of the testator if the testator died intestate, or
- (c) the Court orders otherwise under subsection (2).

**(2)** The Court may, on application, order that subsection (1) does not apply to a will if the Court is satisfied on clear and convincing evidence that the testator made the will in contemplation of the marriage or other spousal relationship.

**[(3)** If a married testator makes a will and before the testator's death, the marriage is terminated by a divorce judgment or found to be void, or if a testator who is in a spousal relationship other than a marriage makes a will and before the testator's death, the spousal relationship terminates, the will is deemed to be revoked unless

- (a) there is a declaration in the will that it is made in contemplation of the termination of the marriage or other spousal relationship,
  - (b) the will is made in the exercise of a power of appointment of real or personal property that, if the appointment were not made, would not pass to the heirs, executor or administrator of the testator or to the persons entitled to the estate of the testator if the testator died intestate, or
  - (c) the Court orders otherwise under subsection (4).
- (4) The Court may, on application, order that subsection (3) does not apply to a will if the Court is satisfied on clear and convincing evidence that the testator made the will in contemplation of the termination of the marriage or other spousal relationship.]

### **Effect of subsequent marriage [or divorce] (Option 3)**

*Option 3 provides for deemed intestacy on a subsequent marriage/spousal relationship [or divorce/termination] if certain tests are met, unless the Court grants relief.*

**20C(1)** An individual who makes a will, subsequently enters into a marriage or other spousal relationship and then dies is deemed to have died intestate if the death occurs

- (a) during the marriage or other spousal relationship, or
- (b) while any issue of the individual is still alive.

[(1.1) If a married individual makes a will and before the individual's death, the marriage is terminated by a divorce judgment or found to be void, or if an individual who is in a spousal relationship other than a marriage makes a will and before the individual's death, the spousal relationship terminates, the individual is deemed to have died intestate if the death occurs while any issue of the individual is still alive.]

(2) A person who is a beneficiary under the will of an individual referred to in subsection (1) [or (1.1)] but who will not be entitled to share in the individual's estate on the deemed intestacy may apply to the Court for an order giving effect to any beneficial disposition made in favour of that person by the will.

(3) The Court may, on application under subsection (2), order that effect be given to any beneficial disposition, or any part of the beneficial disposition, if the Court is satisfied that the order can be made without undue detriment to any other person who is entitled to share in the estate on the deemed intestacy.

(4) Without limiting the generality of subsection (3), the Court may consider that a detriment to a person who is entitled to share in the estate on the deemed intestacy and who is a beneficiary under the will is not an undue detriment if that person will receive, as a result of an order made under subsection (3), no less than the person would have been entitled to receive under the will.

(5) Notwithstanding subsection (2), the Court may, if the Court considers it just, allow an application to be made under that subsection in respect of any portion of the estate remaining undistributed at the date of the application.

[\(2015 s. 14 A to C\)](#)

**COMMENT:** This section provides three options for how to deal with automatic revocation upon the happening of certain events. It is a common principle that a will is not invalidated by a change in circumstances. Either the will may provide for that eventuality, or the rules relating to failed gifts will provide a solution. However, the law has long been that entry into a marriage is a sufficiently significant change in circumstances, involving the undertaking of new obligations, that any existing testamentary instruments should automatically be revoked.

Option number one in section 20A concludes that there are now sufficient protections in place, including matrimonial property and family support provisions, that the old law of automatic revocation is no longer necessary. It also concludes that the default position, after termination of the relationship, is that there is no longer an intention to benefit the former spouse or partner. The first option therefore leaves the will in place but surgically removes any benefit provided by the will to the former spouse or partner. This is the preferred option and does the least damage to the terms of the existing will.

The second option carries forward the provisions of automatic revocation on entry or exit from a relationship. This option would only be appropriate where other aspects of the law are not sufficient to protect the spouse or partner.

Both options 1 and 2 are subject to an expressed intension to the contrary.

The third option, which is modeled on the New Brunswick legislation, attempts to protect the children of the relationship by giving them rights under intestate succession. If, subsequent to the will, the testator enters into or exits from a relationship, and if there are issue of that relationship, the testator is deemed to die intestate. This would have the effect of ensuring that some part of the testator's estate is available for distribution to children. This option substitutes intestacy for the more surgical removal of the former partner under option one.

### **Failed gifts**

**21(1)** If a beneficial disposition in a will cannot take effect because the intended beneficiary has predeceased the testator, whether before or after the will is made, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, the property that is the subject of the beneficial disposition must be distributed

(a) to the alternate beneficiary, if any, of the beneficial disposition, regardless of whether the will provides for the alternate beneficiary to take in the specific circumstances,

(b) if clause (a) does not apply and the deceased beneficiary was a descendant of the testator, to the deceased beneficiary's descendants who survive the testator, in the same manner as if the deceased beneficiary had died intestate without leaving a surviving spouse,

(c) if neither clause (a) nor (b) applies, to the surviving residuary beneficiaries of the testator, if any, named in the will, in proportion to their interests, or

(d) if none of clauses (a), (b) or (c) applies, in the same manner as if the testator had died intestate.

**(2)** If a beneficial disposition in a will cannot take effect by reason of the beneficial disposition to the intended beneficiary being void, contrary to law or disclaimed, or for any other reason, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, the property that is the subject of the beneficial disposition must be distributed as if subsection (1)(a) to (d) applied and the intended beneficiary had predeceased the testator.

**(3)** Notwithstanding subsection (1), no share of the property that is the subject of the beneficial disposition shall be distributed to an individual described in section 19(1) unless section 19(2) applies.

[\(2015 s. 15\)](#)

**COMMENT:** This section rationalizes and updates the whole area of the law relating to lapse, ademption and disqualification. It creates one hierarchical scheme to deal with gifts which fail for any reason. The hierarchy follows the expressed wishes of the testator, then the presumed wishes (including residue instructions) and finally relies on intestacy provisions.

### Property disposed of before death

**22** If a testator makes a will disposing of property to a beneficiary, and after the making of the will but before his or her death, disposes of an interest in the property, the beneficiary inherits any remaining interest the testator has in the property at the time of death unless the Court, in interpreting the will, finds that the testator had a contrary intention.

[\(2015 s. 16\)](#)

**COMMENT:** This section provides a corollary for section 21, in that a beneficiary may still recover a “remaining interest” even if property was disposed of before death. The interpretation of “remaining interest” is left to the court.

### Interpretation

**23** A will must be interpreted in a manner that gives effect to the intent of the testator, and in determining the testator’s intent the Court may admit the following evidence:

(a) evidence as to the meaning, in either an ordinary or a specialized sense, of the words or phrases used in the will,

(b) evidence as to the meaning of the provisions of the will in the context of the testator’s circumstances at the time of the making of the will, and

(c) evidence of the testator’s intent with regard to the matters referred to in the will.

[\(2015 s. 17\)](#)

**COMMENT:** This section simplifies a number of difficult technical rules which were more often circumvented than followed. Old rules that required an error on the face of the document are replaced by the simple direction to give effect to the intention of the testator, by putting the court into the language or circumstances of the testator. There is no condition precedent to the court having access to parole evidence if it is appropriate to do so.

### Restoration

**24** If a writing, marking or obliteration renders part of a will illegible and is not made in accordance with section 11(a), (b) or (c) [or 12], whichever applies, or validated by an order under section 18, the Court may allow the original words of the will to be restored or determined by any means the Court considers appropriate.

[\(2015 s. 18; Am. 2021 s. 17\)](#)

**COMMENT:** This section replaces the old and uncertain approach of determining whether an obliteration was “apparent”. The court may now restore by any means it finds appropriate, and presumably effective.

### Conflict of laws

**25(1)** For the purposes of this section,

(a) an interest in land includes

- (i) a leasehold estate, a freehold estate and any other estate or interest in land whether the estate or interest is real property or personal property, and
- (ii) a movable whose value consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land,

and

- (b) an interest in movables includes
  - (i) an interest in an intangible or tangible thing other than land, and
  - (ii) personal property other than an estate or interest in land.
- (2) The intrinsic validity and effect of a will,
  - (a) as the will relates to an interest in land, are governed by the law of the place where the land is situated, and
  - (b) as the will relates to an interest in movables, are governed by the law of the place where the testator was domiciled or habitually resident at the time of the testator's death.
- (3) As regards the manner of making a will, a will made either within or outside [the enacting jurisdiction] is valid and admissible to probate if it is made in accordance with the law in force at the time of its making in the place where
  - (a) the will was made, or
  - (b) the testator was domiciled or had his or her habitual residence when the will was made.
- (4) Nothing in this section precludes resort to the law of the place where the testator was domiciled or had his or her habitual residence at the time of making a will in aid of its construction as regards an interest in land or an interest in movables.
- (5) A change of domicile or in the habitual residence of the testator occurring after a will is made does not render the will invalid as regards the manner of its making or affect its proper interpretation.

[\(2015 s. 19\)](#)

**COMMENT:** This section updates the conflict of laws rules relating to succession by:

- (i) clearly differentiating between land and movable property;
- (ii) articulating clear rules for the validity and effect of a will – land is governed by *lex situs* and movables by the habitual residence (domicile) of the deceased;
- (iii) articulating clear rules for formal validity, to be determined according to the place of making or habitual residence (domicile).

## PART 4 INTERNATIONAL WILLS

### Force of Law

#### Option A

**26.** 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

**26.** 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*].

(2016 s. 20)

**COMMENT**

Section 26 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 31 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 26 and 31 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 26 and Option B or C of section 31 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**

**27** Nothing in sections 26 to 31 affects the validity of a will that is valid under the laws other than sections 26 to 31 that are in force in [*jurisdiction*].

(2016 s. 21)

**COMMENT**

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

**Authorized persons**

**28** 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.

(2016 s. 22)

**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]**

**29(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).

(2016 s. 23)

**Disclosure of information in system**

**30** No international will deposited in the system continued by section 29, 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
- (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.

(2016 s. 24)

**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 29 and 30.

Jurisdictions that enacted section 52 of the withdrawn Uniform Act and established a registration system may enact subsection 29(1) to continue it for the safekeeping of international wills registered therein. Subsection 29(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 29 would also have to enact section 30 which sets out how the information contained in the system may be disclosed.

Section 30 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 30(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

**31** This Part 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

**31** This Part 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

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

(2016 s.25)

### **COMMENT**

The commencement provision is designed to apply to the entire Uniform Act and not only to sections 26 to 31. 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 26 to 30 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 26 to 30 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 26 – 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 26 – 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 26.

For a jurisdiction choosing to bring its Act into force on assent, section 31 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 26.

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 section 26 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 26 – 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 26.

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 26 – Force of Law.

**PART 5 - GENERAL**

**Repeal of the *Uniform Wills Act***

32 The *Uniform Wills Act* is repealed.

**[Resolution 2014: THAT upon its adoption, the existing *Uniform Wills Act* be repealed. (March 31, 2015)]**

**Consequential Amendment**

33 The Commentary to the Uniform Electronic Commerce Act, s. 2, is modified by adding after the first paragraph:

As a result, the Uniform Wills Act and the Uniform Powers of Attorney Act provide for wills and powers of attorney in electronic form and provide detailed rules for the creation, alteration or revocation of such documents. The exception in s. 2 is maintained specifically to ensure that the rules relating to wills and powers of attorney are exclusively and comprehensively set out in Wills or Powers of Attorney legislation.

[\(2021 s. 18\)](#)

.....

**[RESOLUTION 2020:**

**THAT** the commentary to the Uniform Electronic Commerce Act section 2 is modified by adding the following after the first paragraph:

*As a result, the Uniform Wills Act and the Uniform Powers of Attorney Act provide for wills and powers of attorney in electronic form and provide detailed rules for the creation, alteration or revocation of such documents. The exception in s. 2 is maintained specifically to ensure that the rules relating to wills and powers of attorney are exclusively and comprehensively set out in Wills or Powers of Attorney legislation;]*

**SCHEDULE**

**CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL (WASHINGTON D.C., OCTOBER 26, 1973)**