

# *The Wills Act, 1996*

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[Chapter W-14.1](#) of the *Statutes of Saskatchewan, 1996* (effective August 1, 1997) as amended by the *Statutes of Saskatchewan, 2001, c.51; 2019, c.I-13.2; 2020, c.8; and 2022, c.22.*

**NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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**CHAPTER W-14.1**  
An Act respecting Wills

PRELIMINARY

**Short title**

1 This Act may be cited as *The Wills Act, 1996*.

**Definitions**

2 In this Act:

“**electronic means**” means an electronic means of communication that includes visual aspects by which the testator of a will and the witnesses are able to adequately communicate with each other at all times during the course of their meeting; (« *moyen électronique* »)

“**will**” includes:

- (a) a testament;
- (b) a codicil;
- (c) an appointment by will or by writing in the nature of a will in exercise of a power; and
- (d) any other testamentary disposition. (« *testament* »).

2022, c 22, s.4.

**Application**

3(1) Except as provided in subsection (3), this Act applies only to wills made after March 10, 1931.

(2) For the purposes of this Act, a will that is re-executed or revived by a codicil is deemed to be made at the time that it was re-executed or revived.

(3) In the case of a person who died after March 10, 1931, section 22 applies to his or her will whether it was made before, on or after March 10, 1931.

(4) *The Wills Act*, R.S.S. 1930, chapter 90, continues in force respecting wills made before March 11, 1931.

1996, c.W-14.1, s.3.

### WHO MAY MAKE A WILL

#### Maker of will to be 18 or more

4 A will is not valid unless it is made by a person 18 years of age or more unless provided otherwise by this Act.

1996, c.W-14.1, s.4.

#### Maker of will may be less than 18 if married

5 The will of a person made while that person is or was married or cohabiting in a spousal relationship is not invalid because he or she was under the age of 18 years.

1996, c.W-14.1, s.5; 2001, c.51, s.10.

#### Wills by sailors or members of the armed forces

6(1) A member of the armed forces in actual service or a sailor in the course of a voyage, may make a will in writing signed by him or her or by some other person in his or her presence and by his or her direction, without:

- (a) any further formality; or
- (b) any requirement as to the presence of or attestation or signature by a witness.

(2) A member of the armed forces is deemed to be in actual service after he or she has taken some steps under the orders of a superior officer in view of and preparatory to joining the forces engaged in hostilities.

(3) The will of a person made pursuant to this section is not invalid because he or she was under the age of 18 years.

1996, c.W-14.1, s.6.

### FORMALITIES OF A WILL

#### Execution of a will

7(1) Unless provided otherwise in this Act, a will is not valid unless:

- (a) it is in writing and signed by the testator or by another person in the testator's presence and by the testator's direction;
- (b) it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as the testator's will;
- (c) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses who are in the presence of the testator at the same time; and
- (d) at least 2 of the witnesses in the presence of the testator:
  - (i) attest and sign the will; or
  - (ii) acknowledge their signatures on the will.

(2) Subject to subsection (3), no form of attestation by the witnesses is necessary.

(3) For the purposes of clauses (1)(c) and (d), **"in the presence of"** includes attendance by electronic means if the following conditions are met:

- (a) one of the witnesses is a lawyer;

- (b) the lawyer who is witnessing the will:
  - (i) takes all reasonable steps by electronic means to verify the identity of the testator and to confirm the contents of the will; and
  - (ii) complies with all requirements established by the Law Society of Saskatchewan related to the witnessing of a will by electronic means.

(4) Every will that was witnessed by electronic means in accordance with section 3 of *The Wills (Public Emergencies) Regulations* or section 3 of *The Wills Regulations* before subsection (3) came into force is deemed to have been witnessed in accordance with subsection (3).

2022, c.22, s.4.

#### **Holograph will**

**8** A holograph will, wholly in the handwriting of the testator and signed by him or her, may be made without any further formality or any requirement as to the presence of or attestation or signature by a witness.

1996, c.W-14.1, s.8.

#### **Power of appointment**

**9** Every will made in accordance with this Act, with respect to its execution and attestation, is a valid execution of a power of appointment by will notwithstanding that it has been expressly required that a will in exercise of the power is to be executed with some additional or other form of execution or solemnity.

1996, c.W-14.1, s.9.

#### **No publication required**

**10** Every will made in accordance with this Act is valid without any further publication of the will.

1996, c.W-14.1, s.10.

#### **Execution of alterations**

**11(1)** No obliteration, interlineation, cancellation by drawing lines across a will or any part of a will, or other alteration made in a will after execution is valid or has any effect except to the extent that the words or effect of the will before the alteration are not apparent unless the alteration is executed in accordance with this Act.

(2) The will with the alteration as part of it is properly executed if the signature of the testator and the subscription of the witnesses are made:

- (a) in the margin or in some part of the will opposite or near to the alteration; or
- (b) at the foot or end of or opposite to a memorandum referring to the alteration and written at the end or in some other part of the will.

(2.1) The witnessing of an alteration of a will pursuant to subsection (2) may be made by electronic means if the following conditions are met:

- (a) one of the witnesses is a lawyer;

- (b) the lawyer who is witnessing the alteration of the will:
- (i) takes all reasonable steps by electronic means to verify the identity of the testator and to confirm the contents of the will as altered; and
  - (ii) complies with all requirements established by the Law Society of Saskatchewan related to the witnessing of an alteration of a will by electronic means.
- (2.2) Every alteration of a will that was witnessed by electronic means in accordance with section 4 of *The Wills (Public Emergencies) Regulations* or section 4 of *The Wills Regulations* before subsection (2.1) came into force is deemed to have been witnessed in accordance with subsection (2.1).
- (3) A will may be altered by a testator without any requirement as to the presence of or attestation or signature by a witness or any further formality if the alteration is wholly in the handwriting of, and signed by, the testator.

1996, c.W-14.1, s.11; 2022, c22, s.4.

## WITNESSES

### Incompetency of witnesses

**12** If a person who attests the execution of a will is, or later becomes, incompetent as a witness to prove the execution of the will, the will is not invalid for that reason.

1996, c.W-14.1, s.12.

### Gift to attesting witness

**13(1)** In this section, “**interest**” means any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal property, other than charges and directions for the payment of any debt. («*intérêt*»)

- (2) Subject to subsection (4), if a person attests the execution of a will and by the terms of the will that person, or his or her spouse at that time, is given an interest, that interest is void respecting that person, his or her spouse or any person claiming under either of them.
- (3) The person attesting is competent as a witness to prove the execution of the will or the validity or invalidity of the will.
- (4) Where the will is sufficiently attested without the attestation of that person, or where no attestation is necessary, the interest is not void.
- (5) A court may declare that an interest is not void pursuant to subsection (2) where it is satisfied on application that the person who attested the execution of the will or the person who was the spouse of that person at the time of attestation did not exercise any improper or undue influence on the testator.

(6) An application for a declaration must be made to the court within six months from the grant of probate of the will or of administration with the will annexed and may be made by:

- (a) the person who attests the execution of the will;
- (b) the person who was the spouse of the person who attests the execution of the will at the time of attestation; or
- (c) a person claiming under either of the persons mentioned in clauses (a) and (b).

1996, c.W-14.1, s.13.

**Creditor as witness**

**14** If by a will any real or personal property is charged with a debt, and a creditor or the spouse of a creditor whose debt is so charged attests the execution of the will, the person so attesting is competent as a witness to prove the execution of the will or its validity or invalidity.

1996, c.W-14.1, s.14.

**Executor as witness**

**15** A person is not incompetent as a witness to prove the execution of a will, or its validity or invalidity, solely because he or she is an executor.

1996, c.W-14.1, s.15.

## REVOCATION AND REVIVAL

**Revocation in general**

**16(1)** No will or any part of a will is revoked other than:

- (a) by another will executed in accordance with this Act;
- (b) by some writing declaring an intention to revoke the will or part of the will and executed in accordance with this Act; or
- (c) by burning, tearing or otherwise destroying the will or part of the will by the testator, or by some person in the testator's presence and by the testator's direction, with the intention of revoking it.

(2) The witnessing of a revocation of a will pursuant to clause (1)(b) may be made by electronic means if the following conditions are met:

- (a) one of the witnesses is a lawyer;
- (b) the lawyer who is witnessing the revocation of the will:
  - (i) takes all reasonable steps by electronic means to verify the identity of the testator and to confirm the contents of the will being revoked; and
  - (ii) complies with all requirements established by the Law Society of Saskatchewan related to the witnessing of a revocation of a will by electronic means.

(3) Every revocation of a will pursuant to clause (1)(b) that was witnessed by electronic means in accordance with section 4 of *The Wills (Public Emergencies) Regulations* or section 4 of *The Wills Regulations* before subsection (2) came into force is deemed to have been witnessed in accordance with subsection (2).

2022, c.22, s.4.

**17 Repealed.** 2020, c.8, s.16.

**No revocation by presumption**

**18** Except in the case of the events mentioned in section 19, a will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances.

1996, c.W-14.1, s.18.

**Effect of divorce, etc.**

**19(1)** This section applies where, after the making of the will and before the death of the testator:

- (a) the marriage of the testator is terminated by a divorce;
- (b) the marriage of the testator is found to be void or declared a nullity by a court in a proceeding to which the testator is a party; or
- (c) the testator and his or her spouse, who are not legally married, have ceased to cohabit in a spousal relationship for at least 24 months.

(2) In the circumstances mentioned in subsection (1), unless a contrary intention appears in the will, the following are revoked and the will is to be construed as if the spouse had predeceased the testator:

- (a) a devise or bequest of a beneficial interest in property to the spouse;
- (b) the appointment of the spouse as executor or trustee;
- (c) a general or special power of appointment conferred on the spouse.

(3) In this section, “**spouse**” includes the person purported or thought by the testator to be his or her spouse. (« *conjoint* »)

2001, c.51, s.10.

**Revival**

**20(1)** A will or part of a will that has been revoked is revived only by a will or codicil made in accordance with this Act that shows an intention to give effect to the will or the part of a will that was revoked.

(2) Unless a contrary intention is shown, when a will that has been partly revoked and afterward wholly revoked, is revived, the revival does not extend to the part that was revoked before the revocation of the whole.

(3) The witnessing of a will or codicil to revive a will or part of a will that has been revoked may be made by electronic means if the following conditions are met:

- (a) one of the witnesses is a lawyer;

- (b) the lawyer who is witnessing the new will or codicil:
    - (i) takes all reasonable steps by electronic means to verify the identity of the testator and to confirm the contents of the new will or codicil; and
    - (ii) complies with all requirements established by the Law Society of Saskatchewan related to the witnessing of a will or codicil by electronic means.
- (4) Every will or codicil that was witnessed by electronic means in accordance with section 4 of *The Wills (Public Emergencies) Regulations* or section 4 of *The Wills Regulations* to revive a will or part of a will pursuant to this section before subsection (3) came into force is deemed to have been witnessed in accordance with subsection (3).

1996, c.W-14.1, s.20; 2022, c.22, s.4.

## DEVICES AND BEQUESTS — GENERAL

### Property disposable by will

**21** A person may by will devise, bequeath or dispose of all real and personal property, whether acquired before or after the making of his or her will, to which at the time of his or her death he or she is entitled either at law or in equity for an interest not ceasing at death, including:

- (a) estates *pur autre vie*, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;
- (b) contingent, executory or other future interests in any real or personal property, whether:
  - (i) the testator is or is not ascertained as the person or one of the persons in whom they may respectively become vested; and
  - (ii) he or she is entitled to those interests under the instrument by which they were respectively created or under a disposition by deed or will; and
- (c) rights of entry.

1996, c.W-14.1, s.21.

### Gifts to persons predeceasing testator

**22(1)** Unless a contrary intention appears in the will, where a person dies in the lifetime of a testator either before or after the testator makes the will, a devise or bequest to that person does not lapse if that person:

- (a) is a child or other issue or brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his or her death; and
- (b) leaves a spouse or issue any of whom is living at the time of the death of the testator.

(2) The devise or bequest mentioned in subsection (1) takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he or she had died intestate and without debts immediately after the death of the testator, except that the surviving spouse of that person is not entitled to receive the preferential share pursuant to *The Intestate Succession Act, 2019*.

1996, c.W-14.1, s.22; 2019, cI-13.2, s.24.

**Meaning of “die without issue”, etc.**

**23(1)** Subject to subsection (2), in a devise or bequest of real or personal property the following words mean a failure of issue in the lifetime or at the time of death of a person, and do not mean an indefinite failure of his or her issue unless a contrary intention appears in the will:

- (a) “die without issue”;
- (b) “die without leaving issue”;
- (c) “have no issue”;
- (d) other words importing either a lack or failure of issue of a person in his or her lifetime or at the time of his or her death or an indefinite failure of his or her issue.

(2) Subsection (1) does not extend to cases where the words defined in that subsection indicate:

- (a) if no issue described in a preceding gift is born; or
- (b) if there is no issue who lives to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.

1996, c.W-14.1, s.23.

**Will speaking from death**

**24** Unless a contrary intention appears in the will, every will is to be construed, respecting the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator.

1996, c.W-14.1, s.24.

**Appointment made by general gift**

**25(1)** Unless a contrary intention appears in the will, a general devise of any of the following includes any real property, or any real property to which the description extends, that the testator has power to appoint in any manner he or she considers appropriate and operates as an execution of the power:

- (a) the real property of the testator;
- (b) the real property of the testator:
  - (i) in a place mentioned in the will; or
  - (ii) in the occupation of a person mentioned in the will;
- (c) real property described in a general manner.

(2) Unless a contrary intention appears in the will, a bequest of any of the following includes any personal property, or any personal property to which the description extends, that the testator has power to appoint in any manner he or she considers appropriate and operates as an execution of the power:

- (a) the personal property of the testator;
- (b) personal property described in a general manner.

1996, c.W-14.1, s.25.

**Subsequent conveyances, etc.**

**26(1)** No conveyance of or other act relating to any real or personal property comprised in a will, made or done subsequent to the execution of the will, prevents the operation of the will respecting the estate or interest that the testator had power to dispose of by will at the time of his or her death.

(2) Unless a contrary intention appears in the will, where a testator has devised real property and subsequently does any of the following, the beneficiary named in the devise takes the testator's interest under that agreement for sale, mortgage or option agreement:

- (a) sells the property by agreement for sale;
- (b) sells the property and takes back a mortgage on that property as security for all or part of the purchase price;
- (c) grants an option to purchase the property.

1996, c.W-14.1, s.26.

## DEVISES

**Lapsed and void devises**

**27** Unless a contrary intention appears in the will, real property or an interest in real property that is comprised or intended to be comprised in a devise that fails or becomes void by reason of either of the following is included in the residuary devise, if any, contained in the will:

- (a) the death of the devisee in the lifetime of the testator;
- (b) the devise being contrary to law or otherwise incapable of taking effect.

1996, c.W-14.1, s.27.

**Inclusion of leaseholds**

**28** Unless a contrary intention appears in the will, where a testator devises any of the following, the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates:

- (a) his or her land;

- (b) his or her land in a place mentioned in the will, or in the occupation of a person mentioned in the will;
- (c) land described in a general manner;
- (d) land described in a manner that would include a leasehold estate if the testator had no freehold estate that could be described in the manner used.

1996, c.W-14.1, s.28.

**No words of limitation**

**29** Unless a contrary intention appears in the will, where real property is devised without words of limitation, the devise passes the fee simple or the whole of any other estate in the real property that the testator had power to dispose of by will.

1996, c.W-14.1, s.29.

**Option to purchase**

**30(1)** Unless a contrary intention appears in the will, where a will confers a power to sell real property, the power includes the power to grant an option to purchase that property if the period within which the option may be exercised is not longer than one year from the date on which the instrument granting the option is executed.

(2) Notwithstanding section 3, subsection (1) applies to wills made before, on or after March 10, 1931.

1996, c.W-14.1, s.30.

**Devise to "heirs"**

**31** Where real property is devised to the heirs of the testator, or of any other person, and no contrary intention is signified by the will, the word "heirs" is to be construed to mean the persons to whom the beneficial interests in the real property would go in the case of intestacy.

1996, c.W-14.1, s.31.

**Unlimited devise to trustees**

**32** Where real property is devised to a trustee without express limitation of the estate to be taken by the trustee and the beneficial interest in the real property or in the surplus rents and profits is not given to a person for life or is given to a person for life but the purpose of the trust may continue beyond his or her life, the devise vests in the trustee the fee simple or the whole of any other estate in the real property that the testator had power to dispose of by will and not an estate determinable when the purposes of the trust are satisfied.

1996, c.W-14.1, s.32.

**Devise to trustees or executors**

**33** Where real property is devised to a trustee or executor, the devise passes the fee simple or the whole of any other estate in the real property that the testator had power to dispose of by will unless a definite term of years absolute or determinable or an estate of freehold is given to the trustee or executor expressly or by implication.

1996, c.W-14.1, s.33.

**Devises of estate tail**

**34(1)** For the purposes of this section, “**estate tail**” means a devise that would have been, under the law of England, an estate tail or in *quasi* entail. («*domaine taillé*»)

(2) Unless a contrary intention appears in the will, where a person to whom real property is devised for an estate tail dies in the lifetime of the testator and leaves issue who would inherit under the entail if that estate existed, if any of those issue are living at the time of the death of the testator, the devise does not lapse but takes effect as if the death of that person had happened immediately after the death of the testator.

1996, c.W-14.1, s.34.

**Primary liability of mortgaged land**

**35(1)** Where a person dies possessed of, or entitled to, or under a general power of appointment by his or her will disposes of, an interest in freehold or leasehold property that, at the time of his or her death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary intention:

(a) the interest, as between the different persons claiming through the deceased, is primarily liable for the payment or satisfaction of the mortgage debt; and

(b) every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary intention by either of the following unless he or she further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt:

(a) a general direction for the payment of debts or of all the debts of the testator out of his or her personal estate or his or her residuary real or personal estate, or his or her residuary real estate;

(b) a charge of debts on that estate.

(3) Nothing in this section affects any right of a person entitled to the mortgage debt to obtain payment or satisfaction of the mortgage debt, either out of the other assets of the deceased or otherwise.

(4) In this section, “**mortgage**” includes an equitable mortgage and any charge, whether equitable, statutory or of any other nature, including any lien or claim on freehold or leasehold property for unpaid purchase money, and “**mortgage debt**” has a similar meaning. («*hypothèque*»; «*dette hypothécaire*»)

1996, c.W-14.1, s.35.

**GENERAL****Executor as trustee of residue**

**36(1)** Where a person died after March 10, 1931 and had appointed an executor, the executor is a trustee of any residue not expressly disposed of, for the person, if any, who would be entitled to that residue in the event of intestacy respecting it, unless the executor was intended by the will to take the residue beneficially.

(2) Nothing in this section affects or prejudices any right to which the executor, if this Act had not been passed, would have been entitled, in cases where there is no person who would be so entitled.

1996, c.W-14.1, s.36.

#### Substantial compliance

**37** The court may, notwithstanding that a document or writing was not executed in compliance with all the formal requirements imposed by this Act, order that the document or writing be fully effective as though it had been properly executed as the will of the deceased or as the revocation, alteration or revival of the will of the deceased or of the testamentary intention embodied in that other document, where a court, on application is satisfied that the document or writing embodies:

- (a) the testamentary intentions of a deceased; or
- (b) the intention of a deceased to revoke, alter or revive a will of the deceased or the testamentary intentions of the deceased embodied in a document other than a will.

1996, c.W-14.1, s.37.

#### Immovable and movable property - conflict of laws

**38(1)** In this section and sections 39 and 40:

- (a) “**immovable property**” includes real property and a leasehold or other interest in land; (*«biens immeubles»*)
  - (b) “**movable property**” includes personal property other than a leasehold or other interest in land. (*«biens meubles»*)
- (2) The manner of making, the validity of and the effect of a will, with respect to immovable property, are governed by the law of the place where the property is situated.
- (3) Subject to sections 39 and 40, the manner of making, the validity of and the effect of a will, with respect to movable property, are governed by the law of the place where the testator was domiciled at the time of his or her death.

1996, c.W-14.1, s.38.

#### Wills of movables

**39(1)** A will made in Saskatchewan, regardless of the domicile of the testator at the time of the making of the will or at the time of his or her death, with respect to movable property, is properly made and admissible to probate if it is made in accordance with this Act or if it is made in accordance with the law in force at the time of the making of it of the place where:

- (a) the testator was domiciled when the will was made; or
- (b) the testator had his or her domicile of origin.

(2) A will made outside Saskatchewan, regardless of the domicile of the testator at the time of the making of the will or at the time of his or her death, with respect to movable property, is properly made and admissible to probate if it is made in accordance with this Act or if it is made in accordance with the law in force at the time of the making of it of the place where:

- (a) the testator was domiciled when the will was made;
- (b) the will was made; or
- (c) the testator had his or her domicile of origin.

1996, c.W-14.1, s.39.

#### Change of domicile

**40** No will is revoked or becomes invalid and the construction of a will is not altered by reason of any subsequent change of domicile of the person making the will.

1996, c.W-14.1, s.40.

#### Regulations

**40.1** The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (c) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2022, c 22, s.4.

## INTERNATIONAL WILLS

#### Interpretation

**41** In this section and sections 42 to 51:

“**convention**” means the Convention Providing a Uniform Law on The Form of an International Will set out in the Schedule; (*«convention»*)

“**international will**” means a will that has been made in accordance with the rules regarding an international will set out in the Annex to the convention; (*«testament international»*)

“**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned; (*«ministre»*)

“**registration system**” means a system for the registration or the registration and safekeeping of international wills established pursuant to section 46 or pursuant to an agreement entered into pursuant to section 47; (*«système d'enregistrement»*)

“**registrar**” means the person responsible for the operation and management of the registration system. (*«conservateur des testaments internationaux»*)

1996, c.W-14.1, s.41.

**Application of convention**

**42** On and from October 8, 1982, the convention is in force in Saskatchewan and applies to wills as the law of Saskatchewan.

1996, c.W-14.1, s.42.

**Rules re international wills**

**43** On and from October 8, 1982, the rules regarding an international will set out in the Annex to the convention are law in Saskatchewan.

1996, c.W-14.1, s.43.

**Validity under other laws**

**44** Nothing in sections 41 to 51 detracts from or affects the validity of a will that is valid pursuant to the laws in force in Saskatchewan other than sections 41 to 51.

1996, c.W-14.1, s.44.

**Authorized persons**

**45** All lawyers are designated as persons authorized to act in connection with international wills.

1996, c.W-14.1, s.45.

**Registration system**

**46** The minister shall establish a system of registration or registration and safekeeping of international wills.

1996, c.W-14.1, s.46.

**Agreements re registration system**

**47** With the approval of the Lieutenant Governor in Council, the minister, for and on behalf of the Crown in right of Saskatchewan, may enter into an agreement with the government of another province or a minister or official of the government of another province:

- (a) relating to the establishment of a system of registration or registration and safekeeping of international wills for Saskatchewan and that other province, and for the joint operation of that system; or
- (b) relating to the exchange of information contained in a system established pursuant to section 46 and a similar system established for that other province.

1996, c.W-14.1, s.47.

**Joint system in lieu of provincial system**

**48** Where a registration system is established pursuant to an agreement entered into pursuant to clause 47(a), the minister is relieved of his or her obligation pursuant to section 46.

1996, c.W-14.1, s.48.

**Disclosure of information in system**

**49(1)** No information contained in the registration system concerning the international will of a testator is to be released from the system except:

- (a) in accordance with an agreement made pursuant to section 47; or
- (b) to a person who satisfies the registrar that:
  - (i) he or she is the testator;
  - (ii) he or she is a person who is authorized by the testator to obtain the information; or
  - (iii) the testator is dead and the person is an appropriate person to have access to the information.

(2) An international will deposited in the registration system for safekeeping may only be released to a person who satisfies the registrar that:

- (a) he or she is the testator;
- (b) he or she is a person who is authorized by the testator to obtain the will; or
- (c) the testator is dead and the person is an appropriate person to have custody of the will for the purposes of the administration of the estate of the testator or is the agent of that person.

1996, c.W-14.1, s.49.

**Use of registration system**

**50(1)** Where a lawyer has acted during any month respecting an international will in his or her capacity as a person authorized to act in connection with international wills, he or she, on or before the tenth day of the next month, shall file or cause to be filed with the registrar, in a sealed envelope, a list on a form prescribed in the regulations, certified by the lawyer or his or her agent, setting out:

- (a) the name and address of the testator;
- (b) a description of the testator; and
- (c) the date of execution of each international will with respect to which he or she so acted.

(2) The registrar shall enter the information in the registration system.

(3) The failure of a lawyer to comply with subsection (1) does not affect the validity of the international will.

1996, c.W-14.1, s.50.

**Regulations**

**51** The Lieutenant Governor in Council may make regulations respecting the operation, maintenance and use of the registration system, including:

- (a) prescribing forms for use in the system; and
- (b) prescribing fees for searches of the registration system.

1996, c.W-14.1, s.51.

## REPEAL AND COMING INTO FORCE

**R.S.S. 1978, c.W-14 repealed**

**52** *The Wills Act* is repealed.

1996, c.W-14.1, s.52.

**Coming into force**

**53** This Act comes into force on proclamation.

## 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 in so far 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 systems 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 designed 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, \_\_\_\_\_, a person authorized to act in connection with  
*(name, address and capacity)*  
international wills
- 2 Certify that on \_\_\_\_\_ at \_\_\_\_\_  
*(date)* *(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) 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 or 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.

1996, c.W-14.1, Schedule 1.