

Ontario (Canada)
Succession Law Reform Act
R.S.O. 1990, CHAPTER S. 26

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CONFLICT OF LAWS

Interpretation, ss. 36 to 41

34 In sections 36 to 41,

- (a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land;
- (c) “internal law” in relation to any place excludes the choice of law rules of that place. R.S.O. 1990, c. S.26, s. 34.

Wills made in or out of Ontario, ss. 36 to 41

35 Sections 36 to 41 apply to a will made either in or out of Ontario. R.S.O. 1990, c. S.26, s. 35.

Application of law, land and movables

re interests in land

36 (1) The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated.

re interests in movables

(2) Subject to other provisions of this Part, the manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his or her death. R.S.O. 1990, c. S.26, s. 36.

Application of law, time of making will

37 (1) As regards the manner and formalities of making a will of an interest in movables or in land, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where,

- (a) the will was made;
- (b) the testator was then domiciled;
- (c) the testator then had his or her habitual residence; or

(d) the testator then was a national if there was in that place one body of law governing the wills of nationals.

Idem

(2) As regards the manner and formalities of making a will of an interest in movables or in land, the following are properly made,

- (a) a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration, if any, and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it revokes a will which under sections 34 to 42 would be treated as properly made or revokes a provision which under those sections would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be treated as properly made; and
- (c) a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power. R.S.O. 1990, c. S.26, s. 37.

Change of domicile

38 A change of domicile of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction. R.S.O. 1990, c. S.26, s. 38.

Construction of will, law of testator's domicile when will made

39 Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables. R.S.O. 1990, c. S.26, s. 39.

Movables used in relation to land

40 Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will is governed by the law that governs succession to the interest in the land. R.S.O. 1990, c. S.26, s. 40.

Application of law, general

Formalities

41 (1) Where, whether under sections 34 to 42 or not, a law in force outside Ontario is to be applied in relation to a will, any requirement of that law that,

- (a) special formalities are to be observed by testators answering a particular description; or
- (b) witnesses to the making of a will are to possess certain qualifications,

shall be treated, despite any rule of that law to the contrary, as a formal requirement only.

Effect of alteration of law

(2) In determining for the purposes of sections 34 to 40 whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made, but account shall be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made. R.S.O. 1990, c. S.26, s. 41.

INTERNATIONAL WILLS

Convention on form of international will

42 (1) In this section,

“convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this section. R.S.O. 1990, c. S.26, s. 42 (1).

Effective date

(2) The convention is in force in Ontario and applies to wills as law of Ontario and the rules regarding an international will set out in the Annex to the convention are law in Ontario. R.S.O. 1990, c. S.26, s. 42 (2).

Persons authorized under convention

(3) All persons licensed under the *Law Society Act* to practise law in Ontario as barristers and solicitors are designated as persons authorized to act in connection with international wills. 2006, c. 21, Sched. C, s. 135.

Validity of wills under other laws

(4) Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in Ontario other than this section. R.S.O. 1990, c. S.26, s. 42 (4).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 135 - 01/05/2007

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 designated to direct another person to sign on his behalf.

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

Article 6

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

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

Article 7

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

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

Article 8

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

Article 9

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

Article 10

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

CERTIFICATE

(Convention of October 26, 1973)

1. I,, (name, address and capacity), a person authorized to act in connection with international wills

2. Certify that on (date)

at (place)

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

in my presence and that of the witnesses

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

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

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

5. I furthermore certify that:

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

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

* (2) following a declaration of the testator stating that he was unable to sign his will for the following reason

— I have mentioned this declaration on the will

*— the signature has been affixed by (name, address)

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

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

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

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

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

12. PLACE

13. DATE

14. SIGNATURE and, if

necessary, SEAL

*To be completed if appropriate.

Article 11

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

Article 12

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

Article 13

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

Article 14

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

Article 15

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

R.S.O. 1990, c. S.26, s. 42, Schedule.

Application of Part

43 This Part applies to wills made before, on or after the 31st day of March, 1978 where the testator has not died before that date. R.S.O. 1990, c. S.26, s. 43.

PART

II

INTESTATE SUCCESSION

Note: On January 1, 2022, the day named by proclamation of the Lieutenant Governor, Part II of the Act is amended by adding the following section: (See: 2021, c. 4, Sched. 9, s. 6)

Non-application of intestacy rules to separated spouses

43.1 (1) Any provision in this Part that provides for the entitlement of a person's spouse to any of the person's property does not apply with respect to the spouse if the spouses are separated at the time of the person's death, as determined under subsection (2). 2021, c. 4, Sched. 9, s. 6.

Same

(2) A spouse is considered to be separated from the deceased person at the time of the person's death for the purposes of subsection (1), if,

(a) before the person's death,

(i) they lived separate and apart as a result of the breakdown of their marriage for a period of three years, if the period immediately preceded the death,

- (ii) they entered into an agreement that is a valid separation agreement under Part IV of the *Family Law Act*,
 - (iii) a court made an order with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage, or
 - (iv) a family arbitration award was made under the *Arbitration Act, 1991* with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage; and
- (b) at the time of the person's death, they were living separate and apart as a result of the breakdown of their marriage. 2021, c. 4, Sched. 9, s. 6.

Transition

(3) This section applies in respect of a separation only if an event referred to in clause (2) (a) occurs on or after the day section 6 of Schedule 9 to the *Accelerating Access to Justice Act, 2021* came into force, except that in the case of subclause (2) (a) (i), the spouses must also have begun to live separate and apart on or after that day. 2021, c. 4, Sched. 9, s. 6.

Section Amendments with date in force (d/m/y)

2021, c. 4, Sched. 9, s. 6 - 01/01/2022

Intestacy where spouse and no issue

44 Where a person dies intestate in respect of property and is survived by a spouse and not survived by issue, the spouse is entitled to the property absolutely. R.S.O. 1990, c. S.26, s. 44.

Preferential share of spouse

45 (1) Subject to subsection (3), where a person dies intestate in respect of property having a net value of not more than the preferential share and is survived by a spouse and issue, the spouse is entitled to the property absolutely. 1994, c. 27, s. 63 (1).

Same

(2) Subject to subsection (3), where a person dies intestate in respect of property having a net value of more than the preferential share and is survived by a spouse and issue, the spouse is entitled to the preferential share absolutely. 1994, c. 27, s. 63 (1).

Same

(3) Despite subsection (1), where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and,

- (a) where the spouse is entitled under the will to nothing or to property having a net value of less than the preferential share, the spouse is entitled out of the intestate property to the amount by which

the preferential share exceeds the net value of the property, if any, to which the spouse is entitled under the will;

- (b) where the spouse is entitled under the will to property having a net value of more than the preferential share, subsections (1) and (2) do not apply. 1994, c. 27, s. 63 (1).

Definition

- (4) In this section,

“net value” means the value of the property after payment of the charges thereon and the debts, funeral expenses and expenses of administration. R.S.O. 1990, c. S.26, s. 45 (4); 2009, c. 34, Sched. T, s. 4.

Preferential share

- (5) The preferential share is the amount prescribed by a regulation made under subsection (6). 1994, c. 27, s. 63 (2).

Regulation

- (6) The Lieutenant Governor in Council may, by regulation, prescribe the amount of the preferential share. 1994, c. 27, s. 63 (2).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 63 (1-3) - 01/04/1995

2009, c. 34, Sched. T, s. 4 - 15/12/2009

2021, c. 4, Sched. 9, s. 8 - 19/04/2021

Residue: spouse and children

Same: spouse and one child

- 46** (1) Where a person dies intestate in respect of property and leaves a spouse and one child, the spouse is entitled to one-half of the residue of the property after payment under section 45, if any.

Same: spouse and two or more children

- (2) Where a person dies intestate in respect of property and leaves a spouse and more than one child, the spouse is entitled to one-third of the residue of the property after payment under section 45, if any.

Same: issue of predeceased children

- (3) Where a child has died leaving issue living at the date of the intestate’s death, the spouse’s share shall be the same as if the child had been living at that date. R.S.O. 1990, c. S.26, s. 46.

Distribution of kin

Issue

47 (1) Subject to subsection (2), where a person dies intestate in respect of property and leaves issue surviving him or her, the property shall be distributed, subject to the rights of the spouse, if any, equally among his or her issue who are of the nearest degree in which there are issue surviving him or her. R.S.O. 1990, c. S.26, s. 47 (1).

Share of predeceasing issue

(2) Where any issue of the degree entitled under subsection (1) has predeceased the intestate, the share of such issue shall be distributed among his or her issue in the manner set out in subsection (1) and the share devolving upon any issue of that and subsequent degrees who predecease the intestate shall be similarly distributed. R.S.O. 1990, c. S.26, s. 47 (2).

Parents

(3) Where a person dies intestate in respect of property and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely. R.S.O. 1990, c. S.26, s. 47 (3); 2021, c. 4, Sched. 11, s. 36 (2).

Brothers and sisters

(4) Where a person dies intestate in respect of property and there is no surviving spouse, issue or parent, the property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally. R.S.O. 1990, c. S.26, s. 47 (4); 2021, c. 4, Sched. 11, s. 36 (3).

Nephews and nieces

(5) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother or sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation. R.S.O. 1990, c. S.26, s. 47 (5); 2021, c. 4, Sched. 11, s. 36 (3).

Next of kin

(6) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity to the intestate equally without representation. R.S.O. 1990, c. S.26, s. 47 (6); 2021, c. 4, Sched. 11, s. 36 (3).

Crown

(7) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and the *Escheats Act, 2015* applies. 2015, c. 38, Sched. 4, s. 30; 2021, c. 4, Sched. 11, s. 36 (3).

Degrees of kindred

(8) For the purposes of subsection (6), degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree. R.S.O. 1990, c. S.26, s. 47 (8).

Descendants conceived but unborn

(9) For the purposes of this section, descendants and relatives of the deceased conceived before and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him or her. R.S.O. 1990, c. S.26, s. 47 (9).

Descendants posthumously conceived

(10) For the purposes of this section, descendants and relatives of the deceased conceived and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him or her, if the conditions in subsection 1.1 (1) are met. 2016, c. 23, s. 71 (7).

Right to inherit

(11) The right of a descendant or relative to whom subsection (10) applies to inherit begins on the day he or she is born. 2016, c. 23, s. 71 (7).

Section Amendments with date in force (d/m/y)

2015, c. 38, Sched. 4, s. 30 - 10/12/2016

2016, c. 23, s. 71 (7) - 01/01/2017

2021, c. 4, Sched. 11, s. 36 (2, 3) - 19/04/2021

Abolition of curtesy

48 The common law right of a widower to curtesy is abolished. R.S.O. 1990, c. S.26, s. 48.

Application of Part

49 This Part applies to an intestacy upon a death occurring on or after the 31st day of March, 1978. R.S.O. 1990, c. S.26, s. 49.