



**UNIFORM LAW CONFERENCE OF CANADA
CIVIL SECTION**

POLICY REPORT NO. 2

**PRESENTED BY
INTESTATE SUCCESSION WORKING GROUP**

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the ULCC and its delegates.

**Winnipeg, Manitoba
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Presented to the Civil Section

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TABLE OF CONTENTS

WORKING GROUP MEMBERSHIP	2
BACKGROUND	2
APPLICATION	2
CONSULTATIONS	3
ISSUE IDENTIFICATION AND ANALYSIS	3
1. Definition of Spouse in Section 1(1) of the Uniform Act	3
2. Statutory Wills	3
OPTIONS FOR CONSIDERATION	5
NEXT STEPS.....	5
DRAFT RESOLUTION.....	5

WORKING GROUP MEMBERSHIP

[1] The Working Group began meeting in May, 2024. Its members are:

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BACKGROUND

[2] The Working Group was created to consider revisions to the Uniform Intestate Succession Act (Uniform Act).

[3] This is the second interim report. The [first policy report](#) was presented in August, 2025

APPLICATION

[4] The project is addressed at the law of the common law provinces. We are very fortunate to have the involvement of Prof. Andréanne Malacket and aim to account for substantive law of the Province of Québec on key points.

CONSULTATIONS

[5] The working group has not undertaken any consultations at this time.

ISSUE IDENTIFICATION AND ANALYSIS

1. Definition of Spouse in Section 1(1) of the Uniform Act

[6] The Working Group met to discuss further the definition of a “spouse” for the purposes of the Uniform statute, apropos the question of termination of spousal status in respect of cohabitational relationships. We solicited information on point from the members of the CCSO Family Justice Group. It appears that there is no consistency in treatment amongst the provinces. After considering the issue further, the Working Group confirms its recommendation in our First Interim Report that the approach taken in British Columbia be included in the Uniform Act.

2. Statutory Wills

[7] A “Statutory Will” is a Will provided for the disposition of a Deceased’s assets by court order rather than by testamentary act of the Deceased. The Working Group met and considered whether the Uniform Act should be amended to provide such a jurisdiction to the Court.

[8] The ULCC has already considered this issue in the context of mentally incapable persons. A paper titled Background Discussion on Statutory Wills was presented at the 94th Annual Meeting of the Uniform Law Conference of Canada (2012), in the context of the *Uniform Wills Project*. The ULCC’s *Uniform Wills Act*, proposed in draft form in 2014, provided for Statutory Wills; the relevant provisions were not included in the version of the *Uniform Wills Act* adopted in 2015, but were added in 2021, optionally, as follows:

- i. 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.
- ii. (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.

- [9] The working Group identified five preliminary concerns with including provision for statutory wills in the *Uniform Act*:
- [10] The introduction of a Statutory Will in this area reveals a contradiction: if the purpose of the intestacy rules is to provide a default scheme for the distribution of property based on the legislature's endorsement of what a person who has not made a Will would have intended by virtue of common experience (or what social expectations say the Deceased should have intended), why allow for a "Statutory Will" at all? If the consequences of an intestate distribution would be unduly harsh, then it may well be that the better law reform response is to revise the model of law that establishes such harsh norms rather than provide a discretionary jurisdiction respecting Will-making.
- [11] If the dominant rationale is relief against a harsh result occasioned by intestate distribution, why should relief be restricted to those who cannot make a valid Will due to incapacity?
- [12] As a remedial device to cure an undesirable result that arises by operation of some provision outside the intestacy rules, a Statutory Will is an exceedingly blunt instrument. One might reasonably conclude that the better response is to change the rule that causes the mischief. For example, in jurisdictions that retain the rule revoking a Will by operation of law upon marriage, which may set the stage for "predatory marriages", one must consider as a matter of law reform whether the more appropriate response is the abandonment of the mischief-making rule or the creation of a jurisdiction to make a Statutory Will.
- [13] A jurisdiction to make statutory wills seems a mask for recognizing a legitimate and enforceable "expectation of inheritance" in a manner that the law has not previously accepted. If this is the case, transparency in legal norms favours that we recognize such an enforceable expectation explicitly so that doctrine may develop rationally rather than being left to judicial discretion.
- [14] The prospect of litigation on point causes concerns: the reality of the cost of litigation and the availability of court time causes one to wonder how practically accessible an application for the making of a Statutory Will would be practically. Indeed, in those jurisdictions that do allow for Statutory Wills, they appear to be made infrequently. In addition, there is a real concern in respect of improper applications that the operation of the costs rules will not be a sufficient protection against depletion of the testator's estate, particularly if the "best interests" of the incapable testator, or the fiduciary obligations of a substitute decision-maker, are invoked as the reason for bringing the matter before the Court, which may trigger judicial restraint and an order for a complete indemnification of the parties' litigation expenses to be made out of the incapable person's property.

[15] The Working Group considered the model of law used in New Brunswick through the *Supported Decision-Making and Representation Act*, SNB 2022, c 60 (the only Canadian jurisdiction featuring such legislation) and the *Mental Capacity Act 2005*, c.9 used in England & Wales. We concluded that it would seem that Statutory Wills have been accepted in principle by the ULCC, the legislature of new Brunswick, and the British Parliament as having a legitimate role in the management of an incapable person's property (although there are differences between the three regimes in whether such Wills should be based on some inquiry into the incapable person's subjective testamentary intentions or objective best interests). No jurisdiction, however, appears to allow such Wills to be made at large, outside the incapable persons context. We suggest that a more generalized jurisdiction would be such a fundamental change to succession law that it should await reconsideration of the Uniform Wills Act.

OPTIONS FOR CONSIDERATION

1. Definition of Spouse in Section 1(1) of the Uniform Act

[16] The Working Group confirms its recommendation in our First Interim Report that the approach taken in British Columbia be included in the Uniform Act.

2. Statutory Wills

[17] The working group recommends that no statutory wills provisions be added to the *Uniform Act*.

NEXT STEPS

[18] A revised draft Uniform Act will be prepared for presentation at the 2027 Annual Meeting.

DRAFT RESOLUTION

THAT the Report of the Intestate Succession working group be accepted;

THAT, in accordance with the directions from the ULCC, the Working Group continue its work

THAT the working group present a final report and Draft Uniform Legislation to the ULCC at its 2027 annual meeting.