



May 16, 2007

The Hon. Michael Bryant
Minister of Justice and Attorney General of Ontario
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto ON M5G 2K1

Dear Minister:

Re: Hague Convention on the International Protection of Adults

I write to you on behalf of the Wills, Estates and Trusts Section of the Canadian Bar Association (CBA Section), regarding the *Hague Convention on the International Protection of Adults* (the Convention). The Convention provides protection to incapacitated adults in international situations, to avoid conflicts between legal systems, to encourage international cooperation, and to ensure that the interests of these adults and respect for their dignity and autonomy are primary considerations. We urge each of the provinces and territories in Canada to communicate their support for the Convention to the federal government, and if they have not done so, to enact legislation implementing the Convention upon ratification by Canada.

The protections supplied by the Convention come into play when Canadian incapacitated adults, or their property, are located outside Canada. Consider, for example, an individual who resides in Canada but sojourns in the United States, perhaps having a condominium in Florida. The person may have a power of attorney for property and an advance medical directive drafted under provincial law and signed in Canada. If they are incapacitated and the person appointed under the power of attorney purports to use the power of attorney to sell the land in the United States, the power of attorney may not be honoured when it comes time to transfer land under its authority. Similarly, the medical directive may not be honoured if the adult becomes ill outside of Canada. Another situation may arise where a property guardianship order is granted in Canada, but the adult has property located in a foreign jurisdiction. Again, the guardianship order may not be recognized to protect their interests.

The Convention would operate to provide for the reciprocal recognition of such documents. Canada is not yet a signatory to the Convention, and only one jurisdiction, Saskatchewan, has passed legislation to implement the Convention if ratified. The CBA Section believes that the Convention achieves valuable protections and economies of use to Canadians who have property or dealings abroad. The Uniform Law Conference of Canada (ULCC) has drafted model

legislation, which we support. The legislation may be found on the website at:

<http://www.ulcc.ca/en/us/index.cfm?sec=1&sub=111>.

The International Law Section and the Elder Law Section of the Canadian Bar Association have also reviewed the Convention and support its implementation throughout Canada.

We believe that the Convention will add necessary protections for the legal interests of incapacitated adults, and will help give effect to the intentions of such adults, expressed while competent, as to how their affairs are to be conducted. We urge you to take all steps within your power to resolve this matter without delay. If you have any questions, we encourage you to contact the CBA branch Chair of the Trusts and Estates Section in your jurisdiction, whose name and contact details are below.

Yours truly,

(original signed by John Poyser)

John Poyser, Chair
National Wills, Estates and Trusts Section

(original signed by Corina Weigl)

Corina Weigl, Chair
Trusts and Estates Section, Ontario Bar Association
(416) 865 - 4549