THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

Bill C-428 *Indian Act Amendment and Replacement Act*

NATIONAL ABORIGINAL LAW SECTION
CANADIAN BAR ASSOCIATION

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PREFACE

The Canadian Bar Association is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Aboriginal Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Aboriginal Law Section of the Canadian Bar Association.

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I. INTRODUCTION

The National Aboriginal Law Section of the Canadian Bar Association (CBA Section) is pleased to comment on Bill C-428, the *Indian Act Amendment and Replacement Act*.

The CBA is a national association of over 37,000 lawyers, notaries, law students and academics, and our mandate includes seeking improvement in the law and the administration of justice. The CBA Section consists of lawyers specializing in Aboriginal law and related issues from across Canada.

Bill C-428 is undertaking to modernize the *Indian Act, "*an outdated colonial statute" as described in the Bill's Preamble. Bill C-428 will repeal many redundant provisions. Part II of our submission notes the sections of the *Indian Act* that we agree should be repealed. Part III explains why amendments proposed in s. 7 of Bill C-428 should not be repealed until a sound legislative alternative is created.

II. INDIAN ACT SECTIONS THAT SHOULD BE REPEALED

A. Sections 32 and 33 − Sale or barter of produce

The CBA section supports the repeal of ss. 32 and 33 of the *Indian Act.*

Section 32 provides that, without the written approval of a superintendent, the sale of certain goods and produce from reserves in Manitoba, Saskatchewan or Alberta to a person not of that band is void. Entering into a transaction that is void under s. 32 is an offence under s. 33.

Section 32 was judicially considered in *R. v. Frank* (1999), 74 Alta. L.R. (3d) 157[1], and in *R. v. Keepness* (2001), 204 Sask. R. 200, 2011 SKQB 115[2].

As of February 4, 2010, all bands and their members in Manitoba, Saskatchewan and Alberta were declared exempt from the operation of these sections (SOR/2010-28). Further, courts have found that s. 32 offers no protection from the application of provincial wildlife statutes, nor does a permit under s. 32 serve as an export license.

B. Section 92 – Departmental employees prohibited from trading without a license

This section prohibits employees of the Department, missionaries and school teachers on reserve from trading for profit with Indians. This provision is antiquated and serves no useful purpose. Section 92 has not been judicially considered according to our review of the annotated *Indian Act.* Section 92 should be repealed.

C. Section 105 – Descriptions of Indians in writs

Section 105 allows for orders, writs, warrants, summons or other proceedings under the *Indian Act* to refer to an Indian, whose name is unknown, "in any manner by which he may be identified". The annotated *Indian Act* shows no judicial consideration of this provision. Section 105 should be repealed as use of the provision could be offensive and disrespectful.

D. Section 114(1)(e), 115(c) and (d), 116(2)(c), 118-121, 122 "truant officer"

Subsection 114(1)(e) allows the government to enter into agreements with religious or charitable organizations to educate Indian children. Subsections 115(c) and (d) authorize the Minister to make agreements with religious organizations to fund and support children in those organizations' schools. Subsection 116(2)(c) states that the Minister may require an Indian who becomes 16 years of age to attend school for a further period as the Minister

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1 *R. v. Frank* (1999), 74 Alta. L.R. (3d) 157 involved a man who sold barley from his reserve to the Columbia Grain Company in the United States. Frank had a permit under s. 32 of the *Indian Act*, but did not have a Canadian Wheat Board Export License. The court did not accept his argument that the s. 32 permit authorized the sale of barley in the United States, and Frank was convicted.

2 In *R. v. Keepness* (2001), 204 Sask. R. 200, 2011 SKQB 115, a man was tricked into selling six deer to an undercover conservation officer. He was charged under a provincial statute with trafficking wildlife. Although the trial judge found that provincial laws were inapplicable, this decision was overturned on appeal. The Court of Appeal held that s. 32 of the *Indian Act* only applied to barter in domestic animals, and that the provincial laws prohibiting the sale of game could apply on reserve.

considers advisable, up until the age of 18. Sections 118 to 121 require Indian children to attend such schools as the Minister designates, creates truant officers to ensure the attendance of children at schools, and sets out requirements for the religious denominations of teachers. Section 122 includes the definition for "truant officer".

These sections only apply to Indians who are ordinarily resident on reserve, and do not apply to First Nations in Nova Scotia for whom the *Mi'kmaq Education Act*, S.C. 1998, c. 24 has been proclaimed. A board of education is not precluded from dealing directly with a band council to provide educational services.[3] A band council that makes its own arrangements for a suitable educational program for its children is not under the direction or supervision of the Minister.[4]

The CBA Section is not aware of any case law interpreting these provisions that would grant positive rights or benefits that would be lost if the sections were repealed. The archaic provisions regarding residential schools should be repealed.

E. Section 82 – By-laws

Section 82 of the *Indian Act* requires that by-laws be forwarded to the Minister within four days of being made. The Minister, or a delegate of the Minister, may then decide whether to disallow the by-law. If a by-law is disallowed, there is no requirement that a notice of disallowance be sent to the band.[5] If a by-law is allowed, it comes into force in 40 days.

Bill C-428 would repeal s. 82 and add s. 86.1. It proposes that band by-laws will come into force through the publication of the by-law on the band's Internet site, in the First Nations Gazette, or in a newspaper that has general circulation on the reserve of the band. The Minister's approval would no longer be necessary for a new by-law to come into force. The CBA Section believes this will be a positive change.

III. SECTIONS 42 TO 47 – WILLS AND DESCENT OF PROPERTY

The CBA Section does not support the proposed repeal of sections 42 to 47 of the *Indian Act.* Significant mischief and hardship will occur if Section 7 of Bill c-428 is enacted. Companion

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3 *Kinistino School Division No. 55 v. James Smith Indian Band* (1988), 66 Sask. R. 224.

4 *Chadee v. Norway House First Nation*,[1996] 10 W.W.R. 335 at 345.

5 *Sawridge Indian Band v. Canada (Minister of Indian Affairs & Northern Development)* (1987), 10 F.T.R. 48, (sub nom. *Twinn v. McKnight*) 37 D.L.R. (4th) 270.

legislation must be drafted, in consultation with First Nations, to fill the legislative gaps created by the Bill.

A. Section 7 of BILL C-428

Section 7 would eliminate the role of the Minister of Aboriginal Affairs and Northern Development Canada and the Department (AANDC) in the administration of estates and approval and voiding of wills.

The subject matter of estates falls under provincial jurisdiction. The *Indian Act* provides a complete code for wills and estates matters for Indians ordinarily resident on reserve. As such, provincial laws do not apply. The current provisions of the *Indian Act* are as follows:

Section 42	provides the Minister with *exclusive* jurisdiction over the estates of Indians who die *ordinarily resident* on reserve;
Section 43	defines the Minister's authority to appoint executors of wills of Indians who die with a will and to appoint administrators of estates of deceased Indians who die intestate;
Section 44	allows the court to have jurisdiction over the estate of a deceased Indian with the Minister's consent and confirms that the *Indian Act* applies, not provincial law;
Section 45	provides the Minister with authority to approve wills and defines the scope of wills pursuant to the *Indian Act* (i.e. in writing, signed by the deceased and expressing the deceased's wishes);
Section 46	provides that the Minister may declare a will void under certain conditions;
Section 47	enables individuals to appeal decisions of the Minister made under ss.42, 43 and 46 to Federal Court.

Three other sections complete the "wills and estates" provisions of the *Indian Act* but are not subject to the amendments proposed by Bill C-428:

Section 48	provides for the division of assets where the deceased dies without a will;
Section 49	provides the Minister with authority to approve on reserve land transfers in an estate;
Section 50	provides the superintendent (i.e. departmental employees) with the authority and obligation to sell land on reserve that is gifted to someone not entitled to inherit land on reserve.

Importantly, none of these sections apply to Indians *ordinarily resident* off-reserve, pursuant to s. 4(3) of the Act.[6] Indians who live off-reserve are subject to provincial laws on wills and estates (with the exception of the devise of real property on reserve, which is discussed in detail below).

Section 42 of the *Indian Act* has been judicially considered[7] but none of the findings created rights that are relevant to the proposed repeal. In *Canada (Attorney* General*) v. Canard* ,[1976] 1 S.C.R. 170, the Supreme Court found that ss. 42 and 43 do not create an inequality before the law by reason of race under the *Canadian Bill of Rights*[8].

B. Proposed deletion of sections 42 to 47

With the repeal of ss. 42 to 47, provincial laws on wills and estates will apply through operation of s. 88 of the *Indian Act*[9]. Provincial laws that touch on "Indianness" do not apply of their own force on reserve because they go to the core of s .91(24) jurisdiction.[10] However, s. 88 referentially incorporates provincial laws of general application, so long as those laws are not inconsistent with other provisions of the *Indian Act*, other federal legislation pertaining to First Nations and related regulations, orders and rules.

If s. 43 is repealed, the Minister and AANDC will stop making decisions that have been, in many instances, helpful administratively. If repealed, families will be burdened with making application to the courts themselves.

Currently, this process is largely an administrative task handled by AANDC. If s. 7 of Bill C-428 is passed, an expensive and complex probate process will fall to families, estates or lawyers on their behalf. Before a probate application can be made to court, families will need to:

- obtain proof of death and evidence of ordinary residence on reserve;
- conduct formal will searches in provincial or territorial registries;

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6 See *Earl v. Canada (Minister of Indian & Northern Affairs)*, 2004 FC 897 for further judicial interpretation of "ordinarily resident".

7 See also *Morin v. Canada* (2001), 2001 FCT 1430,

8 S.C. 1960, c. 44

9 Section 88 of the *Indian Act* reads: Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the *First Nations Fiscal and Statistical Management Act*, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts. R.S., 1985, c. I-5, s. 88;

10 *Dick v. R.*, [1985] 2 S.C.R. 309,

- determine if their First Nation has a land code under the *First Nations Land Management Act*;
- assess, if the proposed Bill S-2 is in force,[11] whether an election will be made under S-2, or the default provisions of S-2;
- locate and obtain a value of all assets, locate all heirs at law and obtain their consent to the application. (This may require a request to AANDC under the *Access to Information Act* for information about family members and heirs);
- pay probate fees or probate tax.

Courts will have to be advised that ss. 48 to 50 the *Indian Act* still apply to Indians ordinarily resident on reserve, which, in matters of intestacy, will create a different disposition of intestate property than generally applies in some provinces. The results will be different, depending on the province or territory. For example, in many Canadian jurisdictions, a common law spouse is not considered a spouse under estate law, but is under the *Indian Act* [12]. Some jurisdictions give a different preferential share to a surviving spouse, and the definition of "surviving spouse" may include more than one spouse. The expectation that families, lawyers and courts will know and apply the correct law depending on the circumstances will be problematic, especially for families unable to obtain legal advice.

Concurrent spouses:

Not infrequently, an Indian may be legally married to one person, but dies when in a different, common-law relationship. Currently, the *Indian Act* has the flexibility to deal with these situations to ensure that a will may be varied to provide for everyone for whom the testator was responsible[13]. Provincial and territorial law may not contain the same flexibility. Also, definitions of common law spouse vary under provincial and territorial regimes.

Indian customary adoptions:

Indian customary adoptions are legally recognized under the *Indian Act*[14]. Some provincial and territorial jurisdictions recognize Indian customary adoptions for entitlement of children to inherit property (e.g. British Columbia does; Saskatchewan does not). If the wills of Indians

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11 *Family Homes on Reserves and Matrimonial Interests or Rights Act*, Bill S-2, currently before the House of Commons.

12 *Indian Act*, s. 2 "common law partner" means a person who is cohabiting with the individual in a conjugal relationship, having so co-habited for a period of at least one year. Many provincial jurisdictions require longer periods of co-habitation (e.g. British Columbia, Ontario) and some do not equate the same rights to common law spouses as they do to married spouses (e.g. Quebec, Nova Scotia).

13 *Indian Act*, s. 46(c)

14 *Indian Act*, s. 2(1) "child" includes a legally adopted child and a child adopted in accordance with Indian custom.

ordinarily resident on reserve provide for a common law spouse, the *Indian Act* definition of "child" will no longer apply. This could lead to a will, or some of its provisions, being voided, where the customarily-adopted child beneficiary does not meet the provincial or territorial definition. This seems to be a harsh, unintended consequence of Bill C-428, particularly in light of the recognition of indigenous legal traditions within Canada's multi-juridical heritage[15].

Interjurisdictional immunity and Land on Reserve:

Due to the doctrine of interjurisdictional immunity, provincial law cannot apply to land on reserve as that land is federal land[16]. If an Indian devises an interest in land on reserve, provincial law will not apply to that devise regardless of s. 88 of the *Indian Act*[17]. Without federal legislation governing the devise of land on reserve through an Indian estate (e.g. the "estates" equivalent to Bill S-2, *Family Homes on Reserves and Matrimonial Interests or Rights Act*), there would be a legislative vacuum on the devise by will of land interests on reserve. This vacuum would *not* be filled by provincial estate law through the operation of s. 88 of the *Indian Act*. Bill C-428 would impose a severe hardship on Indians who hold interests in land on reserve (e.g. certificates of possession, etc.). It is difficult to predict the result. Wills devising real property on reserve may be declared void, throwing some estates into intestacy.

The repeal of s.45:

If s. 45 is repealed, the form of a will of an Indian ordinarily resident on reserve will change substantially. Currently, the *Indian Act* requires only that the will be in writing, signed by the testator and expressing the testator's wishes[18]. There is no requirement for a particular form or that it be witnessed or registered. Section 15 of the *Indian Estates Regulations* , C.R.C. 1978, c. 954 states that "[a]ny written instrument signed by an Indian may be accepted as a will by the Minister whether or not it conforms with the requirements of the laws of general application in force in any province at the time of the death of the Indian". The repeal of s. 45 will remove the ease with which Indians ordinarily resident on reserve in rural and remote locations could make a will. Legal advice will need to be sought, an extra expense for potential testators. The result may be fewer Indians making wills and more Indians dying intestate. We question whether previously valid wills under the *Indian Act* may be deemed to be invalid

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15 John Borrows, "Indigenous Legal Traditions in Canada" Journal of Law & Policy Vol. 19:167 2005

16 *Re Stony Plain Indian Reserve No. 135* ,[1982] 1 C.N.L.R. 133; *Tsilhqot'in Nation v. British Columbia* ,[2008] 1 C.N.L.R. 112

17 *Derrickson v. Derrickson*, [1986] 2 C.N.L.R. 45; *Paul v. Paul*, [1986] 2 C.N.L.R. 74

18 Section 45(2): "The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property on his death."

under provincial or territorial law. This is especially true in jurisdictions that do not recognize holograph wills, and where the power of a court to rectify a will is severely curtailed by the law.

The repeal of s. 46:

Section 46 of the *Indian Act* allows the Minister to void wills in certain circumstances: duress; lack of capacity; hardship on dependents; disposing of land contrary to the *Indian Act;* vagueness of terms; and when contrary to public interest. Repealing s. 46 would eliminate the power to abolish an unjust will. For example, the ability of the Minister to void a will because the testator made no provision for a dependent spouse, or child will be gone. Absent the oversight of the Minister, dependents would need to retain counsel to challenge the will in the provincial or territorial courts. Not every jurisdiction has similar grounds for voiding wills (although the lack of testamentary capacity is fairly universal). The repeal of s. 46 may result in some civil rights being negatively affected, especially those in rural and remote communities.

The repeal of s.47:

The repeal of s. 47 will substantively change the process to challenge wills. Currently, s. 42 gives the Minister the authority of probate court and s. 46 gives the Minister the jurisdiction of superior courts. As a result, s. 47 operates to grant a full right of appeal for all decisions made in the exercise of jurisdiction over matters and causes testamentary, including declarations on the validity of a will[19]. With the repeal of these sections, all jurisdiction, authority and appeals will be with the provincial or territorial courts, not the Minister and the Federal Court. The cost of accessing the first level of authority (i.e. the probate court) will lie with the executor and administrators, not AANDC. For small estates in rural and remote communities, this court process may be too expensive for executors of small estates to pursue.

Many wills of low-income Canadians are not probated due to the cost (including refusal by provincial public trustees to serve as executor due the low value of many estates). A common solution is an "unofficial" probate outside the court process where family members pay the deceased's debts as best they can. The CBA Section is concerned about the devise of real property on reserve. For Indian estates including land (i.e. certificates of possession) on rural or remote reserves, the value of a housing lot on reserve can be nominal. This is due in large part to the market being limited to the other band members entitled to live on the reserve[20]. Another factor keeping value low is that transactions must be in cash or in kind because

19 *Morin v. Canada* {2001), [2001] FCT 1430.

20 *Indian Act*, ss. 20 to 29, particularly ss.24 and 25

mortgages are not available. Thus, if a will devises land on reserve but the low value of the estate assets makes it not economical to probate the will, the result may be significant holdings in reserve lands that remain in the name of deceased Indians or revert to the band[21] against the wishes of the testator. There has been an advantage under the current regime of the Minister acting as probate court. Removal of this function may be detrimental to individuals on reserve.

C. Proposed Retention of ss. 48 to 50

Bill C-428 does not propose to repeal ss. 48 to 50 of the *Indian Act.* The intestacy rules would continue to apply for Indians who died ordinarily resident on reserve without a will. The CBA Section understands that most estates are intestate. Only 5 to 10% of Indians ordinarily resident on reserve die with a will. The Minister would continue to have sole authority to approve the transfer of land on reserve in an estate (except for First Nations with a land code pursuant to the *First Nations Land Management Act*). As well, AANDC would continue to be responsible to sell land gifted to heirs and beneficiaries not entitled to inherit land on reserve.

The key problem here is the proposed deletion of s. 43 that currently provides the Minister with exclusive jurisdiction to administer intestacies. Under the current regime, AANDC provides a public service for Indians ordinarily resident on reserve who die without a will. Now, AANDC will assist the deceased's family in the appointment of an administrator and, if no one is prepared to act, AANDC will appoint a departmental employee as administrator as a last resort. That will no longer occur if s. 43 is repealed. There will no longer be an administrator of last resort for the 90% of Indians who die ordinarily resident on reserve intestate. This again seems like an unduly harsh, unintended consequence of Bill C-428.

With the retention of s.48, the Minister would still be involved with the valuation of estate assets in intestacies under s. 48(1) and (2), as well as opinions under s. 48(3) whether adequate provision has been made for children and surviving spouses. With the repeal of s.43, however, AANDC will no longer be involved in intestacies automatically. Bill C-428 would place an obligation on administrators of estates to contact the Minister to obtain the valuation of assets and to seek the opinion on children and survivors. As these administrators will be exclusively private individuals, the Minister's obligation to value assets and assess provision for children and survivors will become subject to the fallibilities of these private individuals.

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21 See *Indian Act*, ss. 25(2) and 50 (3).

The CBA Section understands that, in most simple intestacies on reserve, assets tend to include a housing lot on reserve with a modest house and possibly a bank account. As a result, s. 50 sales tend to be for little or nominal values, especially where reserves are in rural or remote locations. The transactions must be in cash because often no mortgage is available. The values of the estates are too small to trigger or engage provincial laws, including the assistance of the provincial public trustees who require the value of estates to be sufficient to pay their fees.

Significantly, if an administrator is not appointed, and no public trustee will accept the appointment (because the estate assets cannot pay the fees), no one may apply to the Minister for a s. 50 sale or transfer of ownership of land, and ownership of certificates of possession on some reserves may remain in the names of deceased Indians. This could thwart land use planning and development by band councils of land on reserve. Another harsh, unintended consequence of Bill C-428.

There will be an awkward fit between the intestacy provisions of the *Indian Act* and provincial and territorial regimes. An administrator will have to begin a court process under provincial or territorial laws, stand it down to seek the Minister's opinion about the value of assets, then return to court to complete the administration. Bill C-428 does not address the additional complexities for 90 % of the intestate Indians who die ordinarily resident on reserve. The cost to obtain assistance for the administration of often small estates will be greater than the same assistance for other Canadians. Intestate Indians will need familiarity with the interplay of the *Indian Act* and the provincial or territorial estate process, and will need to request and receive documentation from the Minister with respect to valuation and provision for dependents. This will create an additional burden on citizens who are already vulnerable, experience systemic poverty and have difficulties accessing justice.

D. Lack of Transition Provisions

The CBA Section is concerned that Bill C-428 lacks transition provisions to guide practices following implementation. Unanswered questions include:

(a) What will happen to Indian wills made prior to Bill C-428 coming into force: will they be grandfathered or become void?

(b) Will the Minister retain residual authority and jurisdiction under s.43?

(c) How will information be communicated to ensure the Minister receives notice of Indians dying on reserve, in order to conduct valuations of assets per s. 48(1) and (2)?

(d) How will the Minister receive notice of Indians dying on reserve, to assess whether minor children have been adequately provided for per s. 48(3)?

(e) Is there an implementation plan and a "coming into force" provision?

IV. SECTION 85.1 – BY-LAWS

Bill C-428 will repeal Section 85.1 of the *Indian Act.* The section now allows a band council to make by-laws relating to the prohibition of intoxicants:

(a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band;

(b) prohibiting any person from being intoxicated on the reserve;

(c) prohibiting any person from having intoxicants in his possession on the reserve; and

(d) providing for exceptions to any of the prohibitions established pursuant to paragraph (b) or (c).

There are no exceptions permitted for by-laws under s. 85.1(1)(a). Section 85.1(4) makes violation of a by-law under s. 85.1(1) an offence, with maximum limits on fines and punishments.

The repeal of s. 85.1 would create complications for First Nations that wish to maintain by-laws prohibiting or regulating intoxicants, unless they are able to use s. 81 instead. Currently, s. 81 (by-laws) does not expressly allow for the creation of by-laws to restrict intoxicants. It may be possible that, in the absence of a power under s. 85.1, a by-law could be enacted as ancillary to another by-law making power, such as the observance of law and order or the health of residents on reserve[22].

Even if it were possible to create intoxicant prohibition by-laws under the ancillary powers of s. 81(q), differences would exist. One significant difference would relate to punishment: the maximum imprisonment under s. 81 (by-laws) is 30 days, while under s. 85.1(4)(a) an offender can be imprisoned for up to six months. Section 81 would likely allow bands more flexibility in drafting by-laws because s. 81 is a broader power than s. 85.1. Courts have severed part of a band's by-law that allowed an exception for domestic consumption on the basis that s. 85.1 sets out complete prohibitions[23].

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22 However, for obvious reasons, there is no case law to support this reading of the "law and order" by-law making-power.

23 *LaForme v. Mississaugas of the New Credit First Nation*, [2000] F.C.J. No. 629.

Section 85.1 is another lingering example of the patronizing approach historically taken towards First Nations communities. However, its repeal would have a negative impact on communities that currently employ the by-law, particularly if the courts find that they are unable to use the ancillary powers in s. 81.

V. CONCLUSIONS AND RECOMMENDATIONS

While most of the proposed amendments under Bill C-428 are properly characterized as historical housekeeping of archaic and little used provisions of the *Indian Act*, the amendments proposed by s. 7 of C-428 will increase cost and complexity to Indian estates in Canada, particularly for rural, isolated communities. There will be no uniformity to the law that applies to on-reserve estates across the country. As currently proposed, Section 7 of the bill will likely result in many harsh, unintended consequences for Indians.

The CBA Section recommends that:

1. Section 7 of Bill C-428 be tabled until further study can be done by AANDC, in consultation with First Nations, to determine the best way to reform the wills and estates provisions of the *Indian Act* so not to create unintended consequences or legislative gaps.
2. If s. 7 is not removed from Bill C-428, that a transition or "coming into force" clause be added stating that s. 7 will not come into force until Parliament has introduced companion legislation to fill the gaps created by the repeal of ss. 42 to 47 of the *Indian Act*.
3. If neither above recommendation is adopted, Bill C-428 be amended to include:
    a. A provision grandfathering, as valid, existing Indian wills made prior to the coming into force of C-428;
    b. A definition of "common law partner" for the purposes of Indians ordinarily resident on reserve;
    c. A provision that reserves residual authority and jurisdiction to the Minister under s.43 with respect to intestacies still governed by the *Indian Act;*
    d. A provision to ensure the Minister will continue to receive notice of Indians dying on reserve, to conduct valuations of assets per s.48(1) and (2); and
    e. A provision to ensure the Minister will continue to receive notice of Indians dying on reserve, to assess whether minor children have been adequately provided for per s.48(3).