Electronic Wills: A Comparative Law Review of Risks and Benefits

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TOPIC AND IMPORTANCE

A will decides how a person's property will be distributed after they die. A will has traditionally required the will maker and their witnesses to sign it with ink while being together in person. These "formalities" are based on the idea that wills are created and stored using paper.

Today, electronic signatures and documents are common, raising the question of whether electronic wills ("e-wills") should be accepted. This article explores how four jurisdictions have responded to this question: Queensland, England and Wales, British Columbia, and New York. This analysis is important because it explains how electronic wills could change the way we make, store, and prove wills, and it helps us understand both the potential benefits and the possible risks.

MAIN ARGUMENTS

The core formalities of wills—writing, signatures, and presence—ensure the will maker's intent, identity, and the document's authenticity. The requirement of "writing" does not pose a challenge for the development of e-wills, as writing can include electronic text. For example, British Columbia's *Interpretation Act* recognizes electronic formats as "writing," and its *Wills, Estates and Succession Act* (WESA) defines e-wills as electronic documents that people can read and reproduce. Similarly, the U.S. *Uniform Electronic Wills Act* defines an e-will as a readable record at the time of signing.

"Signatures" prove the will maker's intent and identity. Electronic signatures are essential for the development of fully electronic wills, but not all jurisdictions accept them. British Columbia's WESA and the U.S. *Uniform Electronic Wills Act* allow electronic signatures, enabling greater access to will-making. However, some argue that electronic signatures are less secure and could make it harder to prove a will is valid. Right now, we do not have any clear evidence to show which view is correct.

The requirement of "presence" in will-making ensures that the will is genuine and reflects the will maker's wishes. This used to mean physical presence, but emergency measures during the COVID-19 pandemic introduced electronic presence in some jurisdictions. British Columbia kept this option permanently, while others, like New York and Queensland, went back to traditional rules later. So far, no legal challenges have arisen from wills created using electronic presence.

CONCLUSION AND ADDITIONAL CONSIDERATIONS

Different regions are experimenting with how to handle electronic wills. Some, like British Columbia, add electronic formalities into general wills legislation. Others, like the U.S. with its *Uniform Electronic Wills Act*, create separate laws for e-wills. E-wills may offer benefits, such as making it faster and easier for people to create a will. In the future, they might also make it cheaper and simpler to store and prove a will's validity. But they could also make it easier for people to commit fraud. It's too early to fully understand the risks and benefits of e-wills. It will be important to watch what happens in British Columbia and to learn more about why traditional wills fail.