It is time to implement the Testamentary Additions to Trusts Act recommended by The Conference of Commissioners on Uniformity of Legislation in Canada (now the Uniform Law Conference of Canada; herein referred to as the "ULCC") in 1968. Consistently across Canada, wills and estates legislation is being updated to reflect changing societal norms whereby we give great respect and deference to the testator's intentions, even where adherence to strict will formalities is lacking. Pour over wills are one of many examples of tools which, in essence, reflect testator intentions and therefor should be permitted.

A "pour-over" clause is a provision in a will whereby the testator purports to make a gift of some or all of their estate to an existing trust. In the United States, it is relatively common to transfer one's assets to a trust, sometimes called a "revocable living trust", for the purpose of managing one's assets during life. On the death of the settlor of the trust, replacement trustees are appointed, and the property is divided among the deceased's heirs pursuant to the terms of the trust or held on further trusts for the next generation. These trusts are used in the U.S. for probate avoidance as well as for U.S. tax reasons. As part of the planning, the testator will usually complete a "pour-over" will, directing that, upon death, any assets still owned personally by the testator at the date of death are then transferred to the *inter vivos* trust. As a result, the trust becomes the main "testamentary" instrument which distributes all the assets upon the testator's death.

Historically, these types of trusts were not commonly used in Canada. Under Canadian income tax law, when a person transfers assets to a trust, he or she is deemed to have sold them, which could give rise to significant income tax on the accrued capital gains. However, there are now several exceptions to this rule under the *Income Tax Act*, including alter ego trusts, joint spousal trusts and common law partner trusts, which allow the settlor to roll assets into the trust on a tax deferred basis. Accordingly, these trusts are becoming more common in Canada and the use of a "pour-over" clause in a will is a necessary estate planning tool that requires enabling legislation.

Two cases from British Columbia, *Re Kellogg Estate*, and *The Quinn Estate,* conclude that pour over wills to amendable trusts are not valid in Canada. The Testamentary Additions to Trusts Act recommended by Uniform Law Conference of Canada in 1968 would have provided a solution by allowing pour over wills in certain circumstances. The reason pour over wills are valid in the US is because this type of legislation adopted was by most of the States in the 1960's. Unfortunately, the Yukon is the only jurisdiction in Canada which implemented the recommended legislation.

Given the prevalence of alter ego, joint spousal and common law partner trusts, and due to the change in taxation of testamentary trusts and qualified disability trusts, it is time to implement the Testamentary Additions to Trusts Act recommended by the ULCC in 1968.