

## Uniform Dependants' Relief Act

(1973 Proceedings, pages 25, 253; 1974 Proceedings, page 29)

### 1. In this Act

Interpretation

#### (a) "child" includes

- (i) a child adopted by the deceased,

*(NOTE: (a)(i) is not required in jurisdictions in which legislation is in force providing that an adopted child has all the rights of a natural child. (See page 135 of the 1969 Proceedings).)*

- (ii) a child of the deceased *en ventre sa mere* at the date of the deceased's death,  
or

- (iii) an illegitimate child of the deceased;

- (b) "deceased" means a testator or a person dying intestate;

- (c) "court" means the .....

- (d) "dependant" means:

- (i) the widow or widower of the deceased;

- (ii) a child of the deceased who is under the age of .... years at the time of the deceased's death;

- (iii) a child of the deceased who is .... years of age or over at the time of the deceased's death and unable by reason of mental or physical disability to earn a livelihood;

- (iv) a grandparent, parent or descendant of the deceased who, for a period of at least three years immediately prior to the date of the death of the deceased, was dependent upon him for maintenance and support;

- (v) a person divorced from the deceased who, for a period of at least three years immediately prior to the date of death of the deceased, was dependent upon the deceased for maintenance and support; or

- (vi) a person of the opposite sex to the deceased not legally married to the deceased who, for a period

of at least three years immediately prior to the date of the death of the deceased, lived and co-habited with the deceased as the spouse of the deceased and was dependent upon the deceased for maintenance and support;

- (e) "letters probate" and "letters of administration" include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in this Province;
- (f) "order" includes a suspensory order;
- (g) "will" includes a codicil.

*(NOTE: (g) is not required where the term is defined in the jurisdiction's Interpretation Act.)*

Order for maintenance

**2.** Where a deceased has not made adequate provision for the proper maintenance and support of his dependants or any of them, a court, on application by or on behalf of the dependants or any of them, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper maintenance and support of the dependants or any of them.

Suspensory order

**3.** The court, on application by or on behalf of the dependants or any of them, may make an order, herein referred to as a suspensory order, suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide.

Application

**4.** (1) An application under this Act may be made by originating notice of motion (*or* summons) in the matter of the estate of the deceased.

Effective under s. 2

(2) Where an application for an order under section 2 is made by or on behalf of a dependant,

- (a) it may be dealt with by the court as; and
- (b) in so far as the question of limitation is concerned, it shall be deemed to be,

an application on behalf of all persons who might apply.

Certain powers of court

**5.** (1) The court, upon the hearing of an application under this Act, may

- (a) inquire into and consider all matters that it considers should be fairly taken into account in deciding upon the application;

- (b) in addition to the evidence adduced by the parties appearing, direct such other evidence to be given as it considers necessary or proper;
- (c) accept such evidence as it considers proper of the deceased's reasons, so far as ascertainable,
  - (i) for making the dispositions made by his will, or
  - (ii) for not making adequate provision for a dependant,

including any statement in writing signed by the deceased; and

- (d) refuse to make an order in favour of any dependant whose character or conduct is such as, in the opinion of the court, disentitles the dependant to the benefit of an order under this Act.

(2) In estimating the weight to be given to a statement referred to in subsection (1)(c), the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement. Weight to be given to statement

**6.** (1) The court, in any order making provision for maintenance and support of a dependant, may impose such conditions and restrictions as it considers fit. Conditions and restrictions

(2) Provision may be made out of income or capital or both and may be made in one or more of the following ways, as the court deems fit:

1. An amount payable annually or otherwise.
2. A lump sum to be paid or held in trust.
3. Any specified property to be transferred or assigned, absolutely or in trust or for life, or for a term of years to or for the benefit of the dependant.

(3) Where a transfer or assignment of property is ordered, the court may Powers of court

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the court may direct; or

- (b) grant a vesting order.

**7.** Where an order has been made under this Act, a court at any subsequent date may Inquiries and further orders

- (a) inquire whether the dependant benefited by the order has become entitled to the benefit of any other provision for his proper maintenance or support;
- (b) inquire into the adequacy of the provision ordered; and
- (c) discharge, vary or suspend the order, or make such other order as it considers fit in the circumstances.

Further powers  
of court

**8.** A court at any time may

- (a) fix a periodic payment or lump sum to be paid by a legatee, devisee or a beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested;
- (b) relieve such portion of the estate from further liability; and
- (c) direct
  - (i) the manner in which such periodic payment is to be secured; or
  - (ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable.

Distribution  
stayed

**9.** (1) Where an application is made and notice thereof is served on the executor, administrator or trustee of the estate of the deceased, he shall not, after service of the notice upon him, unless all persons entitled to apply consent or the court otherwise orders, proceed with the distribution of the estate until the court has disposed of the application.

Saving

(2) Nothing in this Act prevents an executor, administrator or trustee from making reasonable advances for maintenance and support to dependants who are beneficiaries.

Liability of executor

(3) Where an executor, administrator or trustee distributes any portion of the estate in violation of subsection (1), if any provision for maintenance and support is ordered by the court to be made out of the estate, the executor, administrator or trustee is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Act, to be made out of the proportion of the estate distributed.

**10.** (1) Subject to subsection (2), the incidence of any provision for maintenance and support ordered falls rateably upon that part of the deceased's estate to which the jurisdiction of the court extends. Incidence of provision ordered

(2) The court may order that the provision for maintenance and support be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to it seems proper. Where provision to be charged

**11.** For the purpose of enactments relating to succession duties and gift taxes, where an order, other than an order under section 21, is made under this Act in respect of Priorities

(a) a deceased who died leaving a will, the will of the testator shall be considered to have had effect from the date of the deceased's death as if it had been executed with such variations as are necessary to give effect to the order; or

(b) a deceased who died intestate, the provisions of the *Intestate Succession Act* applicable to the distribution of the intestate's estate shall be construed as having been amended in the manner and to the extent the order alters the operation of those provisions.

**12.** A court may give such further directions as it considers necessary for the purpose of giving effect to an order. Further directions

**13.** (1) A certified copy of every order made under this Act, other than an order made under section 21, shall be filed with the clerk of the court out of which the letters probate or letters of administration issued. Certified copy of order filed with the clerk of the court

(2) A memorandum of the order shall be endorsed on or annexed to the copy in the custody of the clerk of the letters probate or letters of administration, as the case may be. Endorsement on letters probate

**14.** (1) Subject to subsection (2), no application for an order under section 2 may be made except within six months from the grant of letters probate of the will or of letters of administration. Limitation period

(2) A court, if it considers it just, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. Saving

**15.** Where a deceased Property devised

- (a) has, in his lifetime, *bona fide* and for valuable consideration, entered into a contract to devise and bequeath any property real or personal; and
- (b) has by his will devised and bequeathed that property in accordance with the provisions of the contract,

the property is not liable to the provisions of an order made under this Act except to the extent that the value of the property in the opinion of the court exceeds the consideration received by the deceased therefor.

Validity of mortgage, etc.

**16.** Where provision for the maintenance and support of a dependant is ordered pursuant to this Act, a mortgage, charge or assignment of or with respect to such provision, made before the order of the court making such provision is entered, is invalid.

Agreements to waive Act invalid

**17.** An agreement by or on behalf of a dependant that this Act does not apply or that any benefit or remedy provided by this Act is not to be available is invalid.

Appeal

**18.** An appeal lies to the court from any order made under this Act.

Enforcement

**19.** (1) An order, other than an order under section 21, or direction made under this Act may be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the court against the estate may be enforced.

Further orders

(2) A court may make such order or direction or interim order or direction as may be necessary to secure to the dependant out of the estate the benefit to which he is found entitled.

Value of certain transactions

**20.** (1) Subject to section 15, for the purpose of this Act, the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be considered to be part of his net estate for purposes of ascertaining the value of his estate:

1. *Gifts mortis causa.*
2. Money deposited together with interest thereon, in an account in the name of the deceased in trust for another or others with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased.

3. Money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death pursuant to the terms of the deposit or by operation of law to the survivor or survivors of those persons with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased.
4. Any disposition of property made by a deceased whereby property is held at the date of his death by the deceased and another as joint tenants with right of survivorship or as tenants by the entireties.
5. Any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof; but the provisions of this paragraph do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased.
6. Any amount payable under a policy of insurance effected on the life of the deceased and owned by him.

(2) The capital value of the transactions referred to in subsection (1)(b) (c) and (d) shall be considered to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants or as tenants by the entireties was furnished by the deceased. <sup>Idem</sup>

(3) Dependants claiming under this Act have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased. <sup>Dependants' burden</sup>

(4) Where the other party to a transaction described in subsection (1)(c) or (d) is a dependant, such dependant shall have the burden of establishing the amount of his contribution, if any. <sup>Idem</sup>

(5) This section does not prohibit any corporation or <sup>Payment of funds</sup>

person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled thereto unless there has been personally served on such corporation or person a certified copy of a suspensory order made under section 3 enjoining such payment or transfer.

Defence

(6) Personal service upon the corporation or person holding any such fund or property of a certified copy of such suspensory order is a defence to any action or proceeding brought against the corporation or person with respect to the fund or property during the period such order is in force and effect.

Rights of creditors

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights.

Donee of gift may be required to pay maintenance and support

**21.** (1) Where, upon an application for an order under section 2, it appears to the court that

- (a) the deceased has within one year prior to his death made an unreasonably large disposition of real or personal property
  - (i) as an immediate gift *inter vivos*, whether by transfer, delivery, declaration of revocable or irrevocable trust or otherwise, or
  - (ii) the value of which at the date of the disposition exceeded the consideration received by the deceased therefor; and
- (b) there are insufficient assets in the estate of the deceased to provide adequate maintenance and support for the dependants or any of them,

the court may, subject to subsection (2), order that any person who benefited, or who will benefit, by the disposition pay to the executor, administrator or trustee of the estate of the deceased or to the dependants or any of them, as the court may direct, such amount as the court considers adequate for the proper maintenance and support of the dependants or any of them.

Rules

(2) The amount that a person may be ordered to pay under subsection (1) shall be determined in accordance with the following rules:

1. No person to whom property was disposed of is liable to contribute more than an amount equal to the extent to which the disposition was unreasonably large.



2. If the deceased made several dispositions of property that were unreasonably large, no person to whom property was disposed of shall be ordered to pay more than his *pro rata* share based on the extent to which the disposition was unreasonably large.
3. The court shall consider the injurious effect on a person to whom property was disposed of from an order to pay in view of any circumstances occurring between the date of the disposition of the property and the date on which the transferee received notice of the application under section 2.
4. If the person to whom the property was disposed of has retained the property, he is not liable to contribute more than the value of his beneficial interest in the property.
5. If the person to whom property was disposed of has disposed of or exchanged the property in whole or in part, he is not liable to contribute more than the combined value of any remaining original property and any remaining proceeds or substituted property.
6. For the purposes of paragraphs 4 and 5 "value" is the fair market value as at the date of the application under section 2.

(3) In determining whether a disposition of property is a disposition of an unreasonably large amount of property within the meaning of subsection (1), the court shall consider Considerations

- (a) the ratio of value of the property disposed of to the value of the property determined under this Act to comprise the estate of the deceased at the time of his death;
- (b) the aggregate value of any property disposed of under prior and simultaneous dispositions and for this purpose the court shall consider all dispositions drawn to its attention whether made prior or subsequent to one year prior to the death of the deceased;
- (c) any moral or legal obligation of the deceased to make the disposition;
- (d) the amount, in money or moneys worth, of any consideration paid by the person to whom the property was disposed; and

- (e) any other circumstance that the court considers relevant.

Crown bound

**22.** The Crown is bound by this Act.

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