



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

DEPENDANTS OF A DECEASED PERSON RELIEF ACT

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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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DEPENDANTS OF A DECEASED PERSON RELIEF ACT

CHAPTER D-7

1. Definitions

In this Act

- (a) **“child”** includes a child of the deceased conceived but not born at the date of the deceased's death;
- (b) **“deceased”** means a testator or a person dying intestate;
- (c) **“court”** means the Supreme Court of Prince Edward Island;
- (d) **“dependant”** means
 - (i) the surviving spouse of the deceased,
 - (ii) a child of the deceased who is under the age of eighteen years at the time of the deceased's death,
 - (iii) a child of the deceased who is eighteen 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 dependant upon him for maintenance and support, or
 - (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 dependant 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. *R.S.P.E.I. 1974, Cap. D-6, s.1; 1987, c.8, s.6; 2008, c.8, s.7.*

2. Order for maintenance

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. *R.S.P.E.I. 1974, Cap. D-6, s.2.*

3. Suspensory order

A 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. *R.S.P.E.I. 1974, Cap. D-6, s.3.*

4. Application, method of making

- (1) An application under this Act may be made in the matter of the estate of the deceased.

Affect of, on all dependants

- (2) Where an application for an order under section 2 is made by or on behalf of any 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. *R.S.P.E.I. 1974, Cap. D-6, s.4.*

5. Certain powers of court

- (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.

Weighing statement, regard given to

- (2) In estimating the weight to be given to a statement referred to in clause (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. *R.S.P.E.I. 1974, Cap. D-6, s.5.*

6. Conditions and restrictions

- (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.

Provision out of income or capital

- (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 considers fit:
- (a) an amount payable annually or otherwise;
 - (b) a lump sum to be paid or held in trust;
 - (c) 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.

Transfer or assignment of property

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

- (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. *R.S.P.E.I. 1974, Cap. D-6, s.6.*

7. Inquiries and further orders

Where an order has been made under this Act, a court at any subsequent date may

- (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. *R.S.P.E.I. 1974, Cap. D-6, s.7.*

8. Further powers of court

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. *R.S.P.E.I. 1974, Cap. D-6, s.8.*

9. Distribution stayed

- (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.

Advances for maintenance and support

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

Distribution contrary to court order

- (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 a 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. *R.S.P.E.I. 1974, Cap. D-6, s.9.*

10. Incidence of provision ordered

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

Maintenance and support charged against any portion of estate

- (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. *R.S.P.E.I. 1974, Cap. D-6, s.10.*

11. Further directions

A court may give such further directions as it considers necessary for the purpose of giving effect to an order. *R.S.P.E.I. 1974, Cap. D-6, s.11.*

12. Certified copy of order filed with the clerk of the court

- (1) A certified copy of every order made under this Act, other than an order made under section 20, shall be filed with the clerk of the court out of which the letters probate or letters of administration issued.

Memorandum of order

- (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. *R.S.P.E.I. 1974, Cap. D-6, s.12.*

13. Limitation period

- (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.

Exception

- (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. *R.S.P.E.I. 1974, Cap. D-6, s.13.*

14. Property devised

Where a deceased

- (a) has, in his lifetime, in good faith 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. *R.S.P.E.I. 1974, Cap. D-6, s.14.*

15. Validity of mortgage, etc.

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. *R.S.P.E.I. 1974, Cap. D-6, s.15.*

16. Agreements to waive Act invalid

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. *R.S.P.E.I. 1974, Cap. D-6, s.16.*

17. Appeal

An appeal lies to the court from any order made under this Act. *R.S.P.E.I. 1974, Cap. D-6, s.17.*

18. Enforcement

- (1) An order, other than an order under section 20, 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.

Securing dependant's benefit

- (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. *R.S.P.E.I. 1974, Cap. D-6, s.18.*

19. Value of certain transactions deemed part of estate

- (1) Subject to section 14, 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 deemed to be part of his net estate for purposes of ascertaining the value of his estate:
- (a) gifts made in contemplation of, and conditioned upon, the death of the donor;
 - (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) 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 clause do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;
 - (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him.

Extent deemed to be included in net estate

- (2) The capital value of the transactions referred to in clauses (1) (b)(c) and (d) shall be deemed 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 was furnished by the deceased.

Burden of proof re ownership of property by estate

- (3) Dependants claiming under this Act shall have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased.

Burden of proof re establishing amount of contribution

- (4) Where the other party to a transaction described in clause (1) (c) or (d) is a dependant, such dependant shall have the burden of establishing the amount of his contribution, if any.

Suspensory order, service required to stop payment or transfer

- (5) This section does not prohibit any corporation or 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 to an action against payor

- (6) Personal service upon the corporation or person holding any such fund or property of a certified copy of such suspensory order shall be 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.

Creditors rights not affected

- (7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights. *R.S.P.E.I. 1974, Cap. D-6, s.19; 1978, c.6, s.64.*

20. Donee of gift may be required to pay maintenance and support

- (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 while the donor and donee are alive, 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 deems adequate for the proper maintenance and support of the dependants or any of them.

Rules for determining amount of payment

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

- proportional share based on the extent to which the disposition was unreasonably large;
- (c) 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;
 - (d) if the person to whom the property was disposed of has retained the property he shall not be liable to contribute more than the value of his beneficial interest in the property;
 - (e) if the person to whom property was disposed of has disposed of or exchanged the property, in whole or in part, he shall not be liable to contribute more than the combined value of any remaining original property and any remaining proceeds or substituted property;
 - (f) for the purposes of clauses (d) and (e) “value” is the fair market value as at the date of the application under section 2.

Disposition of unreasonably large amount of property, how determined

- (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
 - (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;
 - (e) any other circumstance that the court considers relevant. *R.S.P.E.I. 1974, Cap. D-6, s.20.*

21. Crown bound

The Crown is bound by this Act. *R.S.P.E.I. 1974, Cap. D-6, s.21.*