1980

c 488 Succession Law Reform Act

Ontario
CHAPTER 488

Succession Law Reform Act

1.—(1) In this Act,

(a) "child" means a child born within or outside marriage, subject to sections 86 and 87 of the Child Welfare Act (which relate to the effect of adoption), and includes a child conceived before and born alive after the death of the parent;

(b) "grandchild" means the child of a child;

(c) "issue" means any lineal descendant of a person, whether born within or outside marriage, subject to sections 86 and 87 of the Child Welfare Act (which relate to the effect of adoption), and includes issue conceived before and born alive after the death of the person;

(d) "parent" means the father or mother of a child;

(e) "personal representative" means an executor, an administrator or an administrator with will annexed;

(f) "property" means real or personal property;

(g) "will" includes,

(i) a testament,

(ii) a codicil,

(iii) an appointment by will or by writing in the nature of a will in exercise of a power, and

(iv) any other testamentary disposition.

(2) In this Act, and in any will unless a contrary intention is shown in the will, a reference to a person in terms of a relationship to another person determined by blood or marriage shall be deemed to include a person who comes within the description notwithstanding that he or any
other person through whom the relationship is traced was born outside marriage.

(3) Subsection (2) applies in respect of wills made on or after the 31st day of March, 1978. 1977, c. 40, s. 1.

PART I
TESTATE SUCCESSION
GENERAL

2. A person may by will devise, bequeath or dispose of all property (whether acquired before or after making his will) to which at the time of his death he is entitled either at law or in equity, including,

(a) estates pur autre vie, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;

(b) contingent, executory or other future interests in property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will; and

(c) rights of entry, whether for conditions broken or otherwise. 1977, c. 40, s. 2.

3. A will is valid only when it is in writing. 1977, c. 40, s. 3.

4.—(1) Subject to sections 5 and 6, a will is not valid unless,

(a) at its end it is signed by the testator or by some other person in his presence and by his direction;

(b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
(c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

(2) Where witnesses are required by this section, no form of attestation is necessary. 1977, c. 40, s. 4.

5.—(1) A person who is,

(a) a member of the Canadian Forces placed on active service pursuant to the National Defence Act (Canada); R.S.C. 1970, c. N-4

(b) a member of any other naval, land or air force while on active service; or

(c) a mariner or seaman when at sea or in the course of a voyage,

may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness.

(2) For the purposes of this section, a certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was on active service at that time, is prima facie evidence of that fact.

(3) For the purposes of this section, if a certificate under subsection (2) is not available, a member of a naval, land or air force is deemed to be on active service after he has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service. 1977, c. 40, s. 5.

6. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness. 1977, c. 40, s. 6.

7.—(1) In so far as the position of the signature is concerned, a will, whether holograph or not, is valid if the signature of the testator made either by him or the person signing for him is placed at, after, following, under or beside or opposite to the end of the will so that it is apparent on
the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

(2) A will is not rendered invalid by the circumstance that,

(a) the signature does not follow or is not immediately after the end of the will;

(b) a blank space intervenes between the concluding words of the will and the signature;

(c) the signature,

(i) is placed among the words of a testimonium clause or of a clause of attestation,

(ii) follows or is after under a clause of attestation either with or without a blank space intervening, or

(iii) follows or is after, under or beside the name of a subscribing witness;

(d) the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or

(e) there appears to be sufficient space on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written to contain the signature.

(3) The generality of subsection (1) is not restricted by the enumeration of circumstances set out in subsection (2), but a signature in conformity with section 4, 5 or 6 or this section does not give effect to,

(a) a disposition or direction that is underneath the signature or that follows the signature; or

(b) a disposition or direction inserted after the signature was made. 1977, c. 40, s. 7.
8.—(1) A will made by a person who is under the age of eighteen years is not valid unless at the time of making the will the person,

(a) is or has been married;

(b) is contemplating marriage and the will states that it is made in contemplation of marriage to a named person except that such a will is not valid unless and until the marriage to the named person takes place;

(c) is a member of a component of the Canadian Forces,

(i) that is referred to in the National Defence Act R.S.C. 1970, c. N-4 (Canada) as a regular force, or

(ii) while placed on active service under the National Defence Act (Canada); or

(d) is a mariner or seaman and at sea or in the course of a voyage.

(2) A certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was at that time a member of a regular force or was on active service within clause (1) (c), is prima facie evidence of that fact.

(3) A person who has made a will under subsection (1) may, while under the age of eighteen years, revoke the will. 1977, c. 40, s. 8.

9. No appointment made by will in exercise of any power is valid unless the appointment is executed in the manner hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. 1977, c. 40, s. 9.

10. A will made in accordance with this Part is valid without other publication. 1977, c. 40, s. 10.
11. Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid. 1977, c. 40, s. 11.

12.—(1) Where a will is attested by a person to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns,

(a) the person so attesting;

(b) the spouse; or

(c) a person claiming under either of them,

but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity.

(2) Where a will is signed for the testator by another person in accordance with section 4, to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest, or other disposition is void so far only as it concerns,

(a) the person so signing;

(b) the spouse; or

(c) a person claiming under either of them,

but the will is not invalid for that reason.

(3) Notwithstanding anything in this section, where a surrogate court is satisfied that neither the person so attesting or signing for the testator nor the spouse exercised any improper or undue influence upon the testator, the devise, bequest or other disposition or appointment is not void. New.

(4) Where a will is attested by at least two persons who are not within subsection (1) or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection. 1977, c. 40, s. 12.
13. Where property is charged by a will with a debt and a creditor or the spouse of a creditor whose debt is so charged attests a will, the person so attesting, notwithstanding the charge, is a competent witness to prove the execution of the will or its validity or invalidity. 1977, c. 40, s. 13.

14. A person is not incompetent as a witness to prove the execution of a will or its validity or invalidity solely because he is an executor. 1977, c. 40, s. 14.

15. A will or part of a will is revoked only by,

(a) marriage, subject to section 16;

(b) another will made in accordance with the provisions of this Part;

(c) a writing,

(i) declaring an intention to revoke, and

(ii) made in accordance with the provisions of this Part governing making of a will; or

(d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it. 1977, c. 40, s. 15.

16. A will is revoked by the marriage of the testator except where,

(a) there is a declaration in the will that it is made in contemplation of the marriage;

(b) the spouse of the testator elects to take under the will, by an instrument in writing signed by the spouse and filed within one year after the testator's death in the office of the Surrogate Clerk for Ontario; or

(c) the will is made in exercise of a power of appointment of property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate. 1977, c. 40, s. 16.
17.—(1) Subject to subsection (2), a will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances.

(2) Except when a contrary intention appears by the will, where, after the testator makes a will, his marriage is terminated by a judgment absolute of divorce or is declared a nullity,

(a) a devise or bequest of a beneficial interest in property to his former spouse;

(b) an appointment of his former spouse as executor or trustee; and

(c) the conferring of a general or special power of appointment on his former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator. 1977, c. 40, s. 17.

18.—(1) Subject to subsection (2), unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,

(a) in the margin or in some other part of the will opposite or near to the alteration; or

(b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will. 1977, c. 40, s. 18.

19.—(1) A will or part of a will that has been in any manner revoked is revived only,

(a) by a will made in accordance with the provisions of this Part; or

(b) by a codicil that has been made in accordance with the provisions of this Part,
that shows an intention to give effect to the will or part that was revoked, or,

(c) by re-execution thereof with the required formalities, if any.

(2) Except when a contrary intention is shown, when a will which has been partly revoked and afterward wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole. 1977, c. 40, s. 19.

20.—(1) A conveyance of or other act relating to property that is the subject of a devise, bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death.

(2) Except when a contrary intention appears by the will, where a testator at the time of his death,

(a) has a right, chose in action or equitable estate or interest that was created by a contract respecting a conveyance of, or other act relating to, property that was the subject of a devise or bequest, made before or after the making of a will;

(b) has a right to receive the proceeds of a policy of insurance covering loss of or damage to property that was the subject of a devise or bequest, whether the loss or damage occurred before or after the making of the will;

(c) has a right to receive compensation for the expropriation of property that was the subject of a devise or bequest, whether the expropriation occurred before or after the making of the will; or

(d) has a mortgage, charge or other security interest in property that was the subject of a devise or bequest, taken by the testator on the sale of such property, whether such mortgage, charge or other security interest was taken before or after the making of the will,

the devisee or donee of that property takes the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator. 1977, c. 40, s. 20.
21. When a will has been revived in the manner described in section 19, the will shall be deemed to have been made at the time at which it was so revived. 1977, c. 40, s. 21.

22. Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to,

(a) the property of the testator; and

(b) the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator under subsection 20 (2). 1977, c. 40, s. 22.

23. Except when a contrary intention appears by the will, property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of,

(a) the death of the devisee or donee in the lifetime of the testator; or

(b) the devise or bequest being disclaimed or being contrary to law or otherwise incapable of taking effect,

is included in the residuary devise or bequest, if any, contained in the will. 1977, c. 40, s. 23.

24. Except when a contrary intention appears by the will, where a testator devises,

(a) his real property;

(b) his real property in a place mentioned in the will, or in the occupation of a person mentioned in the will;

(c) real property described in a general manner; or

(d) real property described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates. 1977, c. 40, s. 24.
25.—(1) Except when a contrary intention appears by the will, a general devise of,

(a) the real property of the testator;

(b) the real property of the testator,

(i) in a place mentioned in the will, or

(ii) in the occupation of a person mentioned in the will; or

(c) real property described in a general manner,

includes any real property, or any real property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of,

(a) the personal property of the testator; or

(b) personal property described in a general manner,

includes any personal property, or any personal property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power. 1977, c. 40, s. 25.

26. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. 1977, c. 40, s. 26.

27. Except when a contrary intention appears by the will, where property is devised or bequeathed to the "heir" or "heirs" of the testator or of another person, the words "heir" or "heirs" mean the person to whom the beneficial interest in the property would have gone under the law of Ontario if the testator or the other person died intestate. 1977, c. 40, s. 27.

28.—(1) Subject to subsection (2), in a devise or bequest of property,

(a) the words,

(i) "die without issue",
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(ii) "die without leaving issue", or
(iii) "have no issue"; or

(b) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his issue unless a contrary intention appears by the will.

(2) This Part does not extend to cases where the words defined in subsection (1) import,

(a) if no issue described in a preceding gift be born; or

(b) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.

1977, c. 40, s. 28.

29. Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. 1977, c. 40, s. 29.

30. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits,

(a) is not given to a person for life; or

(b) is given to a person for life but the purpose of the trust may continue beyond his life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied. 1977, c. 40, s. 30.

31. Except when a contrary intention appears by the will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator, either before or after the testator makes his will,
and leaves a spouse or issue surviving the testator, the
devise or bequest does not lapse but takes effect as if
it had been made directly to the persons among whom and
in the shares in which the estate of that person would have
been divisible,

(a) if that person had died immediately after the death
of the testator;

(b) if that person had died intestate;

(c) if that person had died without debts; and

(d) if section 46 had not been passed. 1977, c. 40, s. 31.

32.—(1) Where a person dies possessed of, or entitled to,
or under a general power of appointment by his will dis-
poses of, an interest in freehold or leasehold property which,
at the time of his death, is subject to a mortgage, and the
deceased has not, by will, deed or other document, signified
a contrary or other intention,

(a) the interest is, as between the different persons
claiming through the deceased, primarily liable for
the payment or satisfaction of the mortgage debt;
and

(b) every part of the interest, according to its value,
bears a proportionate part of the mortgage debt on
the whole interest.

(2) A testator does not signify a contrary or other intention
within subsection (1) by,

(a) a general direction for the payment of debts or of all
the debts of the testator out of his personal estate,
his residuary real or personal estate or his residuary
real estate; or

(b) a charge of debts upon that estate,

unless he further signifies that intention by words expressly
or by necessary implication referring to all or some part of the
mortgage debt.

(3) Nothing in this section affects a right of a person entitled
to the mortgage debt to obtain payment or satisfaction
either out of the other assets of the deceased or otherwise.
(4) In this section, "mortgage" includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money, and "mortgage debt" has a meaning similarly extended. 1977, c. 40, s. 32.

33.—(1) Where a person dies having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect of it, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

(2) Nothing in this section prejudices any right in respect of any residue not expressly disposed of to which, if this Part had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under Part II in case of an intestacy. 1977, c. 40, s. 33.

CONFLICT OF LAWS

34. In sections 36 to 41,

(a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;

(b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land;

(c) "internal law" in relation to any place excludes the choice of law rules of that place. 1977, c. 40, s. 34.

35. Sections 36 to 41 apply to a will made either in or out of Ontario. 1977, c. 40, s. 35.

36.—(1) The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated.
(2) Subject to other provisions of this Part, the manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his death. 1977, c. 40, s. 36.

37.—(1) As regards the manner and formalities of making a will of an interest in movables or in land, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where,

(a) the will was made;

(b) the testator was then domiciled;

(c) the testator then had his habitual residence; or

(d) the testator then was a national if there was in that place one body of law governing the wills of nationals.

(2) As regards the manner and formalities of making a will of an interest in movables or in land, the following are properly made,

(a) a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) a will so far as it revokes a will which under sections 34 to 42 would be treated as properly made or revokes a provision which under those sections would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be treated as properly made; and

(c) a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power. 1977, c. 40, s. 37.

38. A change of domicile of the testator occurring after a will is made does not render it invalid as regards the
manner and formalities of its making or after its construction. 1977, c. 40, s. 38.

30. Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables. 1977, c. 40, s. 39.

40. Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will is governed by the law that governs succession to the interest in the land. 1977, c. 40, s. 40.

41. (1) Where, whether under sections 34 to 42 or not, a law in force outside Ontario is to be applied in relation to a will, any requirement of that law that,

(a) special formalities are to be observed by testators answering a particular description; or

(b) witnesses to the making of a will are to possess certain qualifications,

shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

(2) In determining for the purposes of sections 34 to 40 whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made, but account shall be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made. 1977, c. 40, s. 41.

INTERNATIONAL WILLS

42. (1) In this section, "convention" means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this section.

(2) On, from and after the 15th day of September, 1978, the convention is in force in Ontario and applies to wills as law of Ontario and the rules regarding an international will set out in the Annex to the convention are law in Ontario.
(3) All members of the Law Society of Upper Canada, other than student members, are designated as persons authorized to act in connection with international wills.

(4) Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in Ontario other than this section.

SCHEDULE

Convention Providing a Uniform Law on The Form of an International Will

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad in so far as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.
Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX


2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.
2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

**Article XII**

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

**Article XIII**

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

**Article XIV**

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

**Article XV**

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

**Article XVI**

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.
2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

(a) any signature;

(b) the deposit of any instrument of ratification or accession;

(c) any date on which this Convention enters into force in accordance with Article XI;

(d) any communication received in accordance with Article I, paragraph 4;

(e) any notice received in accordance with Article II, paragraph 2;

(f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;

(g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;

(h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX

Uniform Law on the Form of an International Will

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.

2. It need not be written by the testator himself.

3. It may be written in any language, by hand or by any other means.
Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.

2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.

2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:
CERTIFICATE
(Convention of October 26, 1973)

1. I, ...........................................(name, address and capacity), a person authorized to act in connection with international wills

2. Certify that on. .................(date) at. .................(place)

3. (testator) .................................(name, address, date and place of birth)

   in my presence and that of the witnesses

4. (a) ...........................................(name, address, date, and place of birth)

   (b) ...........................................(name, address, date and place of birth)

   has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

   (1) the testator has signed the will or has acknowledged his signature previously affixed.

   *(2) following a declaration of the testator stating that he was unable to sign his will for the following reason.................

   —I have mentioned this declaration on the will

   *—the signature has been affixed by. .................(name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by. .................and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

12. PLACE

13. DATE

14. SIGNATURE and, if necessary, SEAL

*To be completed if appropriate.
Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

1977, c. 40, s. 42 (1-4).

43. This Part applies to wills made before, on or after the 31st day of March, 1978 where the testator has not died before that date. 1977, c. 40, s. 44.

PART II

INTESTATE SUCCESSION

44. Where a person dies intestate in respect of property and is survived by a spouse and not survived by issue, the spouse is entitled to the property absolutely. 1977, c. 40, s. 45.

45.—(1) Subject to subsection (3), where a person dies intestate in respect of property having a net value of not more than $75,000 and is survived by a spouse and issue, the spouse is entitled to the property absolutely.

(2) Subject to subsection (3), where a person dies intestate in respect of property having a net value of more than $75,000 and is survived by a spouse and issue, the spouse is entitled to $75,000 absolutely.

(3) Notwithstanding subsection (1), where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and,
(a) where the spouse is entitled under the will to nothing or to property having a net value of less than $75,000, the spouse is entitled out of the intestate property to the amount by which $75,000 exceeds the net value of the property, if any, to which the spouse is entitled under the will;

(b) where the spouse is entitled under the will to property having a net value of more than $75,000, sub-sections (1) and (2) do not apply.

(4) In this section, "net value" means the value of the property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. 1977, c. 40, s. 46.

Residue: spouse and one child

46.—(1) Where a person dies intestate in respect of property and leaves a spouse and one child, the spouse is entitled to one-half of the residue of the property after payment under section 45, if any.

(2) Where a person dies intestate in respect of property and leaves a spouse and more than one child, the spouse is entitled to one-third of the residue of the property after payment under section 45, if any.

(3) Where a child has died leaving issue living at the date of the intestate's death, the spouse's share shall be the same as if the child had been living at that date. 1977, c. 40, s. 47.

Issue

47.—(1) Subject to subsection (2), where a person dies intestate in respect of property and leaves issue surviving him, the property shall be distributed, subject to the rights of the spouse, if any, equally among his issue who are of the nearest degree in which there are issue surviving him.

(2) Where any issue of the degree entitled under subsection (1) has predeceased the intestate, the share of such issue shall be distributed among his issue in the manner set out in subsection (1) and the share devolving upon any issue of that and subsequent degrees who predecease the intestate shall be similarly distributed.

Share of predeceasing issue

(3) Where a person dies intestate in respect of property and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely.

Parents
(4) Where a person dies intestate in respect of property and there is no surviving spouse, issue or parent, the property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally.

(5) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother or sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation.

(6) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity to the intestate equally without representation.

(7) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and the Escheats Act applies. R.S.O. 1980, c. 142

(8) For the purposes of subsection (6), degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

(9) For the purposes of this section, descendants and relatives of the deceased conceived before and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him. 1977, c. 40, s. 48.

48. The common law right of a widower to curtesy is abolished. 1977, c. 40, s. 49.

49. This Part applies to an intestacy upon a death occurring on or after the 31st day of March, 1978. 1977, c. 40, s. 53.

PART III

DESIGNATION OF BENEFICIARIES OF INTEREST IN FUNDS OR PLANS

50. In this Part,
(a) "participant" means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant's death;

(b) "plan" means,

(i) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents, or former agents of an employer or their dependants or beneficiaries, or

(ii) a fund, trust, scheme, contract, or arrangement for the payment of a periodic sum for life or for a fixed or variable term,

created before, on or after the 31st day of March, 1978, and includes a retirement savings plan and a home ownership savings plan as defined in the Income Tax Act (Canada). 1977, c. 40, s. 54.

Designation of beneficiaries

51.—(1) A participant may designate a person to receive a benefit payable under a plan on the participant's death,

(a) by an instrument signed by him or signed on his behalf by another person in his presence and by his direction; or

(b) by will,

and may revoke the designation by either of those methods.

Idem

52.—(1) A revocation in a will is effective to revoke a designation made by instrument only if the revocation relates expressly to the designation, either generally or specifically.

Idem

(2) Notwithstanding section 15, a later designation revokes an earlier designation, to the extent of any inconsistency.

Idem

(3) Revocation of a will revokes a designation in the will.

Whore will invalid

(4) A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.
(5) A designation in an instrument that purports to be but is not a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

(6) Revocation of a designation does not revive an earlier designation.

(7) Notwithstanding section 22, a designation or revocation in a will is effective from the time when the will is signed.

1977, c. 40, s. 56.

53. Where a participant in a plan has designated a person to receive a benefit under the plan on the death of the participant,

(a) the person administering the plan is discharged on paying the benefit to the person designated under the latest designation made in accordance with the terms of the plan, in the absence of actual notice of a subsequent designation or revocation made under section 51 but not in accordance with the terms of the plan; and

(b) the person designated may enforce payment of the benefit payable to him under the plan but the person administering the plan may set up any defence that he could have set up against the participant or his personal representative. 1977, c. 40, s. 57.

54.—(1) Where this Part is inconsistent with a plan, this Part applies, unless the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment where the benefit payment would have been different if the designation had been made before the benefit payment, in which case the plan applies.

(2) This Part does not apply to a contract or to a designation of a beneficiary to which the Insurance Act applies. 1977, c. 40, s. 58.

PART IV
SURVIVORSHIP

55.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the property of each person, or any property of which he is competent to dispose, shall be disposed of as if he had survived the other or others.
Simultaneous
death of
joint
tenants

(2) Unless a contrary intention appears, where two or more persons hold legal or equitable title to property as joint tenants, or with respect to a joint account, with each other, and all of them die at the same time or in circumstances rendering it uncertain which of them survived the other or others, each person shall be deemed, for the purposes of subsection (1), to have held as tenant in common with the other or with each of the others in that property.

Provision in
will for
substitute
representative

(3) Where a will contains a provision for a substitute personal representative operative if an executor designated in the will,

(a) dies before the testator;

(b) dies at the same time as the testator; or

(c) dies in circumstances rendering it uncertain which of them survived the other,

and the designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides shall be deemed to have occurred.

Proceeds of
insurance
R.S.O. 1980,
c. 218

(4) The proceeds of a policy of insurance shall be paid in accordance with sections 192 and 272 of the Insurance Act and thereafter this Part applies to their disposition. 1977, c. 40, s. 61.

Application
of Part

56. This part applies in respect of deaths occurring on or after the 31st day of March, 1978. 1977, c. 40, s. 63.

PART V
Support of Dependants

Interpretation

57. In this Part,

(a) “child” means a child as defined in clause 1 (1) (a) and includes a grandchild and a person whom the deceased has demonstrated a settled intention to treat as a child of his family but does not include a child placed in a foster home for consideration by a person having lawful custody;
(b) "common law spouse" means either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents;

(c) "court" means the surrogate court having jurisdiction to grant letters probate or letters of administration in the estate of the deceased;

(d) "dependant" means,

(i) the spouse or common law spouse of the deceased,

(ii) a parent of the deceased,

(iii) a child of the deceased, or

(iv) a brother or sister of the deceased,

to whom the deceased was providing support or was under a legal obligation to provide support immediately before his death;

(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) "parent" includes a grandparent and a person who has demonstrated a settled intention to treat the deceased as a child of his family, but does not include a person in whose home the deceased was placed as a foster child for consideration by a person having lawful custody;

(g) "spouse" includes a person whose marriage to the deceased was terminated or declared a nullity. 1977, c. 40, s. 64.
58.—(1) Where a deceased, whether testate or intestate, has not made adequate provision for the proper support of his dependants or any of them, the court, on application, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper support of the dependants or any of them.

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant, or by,

(a) the Ministry of Community and Social Services in the name of the Minister;

(b) a municipal corporation, including a metropolitan, district or regional municipality but not including an area municipality thereof; or

(c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

(3) The adequacy of provision for support under subsection (1) shall be determined as of the date of the hearing of the application. 1977, c. 40, s. 65.

59. On an application by or on behalf of the dependants or any of them, the court may make an 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. 1977, c. 40, s. 66.

60.—(1) An application under this Part may be made to the court by originating notice of motion in accordance with the practice of the court.

(2) Where an application for an order under section 58 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. 1977, c. 40, s. 67.

61.—(1) Subject to subsection (2), no application for an order under section 58 may be made after six months from
the grant of letters probate of the will or of letters of administration.

(2) The court, if it considers it proper, 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. 1977, c. 40, s. 68.

62.—(1) Upon the hearing of an application under this Part, the court,

(a) shall inquire into and consider all the circumstances of the application, including,

(i) the assets and means of the dependant,

(ii) the capacity of the dependant to provide for his or her own support,

(iii) the age and the physical and mental health of the dependant,

(iv) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living,

(v) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures,

(vi) the proximity and duration of the dependant’s relationship with the deceased,

(vii) the contributions made by the dependant to the deceased’s welfare, including indirect and non-financial contributions,

(viii) the contributions made by the dependant to the acquisition, maintenance and improvement of the deceased’s property, business or occupation,

(ix) whether the dependant has a legal obligation to provide support for another person,

(x) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education,

(xi) where the dependant is a child of the age of sixteen years or more, his or her withdrawal from parental control;
(xii) where the dependant is the spouse of the deceased, a course of conduct by the spouse during the lifetime of the deceased that is an obvious and gross repudiation of the relationship,

(xiii) the circumstances of the deceased at the time of death,

(xiv) any agreement between the deceased and the dependant,

(xv) any previous distribution or division of property made by the deceased in favour of the dependant by gift or agreement or under court order, and

(xvi) the claims that any other person may have as a dependant;

(b) in addition to the evidence adduced by the parties appearing, may direct such other evidence to be given as the court considers necessary or proper; and

(c) may accept such evidence as the court 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.

(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. 1977, c. 40, s. 69.
(2) Provision may be made out of income or capital or both and an order may provide for one or more of the following, as the court considers appropriate,

(a) an amount payable annually or otherwise whether for an indefinite or limited period or until the happening of a specified event;

(b) a lump sum to be paid or held in trust;

(c) any specified property to be transferred or assigned to or in trust for the benefit of the dependant, whether absolutely, for life or for a term of years;

(d) the possession or use of any specified property by the dependant for life or such period as the court considers appropriate;

(e) a lump sum payment to supplement or replace periodic payments;

(f) the securing of payment under an order by a charge on property or otherwise;

(g) the payment of a lump sum or of increased periodic payments to enable a dependant spouse or child to meet debts reasonably incurred for his or her own support prior to an application under this Part;

(h) that all or any of the moneys payable under the order be paid to an appropriate person or agency for the benefit of the dependant;

(i) the payment to an agency referred to in subsection 58 (2) of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order.

(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.

(4) An order under this section may be made notwithstanding any agreement or waiver to the contrary.
Notice to parties before order

(5) The court shall not make any order under this section until it is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court, and every such person is entitled to be present and to be heard in person or by counsel at the hearing.

Exception

(6) Notwithstanding subsection (5), where, in the opinion of the court,

(a) every reasonable effort has been made to serve those entitled to notice; or

(b) after every reasonable effort has been made, it is not possible to identify one or more of the persons entitled to notice,

the court may dispense with the requirement of notice in respect of any person who has not been served. 1977, c. 40, s. 70.

Interim order

64. Where an application is made under this Part and the applicant is in need of and entitled to support but any or all of the matters referred to in section 62 or 63 have not been ascertained by the court, the court may make such interim order under section 63 as it considers appropriate. 1977, c. 40, s. 71.

Inquiries and further orders

65. Where an order has been made under this Part, the court at any subsequent date may,

(a) inquire whether the dependant benefitted by the order has become entitled to the benefit of any other provision for his support;

(b) inquire into the adequacy of the provision ordered; and

(c) discharge, vary or suspend the order, or make such other order as the court considers appropriate in the circumstances. 1977, c. 40, s. 72.

Further powers of court

66. The Court may at any time,

(a) fix a periodic payment or lump sum to be paid by a legatee, devisee or 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. 1977, c. 40, s. 73.

67.—(1) Where an application is made and notice thereof is served on the personal representative 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.

(2) Nothing in this Part prevents a personal representative from making reasonable advances for support to dependants who are beneficiaries.

(3) Where a personal representative distributes any portion of the estate in violation of subsection (1), if any provision for support is ordered by the court to be made out of the estate, the personal representative 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 Part, to be made out of the portion of the estate distributed. 1977, c. 40, s. 74.

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

(2) The court may order that the provision for 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 the court seems proper. 1977, c. 40, s. 75.

69. The court may give such further directions as it considers necessary for the purpose of giving effect to an order. 1977, c. 40, s. 76.
70.—(1) A certified copy of every order made under this Part shall be filed with the clerk of the court out of which the letters probate or letters of administration issued.

(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. 1977, c. 40, s. 77.

71. Where a deceased,

(a) has, in his lifetime, in good faith and for valuable consideration, entered into a contract to devise or bequeath any property; and

(b) has by his will devised or 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 Part except to the extent that the value of the property in the opinion of the court exceeds the consideration therefor. 1977, c. 40, s. 78.

72.—(1) Subject to section 71, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his death, whether benefitting 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, and being available to be charged for payment by an order under clause 63 (2) (f),

(a) gifts mortis causa;

(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;

\(e\) 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; and

\(g\) any amount payable under a designation of beneficiary under Part III.

(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.

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

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

(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 the corporation or person a certified copy of a suspensory order made under section 59 enjoining such payment or transfer.

(6) Personal service upon the corporation or person holding any such fund or property of a certified copy of a 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 the order is in force.

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights. 1977, c. 40, s. 79.

73. Where provision for the support of a dependant is ordered under this Part, 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. 1977, c. 40, s. 80.

74.—(1) Where a person by whom, or on whose behalf, an application may be made under this Part is a patient in a psychiatric facility under the Mental Health Act or a resident in a facility under the Developmental Services Act at the time of the deceased's death or at any time before the application under this Part is heard and disposed of, notice of the application for letters probate or letters of administration shall be served upon the Public Trustee on behalf of that person, and the time within which the Public Trustee may make an application under this Part runs from the date of the service of the notice.

(2) Where a person interested in the estate in respect of which an application is made under this Part is a patient in a psychiatric facility under the Mental Health Act or a resident in a facility under the Developmental Services Act, notice of the application shall in every case be served upon the Public Trustee, who has the right to appear and be heard upon the application. 1977, c. 40, s. 81.

75. At any time before the hearing of an application, a judge of the Supreme Court upon motion on behalf of the personal representative of the deceased, the applicant, or any other person interested, and upon being satisfied that the application is of such a nature and of such importance as to render it proper that it should be disposed of in the Supreme Court and the property of
the deceased exceeds $20,000, may by order direct that
the application be heard by a judge of the Supreme Court
and thereupon the matter shall be transferred into the
Supreme Court and the application shall be heard by a
judge of the Supreme Court who has the like powers and
shall proceed in the like manner as the court on an appli-
cation under this Part. 1977, c. 40, s. 82.

76. The court may direct that the costs of the application
be paid out of the estate or otherwise as it thinks proper,
and may fix the amount of the costs payable by any party,
exclusive of necessary disbursements, at a lump sum having
regard to the value of the estate and the amount of any
support applied for or directed by its order. 1977, c. 40, s. 83.

77. An appeal lies to the Divisional Court from any order of
the court made under this Part. 1977, c. 40, s. 84.

78.—(1) An order or direction made under this Part 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.

(2) Where a court orders security for the payment
under an order under this Part or charges a property
therewith, the court may, upon application and notice to all
persons having an interest in the property, direct its sale
for the purpose of realizing the security or charge. 1977, c. 40,
s. 85.

79. This Part binds the Crown. 1977, c. 40, s. 86.

80. This Part does not apply where the deceased died
before the 31st day of March, 1978, but an application
may be made under section 65 regardless of the time of the
deceased's death. 1977, c. 40, s. 88.