



1980

## c 292 Minors Act

Ontario

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CHAPTER 292

Minors Act

1.—(1) The court, upon the application of the father or the mother of a minor, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the minor and the right of access thereto of either parent, having regard to the welfare of the minor, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for such costs, or otherwise, as the court considers just.

Orders as to custody of and right of access to minor, at the instance of father or mother

(2) In subsection (1), "court" means the Supreme Court or the surrogate court of the county or district in which the minor resides at the time the proceedings under that subsection are commenced.

Meaning of "court"

(3) Where,

Removal of proceedings to Supreme Court

(a) custody proceedings have been commenced in a surrogate court under subsection (1); and

(b) it is made to appear to a judge of the Supreme Court that proceedings in respect of custody of children, alimony, dissolution of marriage or annulment of marriage are pending between the father and mother in the Supreme Court,

the judge of the Supreme Court may order that the custody proceedings in the surrogate court be removed to the Supreme Court, and may make such order as to the hearing of the application for custody and as to costs as he considers proper. R.S.O. 1970, c. 222, s. 1 (1-3).

(4) On an application under this section, the court may require the Official Guardian to cause an investigation to be made and to report to the court upon all matters relating to the custody, maintenance and education of the child, in which case section 1 of the *Matrimonial Causes Act* applies with necessary modifications and the court may make an order for the

Investigation by Official Guardian

R.S.O. 1980, c. 258

payment of the Official Guardian's costs. R.S.O. 1970, c. 222, s. 1 (6).

Father and mother to be joint guardians

**2.** Unless otherwise ordered by the court and subject to this Act, the father and mother of a minor are joint guardians and are equally entitled to the custody, control and education of the minor. R.S.O. 1970, c. 222, s. 2 (1).

Rules of equity

**3.** In questions relating to the custody and education of minors, the rules of equity prevail. R.S.O. 1970, c. 222, s. 3.

Where sale or lease of minor's estate may be authorized

**4.—(1)** Where a minor is seised, possessed of or entitled to any real estate in fee or for a term of years or otherwise and the Supreme Court is of opinion that a sale, mortgage, lease or other disposition of the real estate or of a part thereof, or of any timber, not being ornamental, growing thereon, is necessary or proper for the maintenance or education of the minor, or that for any cause his interest requires or will be substantially promoted by the disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of the real estate or a part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the minor, or by a person appointed for the purpose, in such manner and with such restrictions as are considered expedient, and may order the minor to convey the estate.

Exception

**(2)** No sale, mortgage, lease or other disposition shall be made contrary to a will or conveyance by which the estate has been devised or granted to the minor or for his use.

Authorizing exchange of unproductive for productive property

**(3)** The court, if it is of opinion that such course is for the benefit of the minor or that his interest requires it or will be substantially promoted thereby, may from time to time authorize the exchange of any lands held in fee or for a term of years or otherwise by the minor, and that are unproductive, for lands that are productive, but no such exchange of lands shall be made contrary to a will or conveyance.

Procedure

**(4)** Every exchange of lands made under subsection (3) shall be conducted and confirmed in such manner as is required by the rules and practice of the Supreme Court in the case of the sale or other disposition of the lands of minors. R.S.O. 1970, c. 222, s. 4.

Surrender of lease

**5.** The Supreme Court may sanction the surrender of any lease to which a minor is entitled and, if considered expedient, the acceptance of a new lease in lieu thereof. R.S.O. 1970, c. 222, s. 5.

6. Where a minor is entitled to lands subject to a lease <sup>Renewal of lease</sup> containing a covenant for renewal, the Supreme Court may sanction the execution of a new lease in accordance with the covenant or with such modification as is considered expedient. R.S.O. 1970, c. 222, s. 6.

7. Every surrender or lease made or accepted by virtue of this Act shall be deemed to be as valid and effectual as if the person by whom or in whose place it was made or accepted had been of full age and had made or accepted it. <sup>Validity of dispositions</sup> R.S.O. 1970, c. 222, s. 7.

8. Where it is considered convenient, the court may direct <sup>Conveyance by a substitute</sup> some other person to execute a conveyance, mortgage, lease or other document in the place of the minor and every such conveyance, mortgage, lease or other document, whether executed by the minor or by such other person, is as effectual as if the minor had executed it and had been of the age of eighteen years at the time. R.S.O. 1970, c. 222, s. 8.

9. Where a minor is seised of the reversion of land subject to a lease and the lease contains a covenant not to assign or sublet without leave, the Supreme Court may, on behalf <sup>Consent to assignment of lease by minor</sup> of the minor, consent to an assignment or transfer of the leasehold interest in the same manner and with the like effect as if the consent were given by a lessor under no such disability. R.S.O. 1970, c. 222, s. 9.

10. Where by a will or other instrument property is given <sup>Order for maintenance where power of appointment in favour of children</sup> beneficially to a person for his life with a power of devising or appointing the property by will in favour of his children or of one or more of them, the Supreme Court may, on the application or with the consent of the tenant for life, order that such portion of the proceeds of the property as it considers proper shall be applied towards the maintenance or education of any minor child in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life, or upon some other person in such event to make a disposition of the property in favour of some person other than such children. R.S.O. 1970, c. 222, s. 11.

11.—(1) The Supreme Court may order and direct the sale <sup>Order for application of dividends of stock for maintenance of minors</sup> of any personal property of a minor, including any stock or bonds to which he is entitled, and may direct any money belonging to a minor and all or any part of the dividends in respect of the stock or bonds to be paid for the maintenance and education or otherwise for the benefit of the minor, and

payment in accordance with such an order operates as a full release and discharge from all liability with respect to the money paid, and a transfer of any stock or bonds so sold shall be made in such manner as the court directs.

Indemnity  
to banks,  
etc.

(2) Such an order is a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done or permitted to be done pursuant thereto. R.S.O. 1970, c. 222, s. 12.

Appoint-  
ment of  
guardians  
by surrogate  
court

**12.**—(1) The surrogate court of the county or district in which a minor resides may appoint the father or mother of the minor or may, with the consent of the father, if known, and the mother or of the surviving parent, appoint some other suitable person or persons to be the guardian or guardians of the minor, but if the minor is of the age of fourteen years, no such appointment shall be made without his consent. R.S.O. 1970, c. 222, s. 16 (1); 1977, c. 41, s. 18 (1).

Where no  
father or  
authorized  
guardian or  
minor does  
not consent

(2) If the minor has no known parent living or a guardian authorized by law to take the care of his person and the charge of his estate, if any, or if he is of the age of fourteen years and does not give the consent mentioned in subsection (1), upon the written application of the minor, or of a friend of the minor residing within the jurisdiction of the surrogate court to which the application is made, and after proof of twenty days public notice of the application in a newspaper published in the county or district of the surrogate court in which the application is made, the court may appoint some suitable and discreet person or persons to be guardian or guardians of the minor, whether the minor is or is not entitled to any property. R.S.O. 1970, c. 222, s. 16 (2); 1977, c. 41, s. 18 (2).

Letters of  
guardian-  
ship have  
effect  
throughout  
Ontario

(3) Letters of guardianship granted by a surrogate court have force and effect in all parts of Ontario, and an official certificate of the grant may be obtained as in the case of letters of administration. R.S.O. 1970, c. 222, s. 16 (3).

Security by  
the guardian  
R.S.O. 1980,  
cc. 192, 95

**13.** Subject to the *Guarantee Companies Securities Act* and the *Corporations Act*, the court shall take from every guardian appointed under section 12 a bond in the name of the minor in such penal sum and with such sureties as the judge approves, conditioned that the guardian will faithfully perform his trust and that he or his executors or administrators will, when the minor becomes of the full age of eighteen years or when the guardianship is determined or sooner if thereto required by law, render a true and just account of all goods, money, interest, rents, profits or other estate of the minor that have come into the hands of the guardian, and will thereupon

without delay deliver and pay over to the minor or to his executors or administrators the estate or the sum that may be in the hands of the guardian belonging to the minor, deducting therefrom and retaining a reasonable sum for the expenses and charges of the guardian, and the bond shall be recorded by the registrar of the court in the books of his office. R.S.O. 1970, c. 222, s. 17; 1971, c. 98, s. 4, Sched., par. 14.

**14.**—(1) Testamentary guardians and guardians appointed or constituted by virtue of this Act are removable by the Supreme Court or by the surrogate court for the same causes for which trustees are removable. Removal of guardians

(2) Any such guardian may, by leave of the court, resign his office upon such terms and conditions as are considered just. R.S.O. 1970, c. 222, s. 18. Resignation of office by guardian

**15.** A return of every appointment and removal or resignation of a guardian shall be made by the registrar of the court to the surrogate clerk in like manner as is required by the *Surrogate Courts Act* in the case of grants of probate or administration. R.S.O. 1970, c. 222, s. 19. Returns respecting guardians to surrogate court  
R.S.O. 1980, c. 491

**16.** Unless where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, the guardian so appointed or constituted during the continuance of his guardianship, Guardian's authority

(a) has authority to act for and on behalf of the minor; and

(b) has the charge and management of his estate, real and personal, and the custody of his person and the care of his education. R.S.O. 1970, c. 222, s. 20.

**17.** An appeal lies from an order or judgment of a surrogate court under this Act to the Court of Appeal. R.S.O. 1970, c. 222, s. 21. Appeal

**18.** The practice and procedure under the *Surrogate Courts Act* and rules apply to proceedings in the surrogate court under this Act, and the power to make rules under that Act applies to proceedings under this Act. R.S.O. 1970, c. 222, s. 22. Practice and procedure

**19.** Nothing in this Act deprives the Supreme Court of jurisdiction in matters provided for by this Act. R.S.O. 1970, c. 222, s. 23. Jurisdiction of Supreme Court not affected

Religious  
education  
of minor

**20.** Nothing in this Act changes the law as to the authority of the father in respect of the religious faith in which his child is to be educated. R.S.O. 1970, c. 222, s. 24.