

1970

c 129 Devolution of Estates Act

Ontario

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CHAPTER 129

The Devolution of Estates Act**1. In this Act,**Interpre-
tation

- (a) "court" means the Supreme Court;
- (b) "judge" means a judge of the Supreme Court;
- (c) "mental incompetency" means the condition of mind of a mentally incompetent person;
- (d) "mentally incompetent person" means a person,
 - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
 - (ii) who is suffering from such disorder of the mind, that he requires care, supervision and control for his protection and the protection of his property;
- (e) "personal representative" means an executor, an administrator, or an administrator with the will annexed. R.S.O. 1960, c. 106, s. 1.

2.—(1) All real and personal property that is vested in a person without a right in any other person to take by survivorship, on his death, whether testate or intestate and notwithstanding any testamentary disposition, devolves to and becomes vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto, and, subject to the payment of his debts and so far as such property is not disposed of by deed, will, contract or other effectual disposition, it shall be administered, dealt with and distributed as if it were personal property not so disposed of.

Devolution
to personal
representa-
tive of
deceased

(2) This section applies to property over which a person executes by will a general power of appointment as if it were property vested in him.

Idem,
where under
appoint-
ment

(3) This section does not apply to estates tail or to the personal property, except chattels real, of a person who, at the time of his death, is domiciled out of Ontario. R.S.O. 1960, c. 106, s. 2.

Exceptions

3. The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealing with personal property before probate or administration and as respects the payment of costs of

Application
of enact-
ments as to
probate, etc.

administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it is not lawful for some or one only of several joint personal representatives without the authority of a judge to sell or transfer real property. R.S.O. 1960, c. 106, s. 3.

Real and personal property assimilated in matters of administration

4. Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section alters or affects as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies. R.S.O. 1960, c. 106, s. 4.

Payment of debts out of residuary estate
R.S.O. 1970, c. 499

5. Subject to section 37 of *The Wills Act*, the real and personal property of a deceased person comprised in a residuary devise or bequest, except so far as a contrary intention appears from his will or any codicil thereto, is applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration. R.S.O. 1960, c. 106, s. 5.

How far personal representatives to be deemed "heirs"

6. When any part of the real property of a deceased person vests in his personal representative under this Act, such personal representative, in the interpretation of any Act of the Legislature or in the construction of any instrument to which the deceased was a party or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, as respects such part, unless a contrary intention appears, but nothing in this section affects the beneficial right to any property or the construction of words of limitation of any estate in or by any deed, will or other instrument. R.S.O. 1960, c. 106, s. 6.

Trust estates and interests of mortgagees

7. Where an estate or interest of inheritance in real property is vested on a trust or by way of mortgage in a person solely, it, on his death, notwithstanding any testamentary disposition, devolves to and becomes vested in his executor or administrator in like manner as if it were personal estate vesting in him, and accordingly all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with it belong to the

deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if it were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers. R.S.O. 1960, c. 106, s. 7.

8.—(1) Nothing in this Act takes away a widow's right to dower, but a widow may by deed or instrument in writing, attested by at least one witness, elect to take her interest under this Act in her husband's undisposed-of real property in lieu of all claim to dower in respect of the real property of which her husband was at any time seised or to which at the time of his death he was beneficially entitled, and, unless she so elects, she is not entitled to share in the undisposed-of real property.

Saving as to
dower and
right of
election

(2) The personal representative of the deceased may, by notice in writing, require the widow to make her election, and, if she fails to execute and deliver a deed or instrument of election to him within six months after the service of the notice, she shall be deemed to have elected to take her dower.

Notice
to elect

(3) Where the widow is an infant or a mentally incompetent person, the right of election may be exercised on her behalf by the Official Guardian with the approval of a judge or by some person authorized by a judge to exercise it, and the Official Guardian or the person so authorized may, for and in the name of the widow, give all notices and do all acts necessary or incidental to the exercise of such right.

Where
widow under
disability

(4) Where the widow is a patient in a psychiatric facility under *The Mental Health Act* and the Public Trustee is committee of her estate, he is entitled to exercise on her behalf the power of election conferred by this section. R.S.O. 1960, c. 106, s. 8.

Widow
patient in
psychiatric
facility
R.S.O. 1970,
c. 269

9.—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property, it is sufficient for the purposes of an action for the foreclosure of the equity of redemption in, or for the sale of such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under the provisions of this Act, to such property or the proceeds thereof be made defendant to such action, and it is not necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it is otherwise ordered by the court in which the action is brought, but, if during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor, he shall be made a party to the action.

Who to be
defendants
in action for
foreclosure
where no
personal
representa-
tive of
mortgagor

(2) In subsection 1, "mortgagor" includes the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. R.S.O. 1960, c. 106, s. 9.

Interpre-
tation

Application
for order
allowing sale
free of
curtesy or
dower

10.—(1) Where the personal representative desires to sell any real property devolving upon him free from curtesy or dower, he may apply to a judge, who may, in a summary way, and upon notice to be served personally unless the judge otherwise directs, order that it be sold free from the right of the tenant by the curtesy or doweress, and in making such order regard shall be had to the interests of all parties.

Effect

(2) If a sale free from such curtesy or dower is ordered, all the right and interest of the tenant by the curtesy or doweress pass thereby, and no conveyance or release thereof to the purchaser shall be required, and the purchaser, his heirs and assigns, hold the real property freed and discharged from the estate or interest of the tenant by the curtesy or doweress.

Payment in
satisfaction
of dower or
curtesy

(3) The judge may direct the payment of such sum in gross out of the purchase money to the person entitled to curtesy or dower as he considers, upon the principles applicable to life annuities, a reasonable satisfaction for such estate or interest, or he may direct the payment to the person entitled of an annual sum, or of the income or interest to be derived from the purchase money or any part thereof, as he considers just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as he considers necessary. R.S.O. 1960, c. 106, s. 10.

Widow's
preferential
share where
estate does
not exceed
\$20,000

11.—(1) The real and personal property of every man dying intestate and leaving a widow, whether or not he leaves issue, where the net value of such real and personal property does not exceed \$20,000, belongs to his widow absolutely and exclusively.

Where estate
exceeds
\$20,000

(2) Where the net value exceeds \$20,000, the widow is entitled to \$20,000 part thereof, absolutely and exclusively, and has a charge thereon for such sum with interest thereon from the date of the death of the intestate at 4 per cent per annum until payment.

Widow's
share in
remainder
of estate

(3) The provision for the widow made by this section is in addition and without prejudice to her interest and share in the residue of the real and personal property of the intestate remaining after payment of such sum of \$20,000 and interest in the same way as if such residue had been the whole of the intestate's real and personal property and this section had not been enacted. R.S.O. 1960, c. 106, s. 11 (1-3); 1960-61, c. 22, s. 1.

Where estate
consists of
real
property

(4) Where the estate consists in whole or in part of real property, this section applies only if the widow elects under section 8 to take an interest in her husband's undisposed-of real property in lieu of dower.

Interpre-
tation

(5) In this section, "net value" means the value of the real and personal property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. R.S.O. 1960, c. 106, s. 11 (4, 5).

12.—(1) The real and personal property of every woman dying intestate and leaving a widower whether or not she leaves issue shall, where the net value of such real and personal property does not exceed \$20,000, belong to her widower absolutely and exclusively. Widower's preferential share where estate does not exceed \$20,000
1975
c 18

(2) Where the net value exceeds \$20,000, the widower is entitled to \$20,000 part thereof, absolutely and exclusively, and has a charge thereon for such sum with interest thereon from the date of the death of the intestate at 4 per cent per annum until payment. Where estate exceeds \$20,000

(3) The provision for the widower made by this section is in addition and without prejudice to his interest and share in the residue of the real and personal property of the intestate remaining after payment of such sum of \$20,000 and interest in the same way as if such residue had been the whole of the intestate's real and personal property and this section had not been enacted. Widower's share in remainder of estate
R.S.O. 1960, c. 106, s. 12 (1-3); 1960-61, c. 22, s. 2.

(4) This section applies only where the husband has not elected under section 30 to take such interest in the real and personal property of his wife as he would have taken if this Act had not been passed. Application

(5) In this section, "net value" means the value of the real and personal property after payment of the charges thereon and the debts, funeral expenses, and expenses of administration, including succession duty. Interpretation
R.S.O. 1960, c. 106, s. 12 (4, 5).

13. Sections 11 and 12 do not apply to the surviving spouse of a person who dies intestate and is survived by one or more infant children by a former marriage. Application of ss. 11 and 12
1966, c. 45, s. 1 (1).

14.—(1) Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto under section 22 by the personal representative within three years after the death of the deceased is, subject to *The Land Titles Act* in the case of land registered under that Act and subject to subsections 4 and 5 of section 50 of *The Registry Act*, and subject as hereinafter provided, at the expiration of that period, whether probate or letters of administration have or have not been taken, thenceforth vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative, unless such personal representative, if any, has registered, in the proper registry or land titles office, a caution in Form 1 under his hand, and, if a caution is so registered, the real property mentioned therein does not so vest for three years from the time of the registration of the caution or of the last caution if more than one was registered. Vesting of real estate not disposed of within 3 years
R.S.O. 1970, cc. 234, 409
1966, c. 45, s. 2 (1).

Verification (2) The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by *The Registry Act* or *The Land Titles Act*, as the case may be. R.S.O. 1960, c. 106, s. 13 (2).

Effect (3) A caution registered or reregistered under this section or under section 16 is effectual only as to the real property mentioned in the caution.

Withdrawal of caution (4) The personal representative, before the expiration of the three years, may register a certificate in Form 2 withdrawing the caution in respect of the real property described in the certificate, and, upon registration of the certificate, the real property described therein shall be treated as if the caution had expired. 1966, c. 45, s. 2 (2).

Verification (5) The certificate of withdrawal shall be verified by an affidavit of a subscribing witness in Form 3.

Renewal of caution (6) Before a caution expires it may be reregistered and so on from time to time as long as the personal representative considers it necessary, and every caution continues in force for three years from the time of its registration or reregistration. R.S.O. 1960, c. 106, s. 13 (5, 6).

Ordinary rights of executors, etc., preserved R.S.O. 1970, c. 470 **15.** Nothing in section 14 derogates from any right possessed by an executor or administrator with the will annexed under a will or under *The Trustee Act* or from any right possessed by a trustee under a will. R.S.O. 1960, c. 106, s. 14.

Registration of caution after three years from death of testator **16.**—(1) Where a personal representative has not registered a caution within the proper time after the death of the deceased or has not reregistered a caution within the proper time, he may register or reregister the caution, as the case may be, provided he registers therewith,

(a) the affidavit of execution; and

(b) a further affidavit stating that he finds or believes that it is or may be necessary for him to sell the real property of the deceased, mentioned in the caution or part thereof, under his powers and in fulfilment of his duties, and, as far as they are known to him, the names of all persons beneficially interested in the real property, and whether any, and, if so, which of them, are infants or mentally incompetent persons; and

(c) the consent in writing of every adult and of the Official Guardian on behalf of every infant and mentally incompetent person whose property or interest would be affected, and an affidavit verifying such consent; or

- (d) in the absence and in lieu of such consent, an order of a judge of the Supreme Court or of the county or district court of the county or district in which the property or a part of it is situate, or the certificate of the Official Guardian authorizing the caution to be registered or reregistered, which order or certificate the judge or Official Guardian may make with or without notice on such evidence as satisfies him of the propriety of permitting the caution to be registered or reregistered, and the order or certificate to be registered does not require verification and shall not be rendered null by any defect of form or otherwise. R.S.O. 1960, c. 106, s. 15 (1); 1966, c. 45, s. 3.

(2) This section extends to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the period after the death of the testator or intestate within which a caution is required to be registered. Application of section

(3) Where a caution is registered or reregistered under this section, it has the same effect as a caution registered within the proper time after the death of the deceased and of vesting or revesting, as the case may be, the real property of the deceased in his personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through a person beneficially entitled, and save also and subject to any equities of any non-consenting person beneficially entitled, or of a person claiming under him, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or reregistered a caution, if his real property is afterwards sold by the personal representative. Effect of such registration

(4) Where there are two or more personal representatives, it is sufficient if a caution or the affidavit mentioned in clause b of subsection 1 is signed or made by one of such personal representatives. R.S.O. 1960, c. 106, s. 15 (2-4). Signature to caution

17. Where a caution has been registered or reregistered under any enactment repealed and not re-enacted by this Act and is still in force, such caution has the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 14. R.S.O. 1960, c. 106, s. 16. Effect of repealing enactment

18. Any person beneficially entitled to any real property affected by the registration or reregistration of a caution may apply to a judge to vacate the registration or reregistration, and the judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the Vacating caution

persons beneficially entitled ought not to be delayed, may order that the registration or reregistration be vacated as to such property, and every caution, the registration or reregistration of which is so vacated, thereafter ceases to operate. R.S.O. 1960, c. 106, s. 17.

Land
in two or
more
persons

19. Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the will of the deceased. R.S.O. 1960, c. 106, s. 18.

Sales where
infants in-
terested

20.—(1) Where an infant is interested in real property that but for this Act would not devolve on the personal representative, no sale or conveyance is valid under this Act without the written approval of the Official Guardian, or, in the absence of such consent or approval, without an order of a judge.

Local guar-
dians

(2) A judge may appoint the local judge of a county or district or the local master therein as local guardian of infants in such county or district during the pleasure of the judge, with authority to give such written approval instead of the Official Guardian, and the Official Guardian and local guardian are subject to such rules as the court may make in regard to their authority and duties under this Act. R.S.O. 1960, c. 106, s. 19.

Power of
personal
representa-
tive over
real
property

21. Except as otherwise provided in this Act, the personal representative of a deceased person has power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but subject to the like rights, equities and obligations, as if the real property were personal property vested in him. R.S.O. 1960, c. 106, s. 20.

Powers of
executors
and adminis-
trators as to
selling and
conveying
real estate

22.—(1) The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case is it necessary that the persons beneficially entitled concur in any such sale except where it is made for the purpose of distribution only.

Concur-
rence of
heirs and
devisees

(2) Except with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein, including the Official Guardian acting on behalf of an infant or mentally incompetent person, no sale of any such real property made for the purpose of distribution only is valid as respects any person beneficially entitled thereto unless he concurs therein, but, where a mentally incompetent person is beneficially entitled or where there are

other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Official Guardian it would be inconvenient to require the concurrence of such persons, the Official Guardian may, upon proof satisfactory to him that the sale is in the interest and to the advantage of the estate of the deceased person and the persons beneficially interested therein, approve the sale on behalf of such mentally incompetent person and non-concurring persons, and any such sale made with the written approval of the Official Guardian is valid and binding upon such mentally incompetent person and non-concurring persons, and for this purpose the Official Guardian has the same powers and duties as he has in the case of infants, but in any case a judge may dispense with the concurrence of the persons beneficially entitled or any or either of them.

(3) The personal representative has power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of infants or mentally incompetent persons, if any, so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein. 1960, c. 106, s. 4 (1-3).

Powers of personal representative as to dividing estate among persons entitled

(4) Where a person beneficially entitled is a patient in a psychiatric facility under *The Mental Health Act* and the Public Trustee is committee of his estate, the concurrence and approval required by subsections 2 and 3 may be given by the Public Trustee on behalf of such patient. 1960, c. 106, s. 21 (4), amended.

Concurrence where person is a patient in a psychiatric facility R.S.O. 1970, c. 269

(5) Upon the application of the personal representative or of any person beneficially entitled, the court may, before the expiration of three years from the death of the deceased, direct the personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein.

Distribution by order within three years from death

(6) The power of division conferred by subsection 3 may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Official Guardian, which may be given under the same conditions and with the like effect as in the case of a sale under subsection 2.

Exercise of power of division without concurrence

(7) Section 21 and this section do not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and do not derogate from any right possessed by a personal representative independent of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will except with the approval of a judge.

Sections 21 and 22 not to apply to administrators of personal estate only

Conveyance
by personal
representa-
tive without
an order

(8) The powers of a personal representative under subsection 2, 3 or 6 have heretofore been and shall hereafter be exercisable during the period of three years from the death of the deceased without an order of a judge, provided that,

- (a) real property conveyed, divided or distributed by virtue of such powers to or among the persons beneficially entitled thereto, shall be deemed to have been and to be liable for the payment of the debts of the deceased owner as if no conveyance, division or distribution had been made, even though it has subsequently during such three-year period been conveyed to a purchaser or purchasers in good faith and for value, but, in the case of such purchaser or purchasers, such liability shall only continue after the expiry of such three-year period if some action or legal proceeding has been instituted by the creditor, his assignee or successor to enforce the claim and a *lis pendens* or a caution has, before such expiry, been registered against the property; and that
- (b) although such liability has applied and shall apply as aforesaid in respect of real property so conveyed, divided or distributed, any such purchaser, in good faith and for value, shall be deemed to have had and to have a right to relief over against the persons beneficially entitled, and where such conveyance, division or distribution was made by the personal representative with knowledge of the debt in respect of which claim is made, or without due advertisement for creditors, then against such personal representative; and that
- (c) upon the expiration of such three-year period where no *lis pendens* or caution has been registered, subsection 2 of section 25 and section 27 apply as if such real property had become vested in the person beneficially entitled thereto under section 14. R.S.O. 1960, c. 106, s. 21 (5-8).

Effect of
accepting
share of pur-
chase money

23. The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative that has been made without the written approval of the Official Guardian, where such approval is required, is a confirmation of the sale as to him. R.S.O. 1960, c. 106, s. 22.

Protection of
bona fide
purchasers
from per-
sonal repre-
sentatives

24. A person purchasing in good faith and for value real property from a personal representative in a manner authorized by this Act is entitled to hold it freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and is not bound to see to the application of the purchase money. R.S.O. 1960, c. 106, s. 23.

25.—(1) A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of a judge, is entitled to hold it freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, but nothing in this section affects the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative.

Protection of
bona fide
purchasers
from
beneficiary

(2) Real property that becomes vested in a person beneficially entitled thereto under section 14 continues to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under him, not being a purchaser in good faith and for valuable consideration, as it would have been if it had remained vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he is personally liable for such debts to the extent of the proceeds of such real property. R.S.O. 1960, c. 106, s. 24.

Extent to
which real
property
remains
liable to
debts and
personal
liability of
beneficiary

26.—(1) The powers of a personal representative under this Act include,

- (a) power to lease from year to year while the real property remains vested in him;
- (b) power, with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein including the Official Guardian acting on behalf of an infant or mentally incompetent person, to lease for a longer term;
- (c) power to mortgage for the payment of debts.

Powers of
personal re-
presentative
as to leasing
and mort-
gaging

(2) The written approval of the Official Guardian to mortgaging is required where it would be required if the real property were being sold. R.S.O. 1960, c. 106, s. 25.

Approval of
Official
Guardian

27.—(1) A purchaser in good faith and for value of real property of a deceased owner that has become vested under section 14 in a person beneficially entitled thereto is entitled to hold it freed and discharged from the claims of creditors of the deceased owner except such of them of which he had notice at the time of his purchase.

Rights of
purchaser in
good faith
against
claims of
creditors

(2) Nothing in subsection 1 affects the right of the creditor against the personal representative personally where he has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled. R.S.O. 1960, c. 106, s. 26.

Liability of
personal
representa-
tive

Effect of
illegitimacy

28.—(1) Subject to subsections 2 and 3, an illegitimate child or relative shall not share under any of the provisions of this Act. R.S.O. 1960, c. 106, s. 27; 1961-62, c. 34, s. 1 (1).

Intestacy of
mother of
illegitimate
child

(2) Where the mother of an illegitimate child dies intestate as respects all or any of her real or personal property and does not leave any legitimate issue surviving her, the illegitimate child, or, if he is dead, his issue, is entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

Intestacy of
illegitimate
child

(3) Where an illegitimate child dies intestate in respect of all or any of his real or personal property, his mother, if surviving, is entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent. 1961-62, c. 34, s. 1 (2).

Cases of
children
advanced by
settlement,
etc.

29.—(1) If a child of an intestate has been advanced by the intestate by settlement or portion of real or personal property or both, and the same has been so expressed by the intestate in writing or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of the intestate to be distributed under this Act, and if the advancement is equal to or greater than the amount of the share that the child would be entitled to receive of the real and personal property of the intestate, as so reckoned, then the child and his descendants shall be excluded from any share in the real and personal property of the intestate.

If advance-
ment is not
equal

(2) If the advancement is less than the share, the child and his descendants are entitled to so much only of the real and personal property as is sufficient to make all the shares of the children in the real and personal property and advancement to be equal, as nearly as can be estimated.

Value of
property
advanced,
how
estimated

(3) The value of any real or personal property so advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing, otherwise the value shall be estimated according to the value of the property when given.

Education,
etc., not ad-
vancement

(4) The maintaining or educating of, or the giving of money to, a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act. R.S.O. 1960, c. 106, s. 28.

Distribution
of property
of married
woman
dying
intestate

30.—(1) Subject to section 12, the real and personal property, whether separate or otherwise, of a married woman in respect of which she dies intestate shall be distributed as follows: one-third to her husband if she leaves issue, and one-half if she leaves no issue, and, subject thereto, devolves as if her husband had predeceased her.

(2) A husband who, if this Act had not been passed, would be entitled to an interest as tenant by the curtesy in real property of his wife, may, by deed or instrument in writing executed and attested by at least one witness and delivered to the personal representative, if any, or, if there is none, deposited in the office of the Registrar of the Supreme Court at Toronto within six months after his wife's death, elect to take such interest in the real and personal property of his wife as he would have taken if this Act had not been passed, in which case the husband's interest therein shall be ascertained in all respects as if this Act had not been passed, and he is entitled to no further interest thereunder. R.S.O. 1960, c. 106, s. 29, *amended*.

Saving as to husband's interest in property of wife

31. Except as otherwise provided in this Act, the personal property of a person dying intestate shall be distributed as follows: one-third to the wife of the intestate and all the residue by equal portions among the children of the intestate and such persons as legally represent the children in case any of them died in his lifetime, and, if there are no children or any legal representatives of them, then two-thirds of the personal property shall be allotted to the wife and the residue thereof shall be distributed equally to every of the next of kindred of the intestate who are of equal degree and those who legally represent them, and for the purpose of this section the father and the mother and the brothers and the sisters of the intestate shall be deemed of equal degree; but there shall be no representations admitted among collaterals after brothers' and sisters' children, and, if there is no wife, then all such personal property shall be distributed equally among the children, and, if there is no child, then to the next of kindred in equal degree of or unto the intestate and their legal representatives and in no other manner; but, if there is only one child or there are legal representatives of only one child, the personal property of a person dying intestate shall be distributed as follows: one-half to the wife of the intestate and the other half to the child or the legal representatives of the child. R.S.O. 1960, c. 106, s. 30; 1961-62, c. 34, s. 2.

Distribution of personal estate

32. If after the death of a father any of his children die intestate without wife or children in the lifetime of the mother, every brother and sister and the representatives of them shall have an equal share with her, anything in section 31 to the contrary notwithstanding. R.S.O. 1960, c. 106, s. 31.

Children share with mother

33. Subject to section 53 of *The Trustee Act*, no such distribution shall be made until after one year from the death of the intestate, and every person to whom in distribution a share is allotted shall, if any debt owing by the intestate is afterwards sued for and recovered or otherwise duly made to appear, refund and pay back to the personal representative his rateable part of

Distribution not to be made for one year
R.S.O. 1970, c. 470

3101 1973 c. 18 s. 3

that debt and of the costs of suit and charges of the personal representative by reason of such debt out of the part or share so allotted to him, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that he will do so. R.S.O. 1960, c. 106, s. 32.

Rules of
procedure

34. Rules regulating the practice and procedure to be followed in all proceedings under this Act and a tariff of fees to be allowed and paid to solicitors for services rendered in such proceedings may be made by the Rules Committee, subject to the approval of the Lieutenant Governor in Council. R.S.O. 1960, c. 106, s. 33.

Appointment
of deputy
Official
Guardian
pro tem

35. The Lieutenant Governor in Council may appoint a deputy *pro tempore* of the Official Guardian for the purposes of this Act who shall have all the powers of the Official Guardian for such purposes. R.S.O. 1960, c. 106, s. 34.

Affidavits

36. Affidavits may be used in proceedings taken under this Act. R.S.O. 1960, c. 106, s. 35.

FORM 1

The Devolution of Estates Act

(Section 14 (1))

CAUTION

I,, executor of (or administrator with the will annexed of, or administrator of), who died on or about the day of, 19, certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (or administrator) to sell the real property of the said as hereinafter described, or part thereof, and of this all persons concerned are hereby required to take notice.

The real property to be affected by this caution is described as follows:
(Describe the real property in a manner sufficient for registration under The Land Titles Act or The Registry Act, as the case may be.)

1966, c. 45, s. 4, part.

FORM 2

The Devolution of Estates Act

(Section 14 (4))

CERTIFICATE OF WITHDRAWAL

I,, executor (or administrator) of, hereby withdraw the caution heretofore registered with respect to the real property hereinafter described: (*Describe the real property in a manner sufficient for registration under The Land Titles Act or The Registry Act, as the case may be.*)

1966, c. 45, s. 4, part.

FORM 3

The Devolution of Estates Act

(Section 14 (5))

AFFIDAVIT OF WITNESS

I,, of, etc., make oath and say: that I am well acquainted with named in the above certificate; that I was present and did see the said certificate signed by the said; that I am a subscribing witness to the said certificate, and that I believe the said is the person who registered the caution referred to in the said certificate.

Sworn, etc.

R.S.O. 1960, c. 106, Form 3.