

**CONSOLIDATION OF DEPENDANTS RELIEF ACT**  
R.S.N.W.T. 1988,c.D-4

*(Current to: August 19, 2012)*

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**  
S.N.W.T. 1998,c.17

**AS AMENDED BY NUNAVUT STATUTES:**

S.Nu. 2010,c.14,s.4  
s.4 in force June 10, 2010  
S.Nu. 2011,c.6,s.9  
s.9 in force February 25, 2011  
S.Nu. 2011,c.25,s.6  
s.6 in force October 31, 2011

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## DEPENDANTS RELIEF ACT

### Definitions

1. In this Act,

"child" includes

- (a) a natural child or a stepchild,
- (b) a child adopted in accordance with aboriginal customary law, or who appears to the satisfaction of the Court in effect to have been adopted even though there has not been formal compliance with the *Adoption Act*, and
- (c) a child of the deceased conceived before and born alive after the date of the death of the deceased; (*enfant*)

"Clerk" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier*)

"Court" means the Nunavut Court of Justice; (*tribunal*)

"dependant" means

- (a) the surviving spouse of the deceased,
- (b) a child of the deceased who is under the age of 19 years at the time of the death of the deceased,
- (c) a child of the deceased who has attained the age of 19 years at the time of the death of the deceased and unable by reason of mental or physical disability to earn a livelihood,
- (d) a person who immediately before the death of the deceased
  - (i) had lived in a conjugal relationship outside marriage with the deceased for at least one year, and
  - (ii) was dependent on the deceased for maintenance and support, or
- (e) **repealed, S.Nu. 2011,c.25,s.6(3),**
- (f) a person who at the time of the death of the deceased was acting as a foster parent of the children of the deceased in the same household and who was dependent on the deceased for maintenance and support; (*personne à charge*)

"judge" means a judge of the Nunavut Court of Justice; (*jugé*)

"order" includes an order made under subsection 2(2); (*ordonnance*)

"spouse" means a person who, immediately before the death of the deceased,

- (a) was married to the deceased, or
  - (b) had lived in a conjugal relationship outside marriage with the deceased, if
    - (i) they had so lived for a period of at least two years, or
    - (ii) the relationship had been one of some permanence and they were together the natural or adoptive parents of a child.
- (conjoint)*  
S.N.W.T. 1998,c.17,s.8; S.Nu. 2010,c.14,s.4(2);  
S.Nu. 2011,c.6,s.9(2); S.Nu. 2011,c.25,s.6(2),(3),(4).

Order for maintenance and support

**2.** (1) On application by or on behalf of one or more dependants of a deceased, a judge may, despite the provisions of the deceased's will or the *Intestate Succession Act*, order that such provision as the judge considers appropriate be made out of the deceased's estate for the proper maintenance and support of one or more dependants of the deceased whose share in the estate, whether pursuant to the deceased's will or the *Intestate Succession Act*, would otherwise be inadequate for their proper maintenance and support.

Order suspending administration

(2) A judge, on application by or on behalf of one or more dependants of the deceased, may by order suspend in whole or in part the administration of the estate of the deceased in order that application may be made at any later date for an order making specific provision for maintenance and support. S.Nu. 2011,c.6,s.9(3),(4).

Application

**3.** An application under this Act may be made by originating notice of motion in the matter of the estate of the deceased.

Powers of judge

**4.** (1) A judge on hearing an application under this Act may

- (a) inquire into and consider all matters that the judge considers should be fairly taken into account in deciding on the application;
- (b) in addition to the evidence adduced by the parties, receive any other evidence that the judge considers necessary or proper;
- (c) accept evidence that the judge considers proper, including any statement in writing signed by the deceased, of the reasons of the deceased, so far as can be ascertained, for
  - (i) making the dispositions made by his or her will, or
  - (ii) not making adequate provision for a dependant; and
- (d) refuse to make an order in favour of any dependant whose character or conduct, in the opinion of the judge, disentitles the dependant to the benefit of an order under this Act.

#### Accuracy of statement

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

#### Conditions and restrictions

**5.** (1) In an order providing for maintenance and support of a dependant, a judge may impose the conditions and restrictions that the judge considers fit.

#### Payment of maintenance and support

(2) A judge may order that the provision for maintenance and support of a dependant is to be made out of and charged against all or any part of the estate of the deceased in the proportion and manner that the judge considers proper.

#### Methods of payment

(3) Provision for maintenance and support of a dependant may be made out of income or capital of the estate of the deceased or both and may, as the judge considers fit, be made in one or more of the following ways:

- (a) an amount payable annually or otherwise;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned, absolutely or in trust or for life, or for a term of years or for the benefit of the dependant.

#### Transfer or assignment of property

(4) Where a transfer or assignment of property is ordered under paragraph (3)(c), the judge may

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or another person directed by the judge; or
- (b) grant a vesting order.

#### Inquiries and further orders by judge

**6.** Where an order has been made under this Act, a judge may at any later date

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

### Powers of judge

- 7.** A judge may, at any time
- (a) fix a periodic payment or lump sum to be paid by
    - (i) a legatee,
    - (ii) a devisee, or
    - (iii) a beneficiary under an intestacy,to represent, or in commutation of, the proportion of the sum ordered to be paid that falls on the part of the estate of the deceased in which that person is interested;
  - (b) relieve the part of the estate referred to in paragraph (a) from further liability; and
  - (c) direct
    - (i) the manner in which the periodic payment fixed under paragraph (a) is to be secured, or
    - (ii) to whom the lump sum fixed under paragraph (a) is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable.

### Distribution stayed

- 8.** (1) Where notice of an application made under this Act is served on the executor, administrator or trustee of the estate of a deceased, the person served shall not, unless the judge orders otherwise, proceed with the distribution of the estate until the judge has disposed of the application.

### Liability

- (2) An executor, administrator or trustee who disposes of or distributes part of an estate in contravention of subsection (1) is personally liable to pay any amount for the maintenance and support of a dependant that the judge ordered be made out of the estate and that should have been made out of the part of the estate disposed of or distributed.

### Reasonable advances

- (3) Nothing in this Act prevents an executor, administrator or trustee from making reasonable advances for maintenance and support to dependants who are beneficiaries. S.Nu. 2011,c.6,s.9(5).

### Incidence of provision

- 9.** (1) Unless the judge determines otherwise, the incidence of a provision for maintenance and support ordered falls rateably on that part of the estate of the deceased to which the jurisdiction of the judge extends.

### Relief

- (2) The judge may relieve any part of the estate from the incidence of an order referred to subsection (1).

#### Further directions

**10.** A judge may give further directions that the judge considers fit for the purpose of giving effect to an order made under this Act.

#### Effect of order

**11.** (1) An order made under this Act has for all purposes, including the purpose of any enactment relating to succession duties, effect on and after the date of the death of the deceased.

#### Effect of will

(2) A will has effect on and after the date of the death of the deceased as if it had been executed with the variations necessary to give effect to an order referred to in subsection (1).

#### Filing of certified copy of order

**12.** (1) A certified copy of every order made under this Act must be filed with the Clerk from which the letters probate or letters of administration issued.

#### Memorandum of order

(2) A memorandum of an order under this Act must be endorsed on or annexed to the copy of the original letters probate or letters of administration that is in the custody of the Clerk. S.Nu. 2010,c.14,s.4(4).

#### Limitation period

**13.** (1) Subject to subsection (2), an application for an order under section 2 may not be made after six months from the grant of probate of the will or of administration.

#### Exception

(2) If a judge considers it just, the judge may allow an application to be made at any time as to any part of the estate of the deceased remaining undistributed at the date of the application.

#### Effect of contract

**14.** (1) Subject to subsection (2), an order may not be made under this Act in respect of property in the following circumstances:

- (a) the deceased, in his or her lifetime, entered into an agreement, in good faith and for valuable consideration, to devise and bequeath that property; and
- (b) the deceased did devise and bequeath that property in his or her will in accordance with the agreement.

#### Exception

(2) Where, in the opinion of a judge, the value of the property referred to in subsection (1) exceeds the consideration that the deceased received for it, the judge may make an order in respect of the excess value. S.Nu. 2011,c.6,s.9(6).



### Validity of mortgage, charge, assignment

**15.** A mortgage, charge or assignment of or with respect to a provision for the maintenance and support of a dependant that is ordered by a judge under this Act is void if it is made before the order making the provision is entered.

### Appeal

**16.** An appeal lies to the Court of Appeal from any order made under this Act.

### Orders and directions

**17.** A judge may make the necessary order or direction or interim order or direction to secure to a dependant out of the estate of the deceased the benefit to which the dependant is found entitled.

### Enforcement

**18.** An order or direction made under this Act may be enforced against the estate of the deceased in the same manner as any other judgment or order of the court against the estate.

### Testamentary dispositions

**19.** (1) Subject to section 14, for the purposes of this Act, the capital value of the following transactions effected by a deceased before death, whether benefiting the dependants of the deceased or another person, shall be treated as testamentary dispositions as of the date of the death of the deceased and included in the net estate of the deceased:

- (a) a gift made in anticipation of and conditional on the death of the donor;
- (b) money deposited, together with interest on that money, in an account with a bank, savings office or trust company, in the name of the deceased in trust for another person or persons and remaining on deposit at the date of the death of the deceased, to the extent that the money was the property of the deceased immediately before the deposit;
- (c) money deposited, together with interest on that money, in an account with a bank, savings office or trust company, in the name of the deceased and another person or persons and payable on death under the terms of the deposit or by operation of law to the survivor of those persons and remaining on deposit at the date of the death of the deceased, to the extent that the money was the property of the deceased immediately before the deposit;
- (d) any disposition of property made by the deceased by which means the property is, at the date of the death of the deceased, held by the deceased and another person as joint tenants with rights of survivorship, to the extent that the consideration for the property was provided by the deceased;
- (e) any disposition of property made by the deceased in trust or otherwise, to the extent that, by the express provisions of the

disposing instrument, the deceased at the date of his or her death retained, either alone or with another person or persons, a power to revoke the disposition or a power to consume, invoke or dispose of the principal of it, but this does not affect the right of an income beneficiary to the income accrued and undistributed at the date of the death of the deceased;

- (f) any amount payable under an insurance policy on the life of the deceased owned by the deceased, where the beneficiary of the policy was not, immediately before the death of the deceased, designated irrevocably under Part IV of the *Insurance Act*.

#### Burden of establishing ownership

(2) A dependant claiming under this Act has the burden of establishing that the money or property referred to in paragraph (1)(b), (c) or (d), or part of that money or property, belonged to the deceased.

#### Burden of establishing amount

(3) Where the other party to a transaction referred to in paragraph (1)(c) or (d) is a dependant, the dependant has the burden of establishing the amount of his or her contribution. S.Nu. 2011,c.6,s.9(7).

#### Exception

**20.** (1) Section 19 does not prohibit a person from paying or transferring any money or property, or part of any money or property, to a person otherwise entitled to it, unless the person making the payment or transfer has been served personally with a certified copy of an order made under subsection 2(2) enjoining the payment or transfer.

#### Effect of service

(2) Service of an order under subsection (1) is a defence to an action or proceeding brought against the person served with respect to the money or property referred to in subsection (1) during the period the order is in force.

#### Rights of creditors

(3) Section 19 and this section do not affect the rights of creditors of the deceased in a transaction with respect to which a creditor has rights.

Contribution by transferee

**21.** On application, the Court may order a transferee of property from the deceased to contribute to the maintenance of one or more dependants of the deceased where all the following criteria are met:

- (a) the estate of a deceased is insufficient to provide appropriate maintenance to the dependants of the deceased;
  - (b) the deceased, within three years before the date of his or her death, made a transfer of property that, in the opinion of the Court, was unreasonably large;
  - (c) the Court considers it just in the circumstances.
- S.Nu. 2010,c.14,s.4(3).