

The Dependants' Relief Act, 1996

being

Chapter D-25.01 of the *Statutes of Saskatchewan, 1996*
(effective February 21, 1997) as amended
by the *Statutes of Saskatchewan, 2001, c.34* and *51*.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

1	Short title	13	Power of court to allow commutation
2	Interpretation	14	Directions after order is made
3	Application to court for maintenance	15	Effect of order on will
4	Time limited for entertaining application	16	Copies of orders to be filed
5	Service of notice of motion	17	Distribution of estate
6	Maintenance order	18	Distribution of estate postponed
7	Directions respecting maintenance	19	Mortgage made in anticipation invalid
8	Factors to consider in ordering maintenance	20	Power of court to discharge or vary order
9	Trust fund for certain dependants	21	Costs
10	Devise of property pursuant to contract	22	Appeal
11	Allowances fall rateably on whole estate	23	Enforcement of order
12	Power of court to release part of estate	24	R.S.S. 1978, c.D-25 repealed

CHAPTER D-25.01

An Act respecting the Maintenance of Dependants of Testators and Intestates

Short title

1 This Act may be cited as *The Dependants' Relief Act, 1996*.

Interpretation

2(1) In this Act:

“**application**” means an application for maintenance pursuant to this Act;
(«*demande*»)

“**child**” includes an adopted child of a deceased and a child born after the death of a deceased; («*enfant*»)

“**court**” means the Court of Queen’s Bench; («*Cour*»)

“**deceased**” means a testator or a person who died intestate; («*défunt*»)

“**dependant**” means:

- (a) the wife or husband of a deceased;
- (b) a child of a deceased who is under the age of 18 years at the time of the deceased’s death;
- (c) a child of a deceased who is 18 years or older at the time of the deceased’s death and who alleges or on whose behalf it is alleged that:
 - (i) by reason of mental or physical disability, he or she is unable to earn a livelihood; or
 - (ii) by reason of need or other circumstances, he or she ought to receive a greater share of the deceased’s estate than he or she is entitled to without an order; or
- (d) a person with whom a deceased cohabited as spouses:
 - (i) continuously for a period of not less than two years; or
 - (ii) in a relationship of some permanence, if they are the parents of a child; («*personne à charge*»)

“**estate**” means all the property of which a deceased had power to dispose by will, otherwise than by virtue of a special power of appointment, less the amount of the deceased’s funeral, testamentary and administration expenses and debts and liabilities that are payable out of the deceased’s estate on his or her death; («*succession*»)

“**order**” means an order that is made pursuant to this Act providing for maintenance. («*ordonnance*»)

(2) Where, pursuant to section 24 of *The Marriage Act, 1995*, the court makes a declaration of presumption of death and the spouse of the person presumed to be dead marries again in accordance with *The Marriage Act, 1995*, the children of that second marriage are deemed to be dependants for the purposes of this Act notwithstanding that it is later found that the person presumed to be dead was alive when the second marriage ceremony was performed.

(3) For the purposes of this Act, if an application is made by or on behalf of a dependant of an intestate, the intestate is deemed to be a testator and is deemed to have provided by will for distribution of his or her estate as on an intestacy.

1996, c.D-25.01, s.2; 2001, c.51, s.4.

Application to court for maintenance

3 Where a person dies leaving a dependant or dependants, any dependant or person acting on behalf of a dependant may apply to the court for an order to provide reasonable maintenance for the dependant.

1996, c.D-25.01, s.3.

Time limited for entertaining application

4(1) Subject to subsection (2), an application must be made within six months from the grant of probate of the will or of letters of administration.

(2) The court may, if it considers it appropriate, allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application.

1996, c.D-25.01, s.4.

Service of notice of motion

5(1) An applicant shall serve notice of the application on the executors named in the will, or on any person to whom a grant of letters of administration has been made.

(2) The court may direct any other person to be served with notice of the application.

1996, c.D-25.01, s.5.

Maintenance order

6(1) Subject to subsections (2) to (3) and to sections 7 to 9, if on an application the court is of the opinion that the deceased has disposed of real or personal property in a manner that reasonable provision has not been made for the maintenance of the dependant to whom the application relates, the court may order that provision be made from the deceased's estate for maintenance of the dependant in an amount that the court considers reasonable.

(2) The court may order that the provision of maintenance be made out of and charged against the whole or any part of the deceased's estate in the proportion and in the amount that the court considers reasonable.

(3) In making an order for the maintenance of a dependant, the court may impose any conditions and restrictions that it considers appropriate.

1996, c.D-25.01, s.6.

Directions respecting maintenance

7(1) The court may direct that maintenance may be by way of:

- (a) an amount payable annually or otherwise;
 - (b) a lump sum to be paid;
 - (c) specified property to be transferred or assigned, either absolutely or for life or for a term of years, to the dependant or for the use and benefit of the dependant; or
 - (d) a trust fund established pursuant to section 9.
- (2) If a transfer of property is ordered pursuant to clause (1)(c), the court may:
- (a) give any directions that it considers necessary for the transfer to be executed by the executors, the administrators with the will annexed or any other person that the court may direct; or
 - (b) grant a vesting order.

1996, c.D-25.01, s.7.

Factors to consider in ordering maintenance

8(1) In determining whether, and in what way, and from what date, maintenance ought to be provided, the court shall consider the nature of the property representing the deceased's estate and shall not make an order requiring a sale of property that would be improvident having regard to the interests of the dependants and of the person who, apart from the order, would be entitled to that property.

(2) In making an order for maintenance, the court shall consider:

- (a) any past, present or future capital or income from any source of the dependant;
 - (b) the conduct of that dependant in relation to the deceased;
 - (c) the claims that any other dependant of the deceased may have; and
 - (d) any other matters that the court considers appropriate.
- (3) In making an order for maintenance, the court shall consider the deceased's reasons, so far as they are ascertainable, for making the dispositions made by will, or for not making any provision or any further provision, as the case may be, for a dependant.
- (4) When considering the deceased's reasons, the court may accept any evidence of those reasons that it considers appropriate, including a written statement that is signed and dated by the testator.
- (5) In estimating the weight, if any, to be attached to any statement mentioned in subsection (4), the court shall consider all the circumstances from which any inference can reasonably be drawn as to the accuracy or validity of the statement.

(6) The court may refuse to make an order in favour of a dependant whose character or conduct is or has been of a nature that would, in the opinion of the court, disentitle the dependant to the benefit of an order.

1996, c.D-25.01, s.8.

Trust fund for certain dependants

9(1) In this section:

“**allowance**” means an allowance paid by way of a trust fund; (*«indemnité»*)

“**dependant**” means a child of a deceased who is 18 years or older at the time of the deceased’s death and who alleges or on whose behalf it is alleged that:

(i) by reason of mental or physical disability, he or she is unable to earn a livelihood; or

(ii) by reason of need or other circumstances, he or she ought to receive a greater share of the deceased’s estate than he or she is entitled to without an order; (*«personne à charge»*)

“**trust fund**” means a trust fund established pursuant to subsection (2). (*«fonds en fiducie»*)

(2) Subject to subsections (3) to (7), the court may order the establishment of a trust fund for a dependant for the purpose of paying an allowance:

(a) to help the dependant achieve independence;

(b) to meet the special needs of the dependant;

(c) to provide occasional gifts to the dependant; or

(d) to do all or any combination of the things mentioned in clauses (a) to (c).

(3) In determining the amount of an allowance that may be paid to a dependant, the court shall consider that any assistance provided to or on behalf of the dependant pursuant to *The Saskatchewan Assistance Act* and any other similar assistance programs fund by the Government of Saskatchewan will continue to be provided to the dependant.

(4) The capital of and income from a trust fund is not to be considered as an asset or income of the dependant for the purpose of determining the dependant’s eligibility for assistance pursuant to *The Saskatchewan Assistance Act* or any other similar assistance program funded by the Government of Saskatchewan.

(5) If there is no other suitable person to be appointed as trustee and the public guardian and trustee consents to be appointed, the court may appoint the public guardian and trustee as trustee for a trust fund.

(6) If the public guardian and trustee is appointed as trustee of a trust fund pursuant to subsection (5), the public guardian and trustee may charge the same fee for administering the trust fund that the public guardian and trustee could charge pursuant to *The Public Guardian and Trustee Act* for performing similar services respecting the property of a dependent adult.

(7) The Lieutenant Governor in Council may make regulations limiting the amount of a trust fund.

1996, c.D-25.01, s.9; 2001, c.34, s.2.

Devise of property pursuant to contract

10(1) Subject to subsection (2), property of a testator is not subject to an order if the testator:

- (a) has in his or her lifetime, in good faith and for valuable consideration, entered into a contract to devise or bequeath that property; and
- (b) has by his or her will devised or bequeathed the property in accordance with the contract.

(2) Subsection (1) does not apply to the extent that the value of the property, in the opinion of the court, exceeds the consideration received by the testator.

1996, c.D-25.01, s.10.

Allowances fall rateably on whole estate

11 Unless the court orders otherwise, the incidence of maintenance provided by an order falls rateably:

- (a) on the whole estate; or
- (b) in cases where the authority of the court does not extend or cannot, directly or indirectly, be made to extend to the whole estate, on the portion of the estate that is situated in Saskatchewan.

1996, c.D-25.01, s.11.

Power of court to release part of estate

12 The court may release any part of the deceased's estate from the incidence of an order after hearing from as many parties as the court considers necessary and may, for that purpose:

- (a) direct any executor or trustee to represent any party; or
- (b) appoint any person to represent any party.

1996, c.D-25.01, s.12.

Power of court to allow commutation

13 Where, as a result of an order, an amount of maintenance to be paid falls on a portion of the deceased's estate in which a legatee or devisee is interested, the court may:

- (a) fix a periodic payment or lump sum to be paid by the legatee or devisee to represent, or to be in commutation of, that amount of maintenance ordered to be provided that falls on that portion of the estate in which the legatee or devisee is interested;
- (b) relieve that portion of the estate from further liability; and
- (c) direct:

- (i) in what manner a periodic payment fixed pursuant to clause (a) is to be secured; or
- (ii) to whom a lump sum fixed pursuant to clause (a) is to be paid and in what manner the lump sum is to be invested for the benefit of the person to whom the commuted payment is payable.

1996, c.D-25.01, s.13.

Directions after order is made

14(1) The court may give any directions that it considers appropriate to give effect to an order.

(2) In giving directions pursuant to subsection (1), the court may set aside only that portion of the estate which, based on calculations made at the date of the order, will produce income sufficient to provide the amount of the maintenance.

1996, c.D-25.01, s.14.

Effect of order on will

15 Where an order is made, the will has effect, and is deemed to have had effect, from the testator's death as if the will had been executed, with any variations that are specified in the order that are necessary to give effect to the order.

1996, c.D-25.01, s.15.

Copies of orders to be filed

16(1) A certified copy of every order is to be filed with the local registrar of the court at the judicial centre out of which the letters probate or letters of administration issued.

(2) A memorandum of every filed order is to be endorsed on, or annexed to, the original letters probate or letters of administration.

1996, c.D-25.01, s.16.

Distribution of estate

17(1) Until the expiration of six months from the grant of probate of the will or of letters of administration, the executor, administrator or trustee shall not distribute any portion of the estate to any beneficiary without:

- (a) the consent of all of the dependants of the deceased; or
- (b) an order of the court authorizing the distribution.

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

(3) If an executor, administrator or trustee distributes any portion of the estate in contravention of subsection (1) and any provision for maintenance is ordered by the court to be made out of the estate, the executor, administrator or trustee is personally liable to pay the amount of the distribution to the extent that the provision or any part of it ought, pursuant to the order or this Act, to be made out of the portion of the estate distributed.

1996, c.D-25.01, s.17.

Distribution of estate postponed

18(1) After service of notice of an application on an executor, administrator or trustee, the executor, trustee or administrator shall not proceed with the distribution of the estate until the application is disposed of.

(2) An executor, trustee or administrator who contravenes subsection (1) is guilty of an offence and liable on summary conviction:

- (a) in the case of an individual, to a fine not exceeding \$1,000; and
- (b) in the case of a corporation, to a fine not exceeding \$2,000.

1996, c.D-25.01, s.18.

Mortgage made in anticipation invalid

19 Any mortgage, charge or assignment of or with respect to an order is void if it is made before the order is entered.

1996, c.D-25.01, s.19.

Power of court to discharge or vary order

20(1) The court may at any time discharge, vary or suspend an order or make any other order that it considers just in the circumstances, on the ground that a material fact was not disclosed to the court when the order was made.

(2) An application for an order pursuant to subsection (1) may be made by or on behalf of:

- (a) a dependant;
- (b) a beneficiary under the will; or
- (c) a person entitled pursuant to *The Intestate Succession Act, 1996* to share in the estate of the deceased.

1996, c.D-25.01, s.20.

Costs

21 The court may:

- (a) direct that the costs of any application be paid out of the estate or in any other manner that it considers just; and
- (b) fix the amount of the costs, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any maintenance applied for or directed by the order.

1996, c.D-25.01, s.21.

Appeal

22(1) An appeal lies to the Court of Appeal from an order, other than an order as to costs.

(2) On an appeal, the Court of Appeal may:

(a) affirm or annul the order;

(b) reduce or increase the amount or value of any maintenance fixed by the order; or

(c) where the order dismissed the application, reverse the dismissal and fix the amount or value of the maintenance.

1996, c.D-25.01, s.22.

Enforcement of order

23(1) An order may be enforced against the estate of a deceased in the same way and by the same means as any other judgment or order of the court.

(2) The court may issue any direction or interim direction or make interim orders that it considers necessary to secure to the dependant payment out of the estate of the maintenance to which the dependant is found entitled.

1996, c.D-25.01, s.23.

R.S.S. 1978, c.D-25 repealed

24 *The Dependants' Relief Act* is repealed.

1996, c.D-25.01, s.24.