



Ontario

Ministry of
Consumer and
Commercial
Relations

Property
Rights
Division

BULLETIN NO. 78012

DATE: March 6, 1978

TO:
ALL LAND REGISTRARS

THE SUCCESSION LAW
REFORM ACT, 1977

EFFECT ON LAND REGISTRATION

Bill 60, The Succession Law Reform Act, 1977, received Royal Assent on November 4, 1977, and will come into force on March 31, 1978. As a result, Land Registrars should be aware of the following:

1. *Holograph Wills*

Section 6 of the said Act recognizes the validity of holograph wills where the testator has died on or after March 31, 1978 (i.e., handwritten, without formality and without the presence, attestation or signature of a witness). These wills may be accepted under the land titles system without probate where the value of estate of a deceased registered owner is less than \$15,000. In this regard, see Bulletin No. 78008. It should be noted, however, that these wills will not be acceptable for registration under the registry system since they cannot comply with the provisions of section 50(1) of The Registry Act.

2. *Intestate Succession*

Sections 45 to 49 of the said Act modify the law of intestate succession as presently set out in The Devolution of Estates Act. The new sections, however, apply only with respect to an intestacy upon a death occurring on or after March 31, 1978. The repealed or amended provisions of The Devolution of Estates Act will continue in force as if unrepealed or unamended in respect of a death occurring before March 31, 1978. Land Registrars should particularly be aware of the following changes.

(a) Preferential Share - Section 46 of the Act increases the preferential share of a spouse from \$50,000 to \$75,000 and provides a formula for determining a preferential share in cases of partial intestacy.

(b) Sections 45, 47, 48 - These sections alter somewhat the rules of succession on an intestacy as presently set out in sections 30, 31, 31a and 32 of The Devolution of Estates Act. Land Registrars should note particularly that section 47 equalizes the rights of spouses to a distributive share in any property after the preferential share. This section is particularly relevant in cases where an administrator is selling for the purpose of distributing the proceeds amongst those beneficially entitled because the Land Registrar must be satisfied that the consenting beneficiaries represent a majority in number and at least one-half of the beneficial interests.

(c) Curtesy - Section 49 of the Act abolishes the common law rights of a widower to curtesy.

3. *Births outside marriage*

Sections 1(1)(a), 1(1)(c), 1(2) and 50 amongst others of the Act recognize the rights of persons born outside of marriage in the estate of a deceased person. The Act thereby equalizes the treatment of children born within or outside marriage in estate matters. This equalized treatment in a testacy situation applies in respect of wills made on or after March 31, 1978, (see section 1(3) of the Act) and in an intestacy situation applies in respect of a death occurring on or after March 31, 1978, (see section 53).

4. *Survivorship*

Part IV of the Act (sections 61 to 63) repeals The Survivorship Act, R.S.O. 1970, chapter 454, as amended with respect to deaths occurring on or after March 31, 1978. The repealed Act continues in force as if unrepealed in respect of deaths occurring before March 31, 1978. Section 61(3) of the Act provides a new provision to cover the situation where a designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other and the will contains a provision for a substitute personal representative.

5. *Wills by minors*

Section 8 of the Act expands the situations provided in The Wills Act, in which a will by a person who is under the age of 18 years can be valid. This section of the Act, as all sections in Part I, except section 1(2), applies to all wills where the testator has died on or after March 31, 1978.

6. *Effect of termination of marriage on will*

Section 17(2) of the Act is a new section which provides that the rights under a will of a former spouse of the testator may be revoked in the situation where the testator's marriage is terminated after the making of the will.

7. *The Wills Act repealed*

Section 43 of the Act repeals The Wills Act, R.S.O. 1970, Chapter 499, as amended in respect of wills made by a testator who died on or after March 31, 1978. The repealed Act continues in force as if unrepealed in respect of wills made by a testator who died before March 31, 1978.

8. *Conflicts*

Section 37 of the Act provides that as regards to manner and formalities, a foreign will validly affects land if at the time of its making it complied with the internal law of the place where the will was made, the testator was domiciled, the testator had his habitual residence or the testator was a national. The said section 37 is only applicable to wills where the testator has died on or after March 31, 1978. As a result this Bulletin should be cross-referenced to paragraph 1 on page 2 of Bulletin 78008. A foreign will that does not meet the formality requirements of Ontario law may be accepted under the said Bulletin 78008, if the testator died on or after March 31, 1978, provided that the Land Registrar is satisfied by affidavit evidence that the foreign will is valid because of the said section 37.

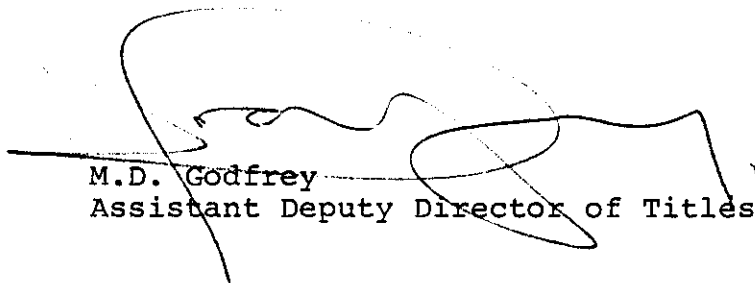
9. *International Wills*

Section 42 of the Act provides that the Province of Ontario will in the future recognize international wills if made and executed in the proper manner (see section 42 for particulars) notwithstanding where the will was made or the nationality of the person making it. The effective date for the recognition of international wills will be published in The Ontario Gazette and we will advise you of the same in due course.

10. *Bequests void if to witnesses or persons signing for testator*

Section 12 of the Act amends section 16 of The Wills Act and expands the situations in which bequests are void. In particular a bequest to a person claiming under a witness or the spouse of a witness is void as well as bequests to a person signing for the testator, his spouse or any person claiming under either of them. Section 12(3) of the Act provides a savings provision to the above.

We enclose herewith for all Land Registrars a copy of The Succession Law Reform Act, 1977. We would ask you to become familiar with the sections of that Act as this Bulletin is intended only to highlight the most relevant provisions.



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Encl.