

SCHEME OF DEVOLUTION  
IN  
INTESTATE SUCCESSIONS

1. Introductory Note
2. Considerations & Propositions
3. Projets A, B & C

Introductory Note

1. This document has been prepared on the basis of two preliminary memoranda:

Y. Caron : Réforme du droit des successions BB/C/18 (6 July 1972)

M. Cumyn : Projets de devolution successorale BB/C/22 (19 octobre 1972)

and their proposals are included.

2. It may also be useful to consult BB/CC/21 Devolution successorale (Droit comparé) of 13 October 1972 for a review of other legislations.
3. The documents found as appendices I & II of Brierley's Report, Part I, showing the Quebec "Table of Relationships & Order of Successions" and the "Table on Intestate Shares", pp. 82 & 83, are also appended for reference.

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Considerations relevant to the scheme of proportional sharing and the nature of the right to be attributed to those called to share:

1. Value of Estate:

The value of the average estate is probably between \$15,000 and \$20,000. Its economic significance may be impaired if it is divided among too many orders of successors.

Proposition: avoid excessive partition among different orders of heirs.

2. Basis of Intestacy:

The basis for intestacy sharing may be sought in either a theory of "presumed affections" of the deceased, or in a theory of alimentary need among those closely connected to him.

In either case it would appear desirable to attribute the largest shares in the estate to the surviving consort and / or children. Such a rule would conform to testamentary practices.

Propositions:

1. ascendants and collaterals to be excluded when in the presence of either a surviving consort and children, or either a consort or children;
2. relations beyond the 6th degree shall not inherit;
3. representation may operate in the collateral line.

3. Qualities of Consort & Children:

In order that intestacy law harmonize with other drafts, the following matters should be settled.

- Propositions:
1. the surviving consort, in order to inherit, must be married to the deceased and not separated from bed and board at the death of the latter; however, the divorced consort, the putative consort and the consort separated from bed and board shall be admitted to make an alimentary claim against the estate but only if they were receiving aliments at the death of the deceased;
  2. children succeed without distinction as to age or sex, and whether legitimate, adopted or natural; so also their descendants who come by way of representation.

4. Source of property transmitted & Matrimonial Regimes

The deceased will normally have died leaving property accumulated by him through his own efforts, i.e. acquests, rather than received by way of inheritance. Where the deceased was married, his consort will normally have assisted in the creation of this wealth.

The surviving consort should thus be entitled to claim, or to retain, such matrimonial property as the matrimonial regime or marriage contract attributes to him : participation in acquests or common property or stipulated gifts. The right to share in the estate stricto sensu, i.e. any other property, should be treated distinctly.

Proposition: Repeal article 624c .

5. Extent & Nature of the Right of Legal Heirs

The essential choices to be made are included within the following charts. They are designed to serve as a basis for discussion. It may be useful to bear in mind the following ideas:

- as to the extent of the right: the arguments for attributing an extensive right to the surviving consort are two-fold: if he or she is advanced in age, such survivor is less likely to be able to provide for himself; if on the other hand the survivor is young, and with children, it is desirable that he or she have control over the whole of the estate in order to discharge the legal obligation of support owing to any dependent children.
- as to the nature of the right: the Caron draft [C] is based on a notion of creating and maintaining a family patrimony and thus attributes a right of jouissance to the surviving consort; the Cumyn drafts [A & B], on the other hand, are based on an attribution of full ownership to such consort, in view of the fact that "family property" as such is unknown in Quebec for the most part.

To these alternatives, there may be, further, other complementary mechanisms:

1. an attribution to the surviving consort of a right to claim, in his or her lot, the family residence and its contents (cf. art. 1267c.) or, alternatively, a right of usage thereof;
2. in the event that the whole of the estate is not attributed to the surviving consort without issue, he or she may be given an alimentary claim against whatever balance of the estate is attributed to ascendants or collaterals;
3. if the totality of the estate is attributed to a surviving consort without issue, the right of return in favour of ascendants as to property given to the deceased could be maintained (cf. art. 630 C.C.).

PROJET A (Cumyn)

Attribution des parts ab intestat

*Cumyn*

Conjoint	toute la succession	x	x	x	x	x	toute la succession, sauf le droit de retour successoral en faveur des ascendant
Descendants	-	toute la succession	x	x	x	x	x
<i>Asc.</i> Asc. priv. (père et/ou mère)	-	toute la succession	x	x	x	x	droit de retour des biens donnés
Coll. priv. (fr. et soeurs ou leurs descendants)	-	toute la succession	x	x	x	x	-
Asc. ord.	-	toute la succession	x	x	x	x	droit de retour des biens donnés à défaut de père et mère
Coll. ord.	-	toute la succession	x	x	x	x	-

Légende:    x : absence  
                   - : exclusion

Attribution des parts ab intestat

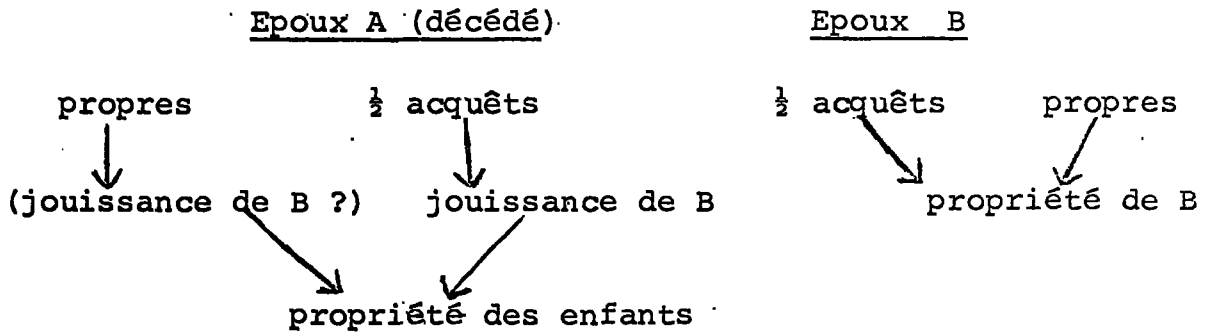
Conjoint	\$10,000. + ½ solde	toute la succession	x	\$10,000. + ¾ solde	toute la succession	x	x	x
Descendants	solde	x	toute la succession	x	x	x	x	x
Asc. priv. (père et/ou mère)	-		-	solde	x	x	x	x
Coll. priv. (frères et soeurs ou leurs desc.)				-	-	toute la succes- sion	x	x
Asc. ord.							toute la suc- ces- sion	x
Coll. ord.								tou- te la suc.

Légende:      x : absence  
                  - : exclusion

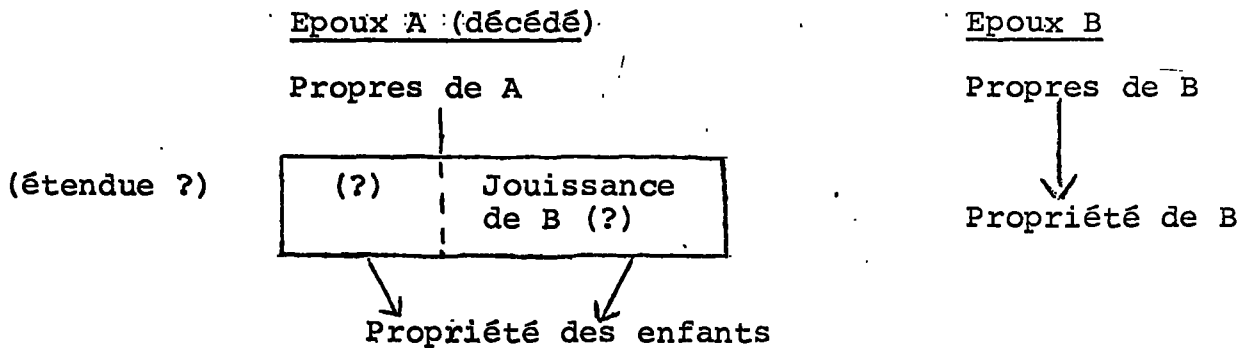
[Caron proposals]

I: Marié avec descendants & Conjoint survivant

1. Société d'acquêts & Communauté



2. Séparation de Biens



II: Marié sans descendants

Conjoint: ses droits sont les mêmes que sous I. Qui aura la propriété des biens de A ?

III: Veuf avec enfants

Descendants: tout

IV: Ni époux, ni descendants (tous autres cas)

Partage entre ascendants, collatéraux et l'Etat