Public Trustee Act

CHAPTER 379 OF THE REVISED STATUTES, 1989

as amended by

1999 (2nd Sess.), c. 8, ss. 9-12; 2001, c. 6, s. 121;
2002, c. 8, s. 25; 2002, c. 38; 2005, c. 8, s. 19; 2005, c. 42, s. 89;
2008, c. 4, ss. 20, 21; 2008, c. 8, ss. 41, 42; 2009, c. 28; 2012, c. 32;
2014, c. 27; 2015, c. 9, ss. 14, 15

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2002, c. 8, s. 25; 2002, c. 38; 2005, c. 8, s. 19; 2005, c. 42, s. 89;
2008, c. 4, ss. 20, 21; 2008, c. 8, ss. 41, 42; 2009, c. 28; 2012, c. 32;
2014, c. 27; 2015, c. 9, ss. 14, 15

An Act to Establish the Office of Public Trustee

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Public Trustee Act*. R.S., c. 379, s. 1.

Interpretation

2 In this Act,

(a) "administering" means acting as guardian or custodian or trustee or executor or administrator of the estate of a person or a deceased person;

(b) "court" means a court of competent jurisdiction and includes a judge thereof and in respect of the court of probate includes the registrar of probate;

(c) "guardian" includes guardian *ad litem*;

(d) "mentally disordered patient" means an involuntary patient pursuant to the *Involuntary Psychiatric Treatment Act* who is in a psychiatric facility;

(e) "missing person" means a person who cannot be found after all reasonable efforts have been made to locate him and includes a person who dies intestate or intestate as to some part of his estate without leaving any known heir-at-law living in the Province or any heir-at-law who can be readily communicated with living elsewhere or where the only heir-at-law is an infant or where Her Majesty in right of the Province has an interest in the estate or proceeds thereof;

(f) "patient" means a person who is under observation, care and treatment in a psychiatric facility;

(g) "property" means real and personal property;

(h) "psychiatric facility" means a psychiatric facility pursuant to the *Involuntary Psychiatric Treatment Act*;

(i) "Public Trustee" means the person appointed as Public Trustee pursuant to this Act. R.S., c. 379, s. 2; 2005, c. 42, s. 89.

Office of Public Trustee

3 **(1)** There is hereby constituted the office of Public Trustee.

(2) The Public Trustee is a corporation sole under that name with perpetual succession and an official seal of a form to be prescribed and approved by the Governor in Council and such Public Trustee may sue and be sued in his corporate name.

(3) The Governor in Council shall appoint a barrister of not less than ten years standing to be Public Trustee who shall be paid such salary as the Governor in Council determines.

(4) Subject to subsection (5), the Public Trustee appointed shall hold office during good behaviour for such period as the Governor in Council shall determine and shall be eligible for re-appointment.

(5) Unless otherwise determined by the Governor in Council, the Public Trustee shall cease to hold office when he attains the age of sixty-five years.

(6) The Public Trustee has the powers and the duties given to or imposed upon him by this Act, and such further powers and duties as the Governor in Council may prescribe.

(7) The Governor in Council may appoint a person to be the Acting Public Trustee in the case of the illness or absence of the Public Trustee or of a vacancy in the office.

(8) A person appointed as Acting Public Trustee has the powers, rights and duties of the Public Trustee.

(9) The Public Trustee shall have the status of a deputy head and the provisions of the *Civil Service Act* relating to a deputy or to a deputy head shall apply to him.

(10) All full-time persons required to assist the Public Trustee in carrying out the powers, functions and duties imposed by this Act on the Public Trustee shall be appointed in accordance with the provisions of the *Civil Service Act*.

(11) For all purposes of the *Public Service Superannuation Act*, the Public Trustee and every full-time employee engaged to carry out the functions, powers and duties imposed on the Public Trustee pursuant to this Act shall be deemed to be persons employed in the public service of the Province and full-time service in employment in respect of this Act shall be deemed to be public service.

(12) For administration purposes the Public Trustee shall report to the Attorney General in respect to matters set forth in this Act. R.S., c. 379, s. 3.

Delegation by Public Trustee

3A **(1)** The Public Trustee may delegate to any employee or class of employee in the office of the Public Trustee any of the Public Trustee's powers,

duties or functions and, without limiting the generality of the foregoing, may authorize an employee in the office of the Public Trustee to

(a) execute or sign a document or instrument requiring the signature of the Public Trustee, or

(b) do any other thing required in relation to a document or instrument to be done by the Public Trustee.

(2) A delegation made pursuant to subsection (1) must be made in writing.

(3) A delegation pursuant to subsection (1) may be general or applied in a particular case.

(4) When acting pursuant to clause (1)(a), the employee shall sign with the employee's name and add the words "acting under the authority of the Public Trustee pursuant to the *Public Trustee Act*".

(5) For greater certainty, a document or an instrument executed pursuant to clause (1)(a) has the same effect as if the document or instrument was executed by the Public Trustee.

(6) A document or an instrument purporting to be executed pursuant to clause (1)(a) must, in the absence of any evidence to the contrary, be accepted or admitted in evidence without proof of the signature or official character of the person appearing to have signed the document or instrument. 2008, c. 4, s. 20.

Powers of Public Trustee

4 **(1)** The Public Trustee may perform the duties of, and be, a

(a) guardian under

(i) the *Guardianship Act*,

(ii) the *Incompetent Persons Act*,

(iii) *repealed 2015, c. 9, s. 14.*

(iv) the *Probate Act*,

(v) the *Civil Procedure Rules*,

(vi) an order of a court,

(vii) an order of the Governor in Council,

(viii) this Act or any other Act;

(b) custodian of the property of a missing person or a deceased person or as otherwise provided in this Act;

(c) trustee

(i) of the estate of a person or of a deceased person if appointed by order of a court,

(ii) either alone or jointly with any other person or persons to carry out a trust where he is appointed for that purpose

(A) by or in accordance with the instrument creating the trust,

(B) after the creation of the trust with the consent of the majority of the persons beneficially interested in the trust who are for the time being of age and capable in law of giving a valid consent, or

(C) by order of a court;

(d) executor or administrator of the estate of a deceased person in any of the capacities referred to in the *Probate Act* or this Act including the capacity and authority to be appointed executor or administrator of the estate of a deceased person where no person is so appointed so that service of process may be made upon him to effect a legal action.

(2) Where no person has been appointed guardian or custodian of the estate of an infant

(a) who has property vested in him; or

(b) who is entitled either immediately or after an interval either certainly or contingently to property under an intestacy or under a will, settlement, trust, deed or in any other manner whatsoever,

the Public Trustee shall be the guardian or custodian of the estate of that infant.

(3) The Public Trustee may

(a) receive sums of money intended to repay bonds, debentures or other similar evidences of indebtedness when they are not claimed within three years following their maturity;

(b) take charge of property abandoned by a dissolved corporation until such time as he receives a certified copy of an order appointing a trustee of such property;

(c) take charge of the undistributed assets of a company which has been wound up or has gone bankrupt;

(d) accept and receive the proceeds of an insurance policy on the life of a person the beneficiary of which is a resident of the Province and is under the age of eighteen years and give a valid discharge therefor and act as the guardian of the estate of the beneficiary in respect of such proceeds;

(e) take possession of the property and effects and safely keep, preserve and protect the property and effects of a person who dies whether testate or intestate when the property and effects have

not been taken possession of by his executors, administrators or heirs-at-law;

(f) with his consent in writing, be appointed administrator or trustee of and under any will or settlement or instrument creating a charitable trust or a trust in which Her Majesty in right of the Province may have an interest or other instrument creating a trust or duty in the same manner as if he were a private trustee;

(g) act in such other capacity and do such other acts, matters and things as the Public Trustee is authorized or required to do

(i) by the *Civil Procedure Rules*,

(ii) by order of a judge,

(iii) by order of the Governor in Council,

(iv) under this Act, or

(v) under any Act.

(4) Where the Governor in Council, a Minister of the Government or a court is empowered to appoint a guardian, custodian, trustee, executor or administrator, the Public Trustee, if he consents to act, may be so appointed.

(5) Where under the *Probate Act* an estate or the proceeds thereof are to be distributed to a person for whose estate a guardian is required and for whose estate no guardian has been appointed, then the estate or proceeds thereof shall be transferred or paid to the Public Trustee, who shall be the guardian of that person's estate, to be administered by him in accordance with this Act. R.S., c. 379, s. 4; 2015, c. 9, s. 14.

Application to be appointed as guardian

5 **(1)** Where a guardian may be appointed pursuant to the

(a) *Guardianship Act;*

(b) *Incompetent Persons Act*;

(c) *repealed 2015, c. 9, s. 15.*

(d) *Probate Act*; or

(e) *Civil Procedure Rules*,

the Public Trustee may, on his own initiative, make application to the proper court and be appointed guardian if the court so determines.

(2) If the Public Trustee has been appointed guardian pursuant to an application authorized by subsection (1), then the provisions of the Act pertaining to the appointment shall apply *mutatis mutandis* to such guardianship except to the extent they are varied by this Act. R.S., c. 379, s. 5; 2015, c. 9, s. 15.

6 *repealed 2002, c. 8, s. 25.*

Appointment as guardian of patient in N.S. Hospital

7 **(1)** Where, in the case of a mentally disordered patient in a psychiatric facility, no guardian of the person and estate of such patient has been appointed under provisions of the *Incompetent Persons Act* or otherwise, the Attorney General may, on the advice of the Minister of Health, appoint the Public Trustee guardian of the person and estate of such patient and upon appointment the provisions of the *Incompetent Persons Act* shall apply *mutatis mutandis* to such guardianship except to the extent they are varied by this Act.

(2) The Attorney General may at any time revoke an appointment made under subsection (1) and discharge the Public Trustee from the performance of any further duties as guardian.

(3) When the Public Trustee has been appointed under this Section the Attorney General may issue a certificate in the form approved by the Attorney General.

(4) A certificate of appointment in the form approved by the Attorney General is conclusive proof of the appointment of the Public Trustee.

(5) The Public Trustee may file the certificate or a true copy of the certificate with the registrar of deeds for the registration district in which any of the real property of the mentally disordered patient is situated.

(5A) Where the real property is registered pursuant to the *Land Registration Act*, the Public Trustee may record the certificate or a true copy of the certificate in the register established pursuant to that Act for each parcel that shows the mentally disordered patient as a registered owner.

(6) Upon receipt of a certificate, the registrar of deeds for the registration district shall register it, and until he receives notice from the Public Trustee of the withdrawal of the certificate he shall not accept for registration any instrument affecting the mentally disordered patient's lands except an order of the court, a certificate of judgment or any document properly ~~registerable~~ [registrable] in the course of proceedings for foreclosure or sale, unless the instrument or the document is executed by the Public Trustee, or the registration is authorized by him.

(6A) Where the real property is registered pursuant to the *Land Registration Act*, upon receipt of a certificate, the registrar for the registration district shall record it in the register established pursuant to that Act for each parcel affected, and until the registrar receives notice from the Public Trustee of the withdrawal of the certificate the registrar shall not accept for registration or recording any instrument affecting the mentally disordered patients lands, except an order of the court, a certificate of judgment or any document properly registrable or recordable in the course of proceedings for foreclosure or sale, unless the instrument or the document is executed by the Public Trustee or the registration or recording is authorized by the Public Trustee.

(7) A recital in a lease, mortgage, conveyance or other document that a mentally disordered patient is a patient in a psychiatric facility and that the

Public Trustee is his guardian is evidence of the facts recited therein. R.S., c. 379, s. 7; 1992, c. 14, s. 53; 2001, c. 6, s. 121; 2005, c. 42, s. 89.

Guardian of estate of physically disabled person

8 **(1)** The court by order may

(a) where an application is made by a relative, friend or creditor of a person who is by reason of physical disability incapable of attending to and transacting his business affairs; and

(b) where satisfied that the person is suffering from such incapacity and is unable to attend to or transact his own affairs or business and by reason thereof his estate is in jeopardy,

appoint the Public Trustee guardian of the estate of that person.

(2) The Public Trustee when appointed a guardian pursuant to subsection (1) has with respect to the estate the powers that he has under this Act with respect to the estate of a mentally disordered patient.

(3) The Public Trustee may enter into an agreement with anyone respecting the guardianship of that person's estate if such person is by reason of physical disability incapable of attending to and transacting his business affairs.

(4) The Public Trustee may enter into an agreement with a patient who is not an incompetent person and is in a psychiatric facility respecting the guardianship of that person's estate while he is a patient in the psychiatric facility and such agreement may be terminated by the patient at any time in writing signed and sealed by him.

(5) The Public Trustee when appointed a guardian pursuant to subsection (3) has with respect to the estate the powers set forth in the agreement which agreement shall not terminate automatically by the mental incompetency or death of the person for whose estate the Public Trustee is the guardian. R.S., c. 379, s. 8.

Section 14 of Personal Directives Act

8A **(1)** Where a decision has been made pursuant to Section 14 of the *Personal Directives Act* to accept an offer of placement in a continuing-care home or regarding provision of home-care services or the delegate named in a personal directive has decided to accept an offer of placement in a continuing-care home or regarding provision of home-care services and the person being placed in the continuing-care home or to be provided home-care services does not have

(a) a person appointed as guardian; or

(b) an enduring power of attorney or other legal arrangement to manage the estate or financial affairs of the person being placed or to be provided home-care services,

a referral may be made to the Public Trustee stating that the person being placed or to be provided home-care services is not capable of managing the person's financial affairs.

(2) A referral referred to in subsection (1) must be accompanied by the written opinion of a duly qualified medical practitioner or a prescribed health-care professional stating that the person being placed in a continuing-care home or to be provided home-care services is not capable of managing the person's financial affairs.

(3) A referral made pursuant to subsection (1) may be made by the person in charge of a continuing-care home or home-care services provider, by a delegate named in a personal directive, or by the person making the decision to accept placement in a continuing-care home or regarding provision of home-care services under Section 14 of the *Personal Directives Act*.

(4) Where a referral has been made pursuant to subsection (1), the Public Trustee has the authority to have access to any relevant information respecting the financial affairs of the person being placed in a continuing-care home or to be provided home-care services and may take any action the Public Trustee considers appropriate to protect the property and financial affairs of the person.

(5) In subsection (6), "person" means a person placed in a continuing-care home or to be provided home-care services pursuant to Section 14 of the *Personal Directives Act* or pursuant to a decision of a delegate named in a personal directive to accept a placement in a continuing-care home or the provision of home-care services.

(6) Where the Public Trustee

(a) is unable to find a legally appointed guardian of the estate of a person;

(b) is unable to find an attorney appointed by a person under an enduring power of attorney; or

(c) is of the opinion that the Public Trustee's continued intervention is appropriate with respect to a person,

the Public Trustee is deemed to be guardian of the property and financial affairs of the person. 2008, c. 8, s. 41; 2009, c. 28, s. 1; 2014, c. 27, s. 1.

Guardian for estate of non-resident

9 **(1)** The Attorney General may, by order, appoint a public trustee, official guardian or other public official responsible for managing, handling, administering or caring for the estate of a person residing in another province to be the guardian of that person's estate in the Province.

(2) A person appointed pursuant to subsection (1) has the same rights, powers, privileges, immunities, duties, obligations and functions in respect

of the estate as the Public Trustee would have if the Public Trustee were responsible for managing, handling, administering or caring for the estate.

(3) The *Incompetent Persons Act* applies *mutatis mutandis* to an appointment made pursuant to subsection (1), except to the extent that that Act is varied by this Act. 2005, c. 8, s. 19.

Maintenance and education of infant

10 **(1)** Where an infant is entitled to share in the estate of an intestate and the share has been paid to the Public Trustee as guardian of the estate of the infant or for the benefit of the infant, or where property is held by the Public Trustee as trustee for an infant and such property is not subject to the terms of a will, trust deed or other instrument governing the trust, the Public Trustee may

(a) if the share or property of the infant does not exceed in value the sum of one hundred thousand dollars,

(i) from time to time expend, or advance to a person who has the lawful custody of the infant, such sum or sums as the Public Trustee deems necessary for or towards the maintenance and education of the infant, and

(ii) for the purpose of subclause (i), resort to capital and sell or convert any of the property held on behalf of the infant;

or

(b) if the share or property of the infant exceeds in value the sum of one hundred thousand dollars,

(i) apply the income from the share or property for the maintenance or education of the infant, and

(ii) from time to time apply to a judge of the Supreme Court on summary application for an order authorizing him to expend or to advance to a person having the lawful custody of the infant so much of the share or property for the maintenance and education of the infant as the judge deems proper.

(2) Upon the making of an order under subclause (ii) of clause (b) of subsection (1) the court, for the purpose of making the payments or advances authorized by the order, may authorize the sale or conversion of any of the property held by the Public Trustee on behalf of the infant.

(3) Where as a result of an order granted pursuant to subclause (ii) of clause (b) of subsection (1) the balance of the share or property of an infant remaining in the hands of the Public Trustee does not exceed in value the sum of one hundred thousand dollars, then the Public Trustee may deal with this share or property as set forth in clause (a) of subsection (1). R.S., c. 379, s. 10; R.S., c. 240, s. 10; 1999 (2nd Sess.), c. 8, s. 9.

Application respecting missing person

11 **(1)** The Public Trustee shall be served with notice of each application made to a court in respect of the property or estate of a missing person.

(2) Such service on the Public Trustee may be made by delivering to the Public Trustee a copy of the originating notice, petition or other process originating the matter in which the application is made, together with copies of all affidavits and other material to be used on the application.

(3) The Public Trustee when served is guardian of the estate or the property of the missing person until the court otherwise orders.

(4) No application referred to in subsection (1) shall be proceeded with until the Public Trustee is represented on the application or has expressed his intention of not being represented. R.S., c. 379, s. 11.

Powers of Public Trustee respecting missing person

12 Where it appears to the Public Trustee that a person is a missing person within the meaning of this Act, the Public Trustee after investigation may

(a) take possession of the property and effects of the missing person; and

(b) safely keep, preserve and protect the property and effects pending an order of a judge of the Supreme Court. R.S., c. 379, s. 12.

Powers of Court respecting missing person

13 **(1)** If it is proved to the satisfaction of a judge of the Supreme Court that a person is a missing person within the meaning of this Act, the judge

(a) may ~~delare~~ [declare] that person to be a missing person; and

(b) by order may appoint the Public Trustee as trustee of the property of the missing person.

(2) The Public Trustee on the order of a judge of the Supreme Court may mortgage, lease, sell or otherwise dispose of any of the property of the missing person.

(3) The registrar of deeds for the registration district within which the land of the missing person is situated

(a) on production of an instrument effecting a disposition of land referred to in subsection (2); and

(b) on production of a copy of or a certified copy of the order referred to in subsection (2),

shall deal with the instrument in the same manner as if the instrument were executed by the missing person.

(4) Where the real property is registered pursuant to the *Land Registration Act*, the registrar for the registration district within which the land of the missing person is situated

(a) on production of an instrument effecting a disposition of land referred to in subsection (2); and

(b) on production of a copy of or a certified copy of the order referred to in subsection (2),

shall deal with the instrument in the same manner as if the instrument were executed by the missing person. R.S., c. 379, s. 13; 2001, c. 6, s. 121.

Payments from estate of missing person

14 (1) The Public Trustee without a further order of a judge of the Supreme Court may pay out of the capital or income of the property of a person declared to be a missing person

(a) sums of money that the missing person might otherwise have been liable to pay; and

(b) such payments and allowances as are necessary for the maintenance or education

(i) of a spouse or child or reputed child of the missing person, or

(ii) of any other relative or reputed relative of the missing person dependent upon him for support.

(2) The Public Trustee shall not make a distribution of the estate of a missing person, otherwise than as provided in subsection (1), until the expiration of two years from the time when the person was declared to be a missing person, and then only when directed to do so by an order of a judge of the Supreme Court. R.S., c. 379, s. 14.

Continued authority to administer estate

14A (1) Notwithstanding any other Act, where

(a) the Public Trustee is managing the estate of a patient pursuant to Section 59 of the *Hospitals Act* and the patient is discharged from the hospital;

(b) the Public Trustee is managing the estate of an adult pursuant to Section 13 of the *Adult Protection Act* and either the court finds that the person is not a person in need of protection or the order that a person is an adult in need of protection expires, terminates or is rescinded; or

(c) the Public Trustee is managing the estate of a person pursuant to Section 8A,

the Public Trustee is deemed to be the guardian of the property and financial affairs of the person and the Public Trustee's guardianship and authority to manage the estate continues until

(d) the Public Trustee determines that it is no longer necessary to manage the estate of the person;

(e) the Supreme Court, or a judge thereof, appoints another person to be guardian of the estate of the person;

(f) the Public Trustee receives a revocation of the declaration of competency stating that the person is not capable of administering the person's estate issued pursuant to the *Hospitals Act*;

(g) the Public Trustee receives a written medical opinion signed by a physician stating that the physician has performed an assessment of the person's competency and that the physician is of the opinion that the person is competent to manage the person's estate; or

(h) a court determines that the person is competent to manage the person's estate and finances,

and the Public Trustee shall manage the estate in accordance with this Act.

(2) For greater certainty, where the Public Trustee is deemed guardian of the property and financial affairs of a person pursuant to subsection (1), the Public Trustee has the authority to mortgage, sell, convey or otherwise dispose of or deal with any property of the person upon such terms as the Public Trustee considers appropriate and to apply the proceeds so far as are necessary to the maintenance, support and best interest of the person. 2008, c. 8, s. 42; 2014, c. 27, s. 2.

Authority to sell without licence

14B Notwithstanding any other Act, where the Public Trustee has been appointed by the Supreme Court of Nova Scotia as guardian of an incompetent person pursuant to the *Incompetent Persons Act*, the Public Trustee has the authority, without obtaining a licence for sale from that court, to mortgage, sell, convey or otherwise dispose of or deal with any property of the incompetent person upon such terms as the Public Trustee considers appropriate and to apply the proceeds so far as are necessary to the maintenance, support and best interest of the incompetent person. 2014, c. 27, s. 3.

Court filed memorandum

14C Where the Public Trustee mortgages, sells, conveys or otherwise disposes of or deals with any property pursuant to Section 14A or 14B, a memorandum reporting and setting out the details of the mortgage, sale, conveyance or disposal must be filed with the Supreme Court of Nova Scotia within thirty days of the transaction. 2014, c. 27, s. 3.

Death while estate administered

15 **(1)** When the Public Trustee is administering an estate of a person as guardian, trustee or custodian pursuant to this Act or any other Act and the person for whose benefit the estate is being administered dies, the Public Trustee shall retain possession of the estate of the deceased pending

(a) a grant of probate or letters of administration;

(b) a grant of letters of administration with will annexed; or

(c) the appointment of the Public Trustee by the Governor in Council.

(2) Under subsection (1) the Public Trustee continues to have and shall exercise with respect to the estate of the deceased person the powers had and exercised by the Public Trustee while the deceased was alive.

(3) The Public Trustee

(a) may apply to the court having jurisdiction for letters of administration or letters of administration with will annexed with respect to the estate of the deceased person; and

(b) on complying with the practice and procedure of the court in so far as applicable, is entitled to the letters of administration or letters of administration with will annexed in priority to the next of kin of the deceased or any other person interested in the estate of the deceased.

(4) The Governor in Council may, where it is deemed expedient to do so, appoint the Public Trustee to be administrator of the estate of the deceased person, and the Public Trustee when appointed has with respect to the estate the powers and duties of an administrator appointed by the court.

(5) The Public Trustee on receipt of an order in council containing the appointment referred to in subsection (4) shall file forthwith a certified copy of the order in council with the registrar of probate

(a) for the district in which the person had his place of residence; and

(b) in each district where any property of the person is situated.

(6) The registrar of probate shall file the copy of the order in council among his records without fee.

(7) When a copy of the order in council is filed with the registrar of probate for a district, no grant of probate or letters of administration or letters of administration with will annexed shall be issued thereafter by that court in respect of the property of the deceased person unless the appointment of the Public Trustee by the Governor in Council has been rescinded. R.S., c. 379, s. 15.

Election to administer estates under $25,000 in priority to next of kin

15A (1) Notwithstanding subsection 15(3), where the gross value of the estate of the deceased as estimated by the Public Trustee does not exceed twenty-five thousand dollars, the Public Trustee, without obtaining any order or authority from the court or from the Governor in Council or otherwise, may, instead of obtaining letters of administration or letters of administration with will annexed, make an election in writing to administer the estate of the deceased person in priority to the next of kin of the deceased or any other person interested in the estate of the deceased and may

(a) out of the personal property give or distribute, in the Public Trustee's discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, where there are no family or relatives of the deceased, to such person or persons as the Public Trustee deems fit;

(b) sell property not dealt with under clause (a) and apply proceeds towards payment of sums due and debts incurred; and

(c) do all things necessary to complete the administration of the estate.

(2) A written election made under subsection (1) must

(a) set out the name, the residence and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person resided or within which the property within the Province is situated.

(3) When the election is filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

(4) No fee is payable to a court in respect of the filing of an election or the right to administer obtained by filing an election.

(5) A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all purposes, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

(6) When the administration of the estate has been completed, the Public Trustee shall file in the office of the registrar of probate an account of the administration verified by oath. 2014, c. 27, s. 4.

Election to administer estate of deceased

16 (1) The Public Trustee without obtaining any order or authority from a court or from the Governor in Council or otherwise may, where

(a) either

(i) a person dies intestate in or out of the Province leaving an estate or interest therein in the Province, or

(ii) he is administering the estate of a person as guardian, trustee or custodian pursuant to this Act or any other Act and the person for whose benefit the estate is being administered dies;

(b) the gross value of the estate or interest therein as estimated by him does not exceed twenty-five thousand dollars;

(c) no person has taken out a grant of probate or letters of administration or letters of administration with will annexed; and

(d) all parties entitled to apply for a grant of administration or probate, renounce their right to do so and nominate the Public Trustee,

instead of obtaining letters of administration or letters of administration with will annexed make an election in writing to administer the estate or interest therein, and may

(e) out of the personal property give or distribute, in his discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, if there are no family or relatives of the deceased, to such person or persons as he deems fit;

(f) sell property not dealt with under clause (e) and apply the proceeds towards payment of sums due and debts incurred; and

(g) do all things necessary to complete the administration of the estate.

(2) The election shall

(a) set out the name of the deceased person and, so far as then known to the Public Trustee, the residence, occupation and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person had his last known place of abode, or within which the property within the Province is situated.

(3) When an election is so filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

(4) No fee is payable to a court in respect of the right to file an election as well as in respect of the right to administer obtained by filing an election.

(5) A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all purposes, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

(6) When the administration of the estate has been completed, the Public Trustee shall file in the office of the registrar of probate an account of the administration verified on oath. R.S., c. 379, s. 16; 1999 (2nd Sess.), c. 8, s. 10; 2012, c. 32, s. 1.

Advertisement for claims against estate

17 (1) The Public Trustee, previous to the payment of debts or the distribution of the estate of the deceased, shall by advertisement in the Royal Gazette newspaper for one month call on all persons who have demands upon the estate of the deceased to exhibit such demands within six months from the date of the advertisement.

(2) The advertisement referred to in subsection (1) shall be in such form or forms as the Attorney General prescribes.

(3) Such demands, when exhibited, shall be attested to by the claimant or, when the claimant is an incorporated company, by an officer thereof or, in the absence from the Province of a claimant or the officer thereof, by his or its agent, and the affidavit shall state whether the creditor is or is not a secured creditor and shall be in the Form in the Schedule to this Act or to the like effect with such variations as may be required. R.S., c. 379, s. 17.

Payment of claims and distribution of estate

18 (1) The Public Trustee, not later than twelve months from the date of election, shall pay all such legal and just claims as have been exhibited, so far as the estate of the deceased in his hands will enable him, and shall make distribution of the estate as is directed by the will of the deceased, or by this or any other Act.

(2) Sums due and debts incurred for the burial of the deceased and the cost of a gravestone or monument not disproportionate to the value of his estate and the expenses of the Public Trustee may be defrayed by the Public Trustee out of the assets of the estate and shall have priority over all claims of creditors of the deceased. R.S., c. 379, s. 18.

Distribution of insolvent estate

19 In the settlement and distribution of the insolvent estate of any deceased person the whole of the property remaining, after payment of the charges and expenses of the necessary medical and other attendance on the deceased during his last illness, and of his funeral and gravestone, and the expenses attendant on the settlement of the estate shall be distributed among those creditors who have rendered their accounts, duly attested, in the following manner:

(a) the wages of clerks, domestic and farm servants, and rent, shall be paid in full for not more than one year next preceding the death and any excess shall be on the same footing as other claims;

(b) all other creditors shall be paid in proportion to the amount of their respective claims. R.S., c. 379, s. 19.

Judgment creditor or mortgagee

20 (1) Nothing in Section 19 shall affect any debt secured by mortgage of property or by a judgment which was registered in the lifetime of the deceased, so as to bind his property.

(2) The right of any creditor who has not exhibited an attested account to recover his claim against the estate of the deceased within six months from the date of the advertisement referred to in Section 17 shall be null and void. R.S., c. 379, s. 20.

Filing of memorandum by Public Trustee

21 (1) If, after filing the election, the gross value of the property to be administered is found to exceed twenty-five thousand dollars, the Public Trustee as soon as practicable after filing the election shall file in the office of the registrar of probate a memorandum stating that fact, and may proceed in the ordinary manner to obtain letters of administration.

(2) If, after filing the election, the Public Trustee discovers that the election is invalid or ineffective by reason of the discovery of a will or for any other reason, the Public Trustee may file in the office of the registrar of probate a memorandum

(a) setting out the facts; and

(b) certifying that the election already filed is ineffective.

(3) Where such a memorandum is filed, the election to administer ceases to be of effect unless the registrar of probate orders the Public Trustee to complete the administration of the estate. R.S., c. 379, s. 21; 1999 (2nd Sess.), c. 8, s. 11; 2012, c. 32, s. 2.

Application to administer intestate estate

22 (1) When a person has died intestate, in or out of the Province, leaving property in the Province and no application for letters of administration has been made, the Public Trustee may apply for letters of administration of the estate.

(2) If the Public Trustee knows of any person resident in the Province

(a) who would be entitled to letters of administration prior to the exercise of the powers conferred on the Public Trustee by this Section; and

(b) who has not renounced his right to apply for letters of administration,

the Public Trustee shall give notice to that person by registered mail of his intention to apply for letters of administration.

(3) Where notice referred to in subsection (2) is required, the Public Trustee shall not apply for letters of administration until the expiration of one month from the mailing of such notice.

(4) If within the time referred to in subsection (3) an application for letters of administration has been made by another person entitled to letters of administration in priority to the Public Trustee, then the Public Trustee shall not apply for letters of administration unless the application of that person has been refused.

(5) Where a grant has been made to the Public Trustee under this Section,

(a) the grant may be revoked upon such terms as to the payment of costs and charges of the Public Trustee as the court deems fair and proper; and

(b) a new grant may be made upon application of a person otherwise entitled to letters of administration upon proof that

(i) he has not renounced or refused administration,

(ii) the omission to apply sooner for administration was due to absence from the Province, illness, incapacity or other circumstances sufficient to excuse the omission, and

(iii) one month's notice in writing of his intention to apply for a grant has been given to the Public Trustee.

(6) On an application under subsection (5), no costs shall be awarded against the Public Trustee. R.S., c. 379, s. 22; 1999 (2nd Sess.), c. 8, s. 12; 2012, c. 32, s. 3; 2014, c. 27, s. 5.

Election to administer estate under $25,000

22A (1) Notwithstanding subsection 22(1), where the gross value of the estate of the deceased as estimated by the Public Trustee does not exceed twenty-five thousand dollars, the Public Trustee, without obtaining any order or authority from the court or otherwise, may, instead of obtaining letters of administration, make an election in writing to administer the estate of the deceased person.

(2) Where the Public Trustee intends to make an election to administer the estate and knows of any person resident in the Province who

(a) would be entitled to letters of administration prior to the exercise of the powers conferred on the Public Trustee by this Section; and

(b) has not renounced the right to apply for letters of administration,

the Public Trustee shall give notice to that person by registered mail of the Public Trustee's intention to make an election in writing to administer the estate.

(3) Where notice referred to in subsection (2) is required, the Public Trustee shall not make the election until the expiration of one month from the mailing of such notice.

(4) Where within the time referred to in subsection (3) an application for letters of administration has been made by another person, the Public Trustee may not make an election to administer the estate unless the person's application is refused.

(5) Upon making an election in writing to administer the estate of the deceased person, the Public Trustee may

(a) out of the personal property give or distribute, in the Public Trustee's discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, where there are no family or relatives of the deceased, to such person or persons as the Public Trustee deems fit;

(b) sell property not dealt with under clause (a) and apply proceeds towards payment of sums due and debts incurred; and

(c) do all things necessary to complete the administration of the estate.

(6) A written election made under subsection (1) must

(a) set out the name, the residence and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person resided or within which the property within the Province is situated.

(7) When the election is filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

(8) No fee is payable to a court in respect of the filing of an election or the right to administer obtained by filing an election.

(9) A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all purposes, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

(10) When the administration of the estate has been completed, the Public Trustee shall file in the office of the Registrar of Probate an account of the administration verified on oath. 2014, c. 27, s. 6.

Where executors renounce or no next of kin

23 **(1)** Notwithstanding any other Act,

(a) where

(i) the adult next of kin residing in the Province of a person who dies wholly or partially intestate, in or out of the Province, leaving property in the Province, or

(ii) the executors named in the will and the adult residuary beneficiaries residing in the Province of a person who dies testate, in or out of the Province, leaving property in the Province,

have renounced any right to apply for letters of administration or probate or letters of administration with will annexed; or

(b) where there is no adult next of kin or adult residuary beneficiary residing in the Province of a person who dies wholly or partially intestate, in or out of the Province, and the executors have renounced their right to apply for probate,

the Public Trustee is entitled to apply for and to receive a grant of letters of administration or letters of administration with will annexed of the estate of that person in priority to all other persons.

(2) In this Section, "next of kin" means

(a) the spouse and children of the deceased person; or

(b) where there is no spouse or child, the persons who are entitled under the *Intestate Succession Act* to the estate of the deceased person. R.S., c. 379, s. 23.

Cases of priority in administration

24 Where the Public Trustee is administering the estate of a person or a deceased person who is

(a) a beneficiary under the will of a deceased person and there is no executor or the executor has renounced probate, or the last surviving executor has died;

(b) entitled to the estate or a portion of the estate of a deceased intestate and there is no administrator of the estate; or

(c) the executor of a will or the administrator of the estate of a deceased person,

the Public Trustee may apply to the court having jurisdiction for letters of administration or letters of administration with will annexed or letters of administration *de bonis non* with respect to that estate, and on complying with the practice and procedure of the court in so far as applicable the Public Trustee is entitled to the letters in priority to the next of kin of the deceased or any other person interested in his estate. R.S., c. 379, s. 24.

Letter as proof

25 A letter signed by the Public Trustee addressed to any person in possession of property belonging to a person or a deceased person, advising that the Public Trustee is administering the estate of the person or deceased person pursuant to this Act, is proof that the Public Trustee is the administrator of the estate of the person or deceased person. R.S., c. 379, s. 25.

Human Tissue Gift Act

26 Notwithstanding that the Public Trustee has the powers of an executor or administrator in respect of the estate of a deceased person, or that he is authorized to sell property of a deceased person and apply the proceeds thereof toward payment of the burial expenses of the deceased person, the Public Trustee shall be deemed not to be a legal representative, or person having lawful possession of a body, within the meaning of and for the purposes of the *Human Tissue Gift Act*. R.S., c. 379, s. 26.

Transfer of property of non-resident to Public Trustee

27 **(1)** Any property to which a person who is resident outside of the Province is entitled under an intestacy or a will may be, with the consent of the Public Trustee, transferred by the administrator or executor to the Public Trustee who in such case shall act as trustee of the property for such person.

(2) The receipt in writing of the Public Trustee for such property shall be a discharge to the administrator or executor of seeing to the application of such property.

(3) The Public Trustee may

(a) pay out of the capital or income of the property such money as is required to ensure its effectual transfer and proper maintenance and administration; and

(b) deal with the property in the manner and to the extent as may a trustee under the *Trustee Act*. R.S., c. 379, s. 27.

Transfer of undistributed assets to Public Trustee

28 **(1)** An executor or administrator or a trustee acting pursuant to the provisions of a will or otherwise may at any time and shall, after the expiration of five years next after receipt of the assets of an estate or trust, apply for an order authorizing the transfer of the assets to the Public Trustee when the heir-at-law or beneficiary cannot be located or identified or the object of the trust cannot be carried out or if for any other reason it is not possible to distribute the assets of the estate or trust.

(2) Any such assets received by the Public Trustee pursuant to the direction of the court shall be converted into cash by the Public Trustee and paid immediately to the Minister of Finance and the provisions of Sections 35 or 35A shall apply *mutatis mutandis* thereto.

(3) Where assets are transferred to the Public Trustee pursuant to this Section, the transfer shall have the same effect as a transfer to the heir-at-law or beneficiary for the purpose of any enactment or law governing the administrator, executor or trustee. R.S., c. 379, s. 28; 2002, c. 38, s. 1.

Successor to official under former Acts

29 **(1)** The Public Trustee is the successor in office of the Attorney General under the former *Administration of Estates by the Attorney General Act* and the Administrator of Estates under the former *Official Administrator of Estates Act* and unless the authorization and appointment of a person authorized and appointed to make application to the court of probate for administration of an estate by the Attorney General or the Administrator of Estates pursuant to the provisions of those Acts is revoked by the Public Trustee such person shall continue in his authorization and appointment in accordance with the provisions of those Acts.

(2) The Public Trustee with the consent of the Attorney General may

(a) make application to the court of probate for the grant of a citation against a person so appointed by the Attorney General or by the Administrator of Estates under those Acts requiring him to proceed to the settlement of the accounts of the estate and the court of probate shall grant such citation and issue the same and make a decree thereon directing the administrator to proceed to the settlement of the estate in accordance with the provisions of the *Probate Act*; or

(b) revoke the authorization and appointment made by the Attorney General pursuant to the provisions of the former *Administration of Estates by the Attorney General Act*, or made by the Administrator of Estates under the provisions of the former *Official Administrator of Estates Act*,

or do both.

(3) Upon receipt of a notice in writing under the signature and seal of the Public Trustee, such notice stating that it is made with the consent of the Attorney General, the court of probate shall immediately revoke the grant of letters of administration made to the person previously authorized by the Attorney General or the Administrator of Estates and give notice to the administrator of such revocation by registered mail and within thirty days of the mailing of the notice by the court of probate the administrator shall file with the Public Trustee and the court of probate his accounts in the estate.

(4) Within fifteen days after receipt by the court of probate of such accounts or at such time as may be set by it, the court of probate shall adjudicate upon the same in accordance with the procedure set out in the *Probate Act* for the settlement of estates, and where the court of probate is of the opinion that further administration is required in connection therewith, it shall grant letters of administration to the Public Trustee who shall administer those assets coming into his hands

as if the original grant of letters of administration had been made to him and may continue and carry out any and all contracts entered into and on behalf of the estate and all proceedings taken in relation to the estate.

(5) Any property of an intestate for which an administrator appointed by the Attorney General or by the Administrator of Estates does not or cannot account may be recovered with costs in any court of competent jurisdiction as if the same were the property of Her Majesty in right of the Province and where such property cannot be found or is lost or stolen, then its value as shown in inventory on file at the court of probate may be recovered with costs in any court of competent jurisdiction as a debt due Her Majesty in right of the Province.

(6) Any action for the recovery of such property or the monetary value thereof shall be brought by the Attorney General on behalf of Her Majesty in right of the Province and shall be tried without a jury, and the administrator against whom the action is brought shall have the burden of proving that the property had not come into his hands as such administrator.

(7) The Public Trustee may exercise, continue or carry out under this Act all the appointments, obligations, powers and duties previously conferred upon the Attorney General under the former *Administration of Estates by the Attorney General Act* and upon the Administrator of Estates and the Attorney General under the former *Official Administrator of Estates Act* and all contracts entered into by the Attorney General or the Administrator of Estates, or both, pursuant to the provisions of those Acts and all proceedings taken pursuant thereto.

(8) All property vested in the Attorney General or the Administrator of Estates, or both, pursuant to the provisions of the former *Administration of Estates by the Attorney General Act* or the former *Official Administrator of Estates Act* is hereby vested in the Public Trustee to be dealt with by him according to law. R.S., c. 379, s. 29.

Investment of moneys in hands of Public Trustee

30 **(1)** Money for the time being in the hands of the Public Trustee, not being money subject to any express trust or direction for the investment thereof, may be invested by the Public Trustee in a common fund or in any one of several common funds kept and controlled by the Public Trustee.

(2) An investment made pursuant to subsection (1) shall not be made on account of or belong to a particular estate.

(3) The interest of a person entitled to a share or interest in a common fund referred to in subsection (1) is in common with the other persons so entitled.

(4) The Governor in Council

(a) may make regulations for the management of a common fund; and

(b) may prescribe the fees which for the management of the common fund may be charged against the fund and against the persons entitled to the fund. R.S., c. 379, s. 30.

Rate of interest on money in common fund

31 **(1)** The interest payable in respect of the estates on the money which forms the common fund shall be at such rate as the Governor in Council may prescribe.

(2) Interest shall be credited to the respective estates at the authorized rate half-yearly, namely, on the thirtieth day of April and the thirty-first day of October in each year, and shall be calculated upon the minimum quarterly balance of the money that forms the common fund.

(3) The common fund shall be invested in investments authorized by the *Trustee Act* and not otherwise.

(4) For the purpose of distribution

(a) the investments in the common fund shall be deemed to be of the same aggregate value as the aggregate amount of the money invested in the fund; and

(b) no regard shall be had to a fluctuation in value or price of the investments of the common fund. R.S., c. 379, s. 31.

Special reserve fund

32 **(1)** When the income earned by the investments of the common fund exceeds in any half-year the amount of interest payable in respect of the estates invested therein, the amount of the excess income shall be paid into a special reserve fund.

(2) Where investments in the common fund when realized produce a greater sum than the money invested in the fund, the surplus shall be paid into the special reserve fund if, at that time, the aggregate market value of the investments in the common fund is equal to or greater than the aggregate amount of money invested in the fund.

(3) The special reserve fund shall be available for the purpose of making up

(a) any deficiency between the income of the investments of the common fund during a half-year and the amount required to pay the interest payable in respect of the estates in the fund; and

(b) any deficiency between the aggregate amount of sums invested in the common fund and the realized value of the investments of the common fund.

(4) The special reserve fund shall be held by the Public Trustee jointly with the Deputy Minister of Finance and all securities in the fund shall be so registered.

(5) Money in the special reserve fund may be invested in securities authorized by the *Trustee Act* for the investment of trust funds.

(6) The Province hereby guarantees that the common fund together with the special reserve fund will be sufficient for the purpose of paying lawful claims that are payable out of the common fund pursuant to this Act.

(7) The Minister of Finance is hereby authorized to pay out of the Consolidated Fund of the Province such sums as are necessary to implement the guarantee referred to in subsection (6).

(8) Income earned in respect of the securities held in the special reserve fund shall be paid into and form part of the special reserve fund.

(9) Notwithstanding subsection (8), the Public Trustee and the Deputy Minister of Finance may out of the income earned on the special reserve fund and received by them pay to the Minister of Finance to form part of the general revenue of the Province annually such sum of money as may be determined by the Public Trustee and the Deputy Minister of Finance.

(10) The sum of money paid under subsection (9)

(a) shall not exceed the annual interest earned in respect to the securities held in the special reserve fund; and

(b) shall be applied toward the cost of administration of the common fund and of the special reserve fund and the administration of this Act. R.S., c. 379, s. 32.

Unclaimed property belongs to Crown

33 All property in the hands of the Public Trustee to which no person is entitled or to which a missing person is entitled and is not claimed by that missing person within seven years from the date of receipt by the Public Trustee is the property of Her Majesty in right of the Province and shall, at the direction of the Governor in Council, be converted into cash and paid to the Minister of Finance and credited by him to the Consolidated Fund of the Province. R.S., c. 379, s. 33.

Sale of real property of estate of deceased

34 **(1)** Where the Public Trustee is administering or has administered the estate of a deceased person pursuant to the provisions of this Act or the *Probate Act* and six months have expired from the date of his appointment or election as administrator and it is made to appear to the Governor in Council that

(a) the deceased died entitled to real property in the Province or an interest therein;

(b) the provisions of the *Probate Act* respecting the sale of property to pay debts do not apply; and

(c) there are

(i) no known heirs of the deceased, or

(ii) known heirs of the deceased not resident in the Province and attempts to communicate with them were not successful or that it is impracticable to obtain their signatures to a conveyance or release and it is in their interest that real property or an interest therein be sold or an interest therein be released,

the Governor in Council may grant and direct the sale by auction or private sale of the said real property or any interest therein or that an interest therein be released, subject to such terms and conditions as he may direct, and the Public Trustee is thereupon authorized to sell in accordance with the directions of the order in council the whole or any part of the real estate or interest therein and convey it to the purchaser or to release the interest therein and execute a release, and every such conveyance or release by the Public Trustee is as valid and effectual as if the deceased were alive at the time of its making and had executed it.

(2) The proceeds from the sale of such real estate or interest therein or the consideration for the said release shall be property in the hands of the Public Trustee within the meaning of Section 33. R.S., c. 379, s. 34.

Limitation period for money held by Minister

35 (1) Any person claiming to be entitled to any money held by the Minister of Finance under this Act or to any interest therein may make application to the Supreme Court or a judge thereof for a judgment or order declaring his rights in respect thereto

(a) if a claim thereto is made within ten years next after the same has been paid over to the Minister of Finance; or

(b) where the person entitled to such money is under the age of nineteen years or of unsound mind or out of the Province, a claim thereto is made by such person within ten years next after his coming to or being of full age, of sound mind or returning to the Province, and in any event within forty years next after the same has been paid to the Minister of Finance,

and the Court may direct such inquiries as may be necessary to determine the same and may finally adjudicate thereon but no such application shall be entertained unless security for costs is given by the applicant if the Public Trustee demands the same.

(2) Where the Supreme Court or a judge thereof has determined that a person is entitled to money held by the Minister of Finance or any part thereof, he shall pay the same to that person with such interest as the Governor in Council shall direct.

(3) Where the Governor in Council is satisfied that any person should receive any money referred to in subsection (1), the Governor in Council may authorize the Minister of Finance to pay such money to such person with such interest as he shall deem fit. R.S., c. 379, s. 35; R.S., c. 240, s. 10.

Authority of Minister to distribute

35A (1) Where, on application under subsection (1) of Section 35, the Supreme Court or a judge thereof is satisfied that

(a) a person who, if living, would be entitled to any money held by the Minister of Finance, is absent from the Province and has not been heard of or from by the applicant, or to the knowledge of the applicant by any other person, since a day named;

(b) the applicant has no reason to believe the person is living; and

(c) reasonable grounds exist for believing the person is dead,

the Supreme Court or a judge thereof may authorize the Minister to distribute the money among such persons who would be entitled to the money if the death of the absent person had taken place immediately before the time at which the application was made in accordance with subsections (2) and (3) of Section 35.

(2) Before the money is distributed pursuant to subsection (1), there shall be given to the Minister of Finance security in such amount and in such form as is prescribed for the payment or re-delivery of the money to the absent person if the absent person returns, or in case of the death of the absent person being proved to have taken place at a time other than that immediately before the application, then to the persons entitled to the same by reason of the death having taken place at such other time.

(3) Nothing in this Section limits or abridges the remedies to which the absent person, or any other person entitled thereto, may resort to for recovering the money from the persons among whom the Minister of Finance has distributed the same, but the Minister is relieved from all further liability in respect to such money. 2002, c. 38, s. 2.

Appointment of another to take out administration

36 (1) Where in any case the Public Trustee is entitled to take out letters of administration under this Act, he may authorize and appoint by writing under his hand some other person to take out such letters of administration.

(2) The court of probate shall, upon the application of a person so authorized and appointed by the Public Trustee as aforesaid, grant to such applicant letters of administration.

(3) The person so appointed shall give security for the performance of his duties in such manner and such amount as the Public Trustee shall require. R.S., c. 379, s. 36.

Power to approve accounts of trustee or guardian

37 **(1)** Notwithstanding the provisions of the *Trustee Act*, a trustee or guardian may have his accounts settled and approved by the Public Trustee instead of by the court or a judge.

(2) Where any application is made to the Public Trustee pursuant to subsection (1), the Public Trustee may settle and approve such accounts, award such remuneration and give such discharges to the same extent and effect as the court or a judge is authorized so to do by the *Trustee Act* and the *Civil Procedure Rules*. R.S., c. 379, s. 37.

Inquiry into escheated or forfeited property

38 The Public Trustee, at the request of the Attorney General, shall make inquiries from time to time as to property that has escheated, or become forfeited for any cause to the Crown, or in which the Crown in right of the Province may have an interest, and every person when required by the Public Trustee shall furnish him with such information as he requires, and in default of so doing is guilty of an offence and on summary conviction is liable to a fine of not more than one hundred dollars, which fine shall be paid over to the Public Trustee. R.S., c. 379, s. 38.

Public Inquiries Act

39 For the purposes of an inquiry under Section 38, the Public Trustee has all the powers and immunities that are conferred upon a commissioner under the *Public Inquiries Act*. R.S., c. 379, s. 39.

If judgment against Public Trustee

40 If a judgment is obtained against the Public Trustee in respect of any act or omission by him in the course of exercising any power, duty or function which he is authorized to exercise by this or any other Act, then to the extent that the judgment is payable by the Public Trustee and is not payable out of any estate, the judgment shall be deemed to be a judgment against the Crown in right of the Province to which the *Proceedings against the Crown Act* applies. R.S., c. 379, s. 40.

No security by Public Trustee

41 Notwithstanding a rule of practice or the provisions of an Act requiring security, the Public Trustee is not required to give security for the due performance of his duty as guardian, custodian, executor, administrator or trustee, or in any other office to which he is appointed by order of a court or under the provisions of this or any Act. R.S., c. 379, s. 41.

Rules and regulations

42 The Governor in Council may from time to time make rules governing the practice and procedure in the office of the Public Trustee and charges to be made by him for services including, without restricting the generality of the foregoing, those performed pursuant to Section 37 and regulations to carry out the intent and purpose of this Act. R.S., c. 379, s. 42.

Annual estimate and payment from Consolidated Fund

43 **(1)** The costs and expenses incurred by the Public Trustee or in the administration of this Act may be paid out of the Consolidated Fund of the Province.

(2) The Governor in Council, on the recommendation of the Minister of Finance, may authorize the Minister of Finance to advance from time to time to the Public Trustee by way of temporary loan from the Consolidated Fund of the Province such sums of money for such period and upon such terms and conditions as are deemed requisite for the advantageous administration of an estate being administered by the Public Trustee pursuant to this Act.

(3) The Public Trustee shall prepare annually an estimate of the sums required to be provided by the Legislature for the carrying out of this Act during the fiscal year, which estimate shall be transmitted to the Attorney General for his approval, and the estimates approved shall be laid before the Legislature with the other estimates for the year. R.S., c. 379, s. 43.

Annual audit

44 The Auditor General shall make an annual audit of the books, accounts and vouchers of the Public Trustee. R.S., c. 379, s. 44.

Costs and fees

45 **(1)** The Public Trustee is entitled to the same costs and fees as are payable to counsel and solicitors when he acts as such.

(2) The costs and fees referred to in subsection (1) are liable to taxation, and shall be in the discretion of the court.

(3) The court or judge may

(a) order that the costs and fees referred to in subsection (1) be paid out of and form a charge on the estate; or

(b) order any other party to the proceeding or application or any other person not a party to the proceeding or application to pay the costs and fees thereof. R.S., c. 379, s. 45.

Costs and fees form part of Consolidated Fund

46 Costs and fees received by the Public Trustee form part of the Consolidated Fund of the Province. R.S., c. 379, s. 46.

Annual report and tabling

47 The Public Trustee shall, within thirty days of the end of each year, present a report to the Attorney General concerning matters contained in this Act, and the Attorney General shall cause the report to be laid before the House of Assembly within thirty sitting days after the receipt thereof, or, if the House of Assembly is not then sitting, on any of the first thirty days next thereafter that the House is sitting. R.S., c. 379, s. 47.

Secrecy of information

48 Every person employed in the performance of the duties imposed upon the Public Trustee by this or any other Act or by the Governor in Council shall preserve secrecy with respect to all matters that come to his knowledge in the course of such employment and shall not communicate any such matters to any person other than to a person legally entitled thereto or to his legal counsel except as may be required in connection with the administration of this Act and the regulations or any proceedings thereunder. R.S., c. 379, s. 48.

Regulations Act

49 The exercise by the Governor in Council of the powers contained in subsection (4) of Section 30 and in Section 42 shall be regulations within the meaning of the *Regulations Act*. R.S., c. 379, s. 49.

SCHEDULE

Form

(Section 17 (3))

Province of Nova Scotia)
County of . . . . .)

In the estate of . . . . . .
. . . . . deceased

I, ... of . . . . . make oath and say that the foregoing paper writing contains a true and correct account of my demand against the estate of . . . . . deceased, and that all of the credits to which the deceased was honestly and justly entitled, so far as I believe, have been given on the said account; and that amount of . . . . . is justly and truly owing to me, (and that I hold security in respect of the said demand or and that I do not hold security in respect of the said demand as the case may be).

Sworn before me at . . . . . .,
in the County of . . . . . .,
this . . . . . day of . . . . . .,19. . . . .,

. . . . . .

. . . . . .

R.S., c. 379, Sch.