

Probate Act

CHAPTER 31 OF THE ACTS OF 2000

as amended by

2001, c. 5, ss. 12-33; 2002, c. 5, s. 47; 2004, c. 3, s. 31;
2007, c. 9, s. 35; 2007, c. 50; 2009, c. 5, s. 26; 2011, c. 8, s. 20;
2013, c. 3, s. 13; 2015, c. 6, s. 45; 2017, c. 4, s. 87



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**An Act Respecting the
Probate and Administration
of the Estates of Deceased Persons**

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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 *Probate Act*. 2000, c. 31, s. 1.

Interpretation

2 In this Act,

(a) “court” means the court of probate for a probate district and, for the purposes of Sections 85, 86 and 87, includes a probate court under either of the former Acts;

(b) “extra-provincial grant” means a grant issued pursuant to Section 37;

(c) “former Acts” means Chapter 238 of the Revised Statutes, 1967, the *Probate Act* and Chapter 359 of the Revised Statutes, 1989, the *Probate Act*;

(d) “grant” means a grant of probate or administration of the estate of a deceased person made pursuant to this Act, whether granted for general, special or limited purposes and includes administration with the will annexed and an extra-provincial grant and, for the purpose of Sections 85, 86 and 87, includes a grant of probate or administration of the estate of a deceased person made pursuant to either of the former Acts, whether granted for general, special or limited purposes and includes administration with the will annexed and a re-sealing of probate or administration and ancillary probate or ancillary administration;

(e) “judge” means a judge of a court of probate;

(f) “order” includes a decree;

(g) “personal representative” means an executor or an administrator;

(h) “prescribed” means prescribed by the regulations, including the Probate Rules;

(i) “probate district” means a probate district established by this Act;

(j) “Probate Rules” means rules of court made pursuant to this Act;

(k) “property” means real or personal property and includes, for greater certainty, a chose in action;

(l) “registrar” means a registrar of probate and, for the purposes of Sections 85, 86 and 87, includes a registrar of probate under either of the former Acts;

(m) “Supreme Court” means the Supreme Court of Nova Scotia;

(n) “trust company” means a trust company that is authorized by law to act as a personal representative;

(o) “will” includes a testament, a codicil and every other testamentary instrument of which a grant may be issued. 2000, c. 31, s. 2.

PROBATE COURTS

Probate districts

3 Each justice centre area established pursuant to the *Judicature Act* constitutes a probate district for the purpose of this Act. 2000, c. 31, s. 3.

Probate courts

4 (1) There shall be a court of probate for each probate district.

(2) Each judge of the Supreme Court is a judge of every court of probate. 2000, c. 31, s. 4.

Continuation of existing courts

5 Each court in existence immediately before the coming into force of this Act is hereby continued. 2000, c. 31, s. 5.

Documents as evidence

6 Any grant, letter, licence, order or instrument of a court or any copy thereof, appearing to be sealed with the seal of the court, shall, in all courts of the Province, be received in evidence without further proof thereof. 2000, c. 31, s. 6.

Jurisdiction of courts

7 (1) Each court has jurisdiction throughout the Province and all grants, licences, orders and process of every court have effect and may be enforced throughout the Province.

(2) A court has and may exercise all the powers and jurisdiction exercised by the courts of probate in existence immediately before February 1, 1901, and by the judges of probate. 2000, c. 31, s. 7.

Power of courts

- 8 (1) Each court may
- (a) issue grants;
 - (b) revoke or cancel grants;
 - (c) effect and carry out the judicial administration of the estates of deceased persons through their personal representatives, and hear and determine all questions, matters and things in relation thereto necessary for such administration;
 - (d) order any person who has been named as an executor of a will to appear and probate or renounce executorship of the will;
 - (e) order any person who witnessed a will to prove the will;
 - (f) order a person to comply with this Act;
 - (g) appoint guardians and take the accounts of guardians under the *Guardianship Act*.

(2) Nothing in this Act deprives the Supreme Court of jurisdiction in the matters referred to in subsection (1). 2000, c. 31, s. 8.

Court records

9 (1) In this Section, “court records” includes all documents, records, letters, transcripts, recordings, exhibits and papers of any kind, or any thing

on which information is recorded or stored by any means, including graphic, electronic or mechanical means, deposited or on file with or held by a court.

(2) Court records that are no longer required shall be disposed of by

- (a) destruction without photographing or preserving an image thereof in electronic or other form;
- (b) destruction after photographing or preserving an image thereof in electronic or other form; or
- (c) transfer to the Public Archives,

in accordance with the directions of the Deputy Attorney General, after consultation with the Provincial Archivist or such other officer or employee of The Board of Trustees of the Public Archives of Nova Scotia as the Provincial Archivist may designate, and subject to the approval of the Chief Justice of the Supreme Court, or in accordance with a schedule for the retention and disposal of court records established by the Deputy Attorney General and the Chief Justice after consultation with the Provincial Archivist or such other officer or employee. 2000, c. 31, s. 9.

REGISTRARS OF PROBATE

Appointment

10 There shall be a registrar of probate for each court appointed in accordance with the *Civil Service Act*. 2000, c. 31, s. 10.

Requirement before commencing duties

11 Before entering upon the duties of office, each registrar shall do such acts and file such documents as are prescribed. 2000, c. 31, s. 11.

Duties

12 Each registrar shall perform such duties as are imposed by this Act and the regulations. 2000, c. 31, s. 12.

Deputy registrars

13 (1) One or more deputy registrars may be appointed for each probate court in accordance with the *Civil Service Act*.

(2) A deputy registrar shall perform such duties and may exercise such powers as are imposed or conferred by this Act and the regulations. 2000, c. 31, s. 13.

Territorial jurisdiction

14 Notwithstanding anything contained in this Act, a registrar may discharge the duties of a registrar or deputy registrar, as the case may be, in any probate district. 2000, c. 31, s. 14.

Removal of original wills

15 No original will shall be removed from the court except for the purpose of being produced in the Supreme Court for inspection, and in such case security shall be taken for its safe custody and return. 2000, c. 31, s. 15.

Duty to file and preserve

16 Each registrar shall file and preserve all original wills of which a grant has been made by the court and all other papers used in any matter in the court, subject to the Probate Rules and the regulations. 2000, c. 31, s. 16.

ADMINISTRATION OF ESTATES

Order restraining intermeddling

17 (1) At any time before the issue of a grant, a person may apply to the court that may make the grant, on such notice as the court directs, for an order restraining any person from dealing or intermeddling with the property of the deceased person.

(2) Where the court is satisfied that the application was made in good faith for the preservation of the property, costs are in the discretion of the court and shall be paid by the estate of the deceased person or the intermeddler, or both, as the court thinks fit. 2000, c. 31, s. 17.

Powers of Public Trustee

18 (1) Where it is brought to the attention of the Public Trustee that a person has died and the person's personal representative or persons entitled to share in the distribution of the estate have not taken possession of the property of the deceased person, the Public Trustee may take possession of the property for the purpose of protecting and preserving it and, pending a grant, the Public Trustee has all the powers of a personal representative with respect to the property.

(2) The Public Trustee is entitled to be paid from the assets of the estate such compensation for acting pursuant to subsection (1) and to be reimbursed for such expenses that are incurred by the Public Trustee in so acting as may be determined by the court. 2000, c. 31, s. 18.

Renunciation of executorship

19 (1) Before commencing the carrying out of the duties of an executor, a person may renounce executorship of a will of which that person is named as an executor or as the sole executor if the person does so prior to the grant of probate.

(2) Where a person renounces executorship of a will of which that person is named as an executor or as the sole executor, the person's rights in respect of the executorship and trusteeship under the will wholly cease, except in so far as the renunciation expressly reserves the trusteeship and, thereupon, any application for a grant shall be made and dealt with as if the person renouncing had not been named as executor. 2000, c. 31, s. 19.

Termination of executorship

20 Where an executor

- (a) survives the testator but dies without obtaining a grant; or
- (b) is ordered to appear and probate the will or renounce executorship of the will and fails to appear or fails to satisfy the court that there was a reasonable excuse for not probating the will or renouncing executorship,

the executor's rights in respect of the executorship and any trusteeship under the will wholly cease and any application for a grant shall be made and dealt with as if the person so dying or failing to appear had not been named as an executor or trustee. 2000, c. 31, s. 20.

Perishable or precarious property

21 Where it appears to the court that there is danger to any portion of an estate of a deceased person by reason of it being of a perishable or precarious nature and the persons entitled to apply for a grant have not done so and there is likely to be delay, the court may, on application and on such notice, if any, as it may direct, issue a grant to a person it thinks fit. 2000, c. 31, s. 21.

Administration with will annexed

22 Where there is no executor of a will or where none of the executors who are ordered to appear and probate a will or renounce executorship of the will do so, the court may grant administration of the estate with the will annexed to the person or persons who would have been entitled to the administration under Section 32. 2000, c. 31, s. 22.

Temporary grant

23 Where a person residing in the Province is entitled to a grant and that person is absent from the Province, the court may reserve the right of that person to the grant and may issue a temporary grant and appoint some other person who is, under Section 32, entitled to be the personal representative of the deceased person for a limited time or until the grant is revoked on the return of the person entitled to the grant. 2000, c. 31, s. 23.

Administration pending litigation

24 The court may appoint any person who is, under Section 32, entitled to a grant as the personal representative of the deceased person pending any litigation respecting the validity of a will of a deceased person or for obtaining, recalling or revoking any grant. 2000, c. 31, s. 24.

Continuation of administration

25 (1) Where an administrator dies leaving an estate partly unadministered, the court may appoint any person who is, under Section 32, entitled to a grant to continue the administration.

(2) Where the executor of an estate dies intestate and there is no other executor to carry on administration of the estate and where the administrator of an estate who has been issued a grant of administration with the will annexed dies leaving part of the estate unadministered, the court may appoint any person who is, under Section 32, entitled to a grant to continue the administration with the will annexed. 2000, c. 31, s. 25.

Effect of administration with will annexed

26 A person who is administrator with the will annexed has the same rights, powers and duties as if that person had been appointed executor of the will. 2000, c. 31, s. 26.

Effect of appointment

27 (1) An administrator appointed pursuant to Section 21, 22, 23, 24 or 25 has all the rights and powers of a general administrator and is subject to the immediate control and direction of the probate court and shall act under its direction.

(2) Notwithstanding subsection (1), an administrator appointed pursuant to Section 24 may not distribute the residue of the property being administered.

(3) The court may impose on a grant made pursuant to Section 21, 22, 23, 24 or 25 any limitations and restrictions it thinks fit. 2000, c. 31, s. 27.

Continuation of proceedings

28 Where, before revocation of any temporary administration, proceedings have been commenced by or against any new personal representative appointed pursuant to this Act, the court in which the proceedings are pending may order that the proceedings be continued in the name of the new personal representative in like manner as if the proceedings had originally been by or against the new personal representative, but subject to such conditions or variations as the court directs. 2000, c. 31, s. 28.

GRANT OF PROBATE OR ADMINISTRATION

Power to issue grant

29 A court may issue a grant where

(a) the court is the court for the probate district in which the deceased person resided at the time of death; or

(b) the court is the court for the probate district in which the deceased person had property at the time of death, if the deceased person did not reside in the Province at the time of death and no grant or order to the like effect with respect to the estate of the deceased person has been made by an authority outside the Province. 2000, c. 31, s. 29.

Proof in common form

30 (1) A court may, upon application, issue a grant pursuant to Section 29.

(2) Execution of a will may, for the purpose of subsection (1), be proved in common form by an affidavit in writing in the prescribed form and that contains such facts and information as are prescribed and that is taken at or after the time the will is executed before a registrar, a deputy registrar, a notary public, a barrister of the Supreme Court or such other person as the registrar directs.

(3) Proof in common form of any will and the probate granted thereon are sufficient to all intents and purposes. 2000, c. 31, s. 30; 2008, c. 50, s. 1.

Proof in solemn form

31 (1) A court may hear a will proved in solemn form and determine the validity of the will where an application asking the court to do so is made by a person interested in the estate of the testator either before or after a grant is made with respect to the will but not after the expiration of six months from the grant.

(2) Notwithstanding subsection (1), the court may, upon application, where it considers it just, hear a will proved in solemn form at any time after the expiration of six months from the grant and before an order is issued pursuant to Section 72 as to any portion of the estate remaining undistributed at the date of the application. 2000, c. 31, s. 31.

Entitlement to administration

32 (1) Subject to Sections 15, 23 and 24 of the *Public Trustee Act*, administration of the estate of an intestate or of an estate partly or wholly unadministered owing to the death or removal of a personal representative shall be granted to one or more of the following persons, if they are competent and suitable for the discharge of the trust and willing to undertake the administration of the estate unless the court thinks it proper to appoint some other person, according to the following priorities:

(a) first - the spouse of the intestate if the spouse resides in the Province and those children of the intestate who reside in the Province;

(b) second - those persons who reside in the Province and who are entitled to share in the distribution of the estate by reason of the *Intestate Succession Act* or by reason of being adult residuary beneficiaries;

(c) third - the Public Trustee;

(d) fourth - those persons who do not reside in the Province and who are entitled to share in the distribution of the estate by reason of the *Intestate Succession Act* or by reason of being adult residuary beneficiaries;

(e) fifth - a creditor or a person having a cause of action against the estate.

(2) Where there is no person entitled to a grant of administration, the court may grant administration to any person the court thinks fit.

(3) Where more than one person is entitled to administration, the court may grant administration to one or more of such persons.

(4) Any person who is entitled to a grant under clause (1)(a), (b) or (d) or, where there is more than one of such persons, all such persons may, with the written consent of the Public Trustee, nominate another person, including a trust company, as administrator of all or part of the property of a deceased person.

(5) Where a person nominates another person pursuant to subsection (4), the right to the grant of the person who nominated the other person passes to that other person.

(6) Where an infant is the only executor of an estate and no person is named in the will as an alternate executor to act as executor in the event of the person who is the infant predeceasing the testator or being unable or unwilling to act, the court shall reserve the right of the infant to the grant but shall grant temporary administration of the estate with the will annexed to the guardian of the infant or such other person as the court thinks fit until the infant attains the age of majority.

(7) Where an infant is the only executor of an estate but another person is named in the will as an alternative executor to act as executor in the event that the person who is the infant predeceases the testator or is unable or unwilling to act, the court shall reserve the right of the infant to the grant, but shall grant temporary administration of the estate to the alternative executor until the infant attains the age of majority. 2000, c. 31, s. 32.

Additional administrators

33 With the consent of those persons entitled to the grant of administration and selected by the court as administrators, the court may appoint one or more other persons as additional administrators. 2000, c. 31, s. 33.

Restriction on acting in estate

34 After the issue of a grant, no person other than the personal representative to whom it is issued may act in the estate comprised in or affected by the grant until the grant has been recalled or revoked or the personal representative discharged. 2000, c. 31, s. 34.

Effect of lack of jurisdiction

35 A grant made by a court not having jurisdiction to make it has, until revoked, the same effect as if it had been made by a court having jurisdiction. 2000, c. 31, s. 35.

Stay

36 Where it is made to appear to a court before which any matter is pending that the residence of the testator or intestate or the situation of property of the testator or intestate has not been correctly stated in the application for the grant, the court may stay all further proceedings and make such order as to costs of the proceedings as it thinks just. 2000, c. 31, s. 36.

Extra-provincial grants

37 (1) Where there is filed with a court

(a) a grant or an order to the like effect made by an authority outside the Province, or a copy thereof, appearing to be certified under the seal of the authority that granted it as a true copy;

(b) a translation into English of any document referred to in clause (a), including any will, and the translation is certified in the prescribed manner and form; and

(c) security in such an amount and in such form as is prescribed pursuant to Section 40,

the court may issue a grant with respect to the estate.

(2) For the purpose of this Section, where an authority in Quebec has granted letters of verification with respect to the estate of a deceased person, that authority is deemed to have made a grant. 2000, c. 31, s. 37; 2001, c. 5, s. 12.

Continuation of proceedings

38 Where a grant is revoked while legal proceedings by or against the personal representative named therein are pending, the court in which the proceedings are pending may order that a notation be made on the record of the revocation and the proceedings shall be continued in the name of the new personal representative when appointed in like manner as if they had originally been commenced by or against the new personal representative, but subject to the conditions and variations, if any, that the court directs. 2000, c. 31, s. 38.

Payment or transfer in good faith

39 (1) Where a grant is revoked, a payment made in good faith to a personal representative under the grant before its revocation is a legal discharge to the extent of the payment to the person making it.

(2) Where a grant is defective or there are circumstances affecting the validity of the grant, no action or proceeding lies against a person by reason of that person making or permitting to be made any payment or transfer relying on the grant in good faith and without actual notice of the defect or the circumstances affecting the validity of the grant. 2000, c. 31, s. 39.

Security

40 (1) Except where otherwise provided by law or by the will of a deceased person, every person to whom a grant of administration of the estate of the deceased person may be issued, whether or not resident in the Province, and every executor to whom probate of the will may be granted, who is not resident in the Province, shall give to the registrar security in such an amount and in such form as is prescribed for the due collecting, getting in and administering of the property of the deceased.

(2) The court may dispense with the giving of security where the personal representative is the sole beneficiary of the deceased person.

(3) The court may dispense with the giving of security by an executor not resident in the Province where all persons who are or may be beneficially interested in the estate are adults and are competent and have consented in writing to the dispensation.

(4) Subsection (1) does not apply

(a) to the Public Trustee;

(b) to a trust company;

(c) to an executor who is not resident in the Province if there is a co-executor who is resident in the Province; or

(d) where the will was made before the coming into force of this Section. 2000, c. 31, s. 40.

Requirement for new security

41 Upon proof that any surety or any person who has given security has died or become insolvent, the court may order the personal representative to provide new security. 2000, c. 31, s. 41.

Order to give security

42 Upon the application of a person interested in an estate, a court may order the executor to give security for the performance of the duties of the executor where it is satisfied that it is in the interest of the estate to make the order. 2000, c. 31, s. 42.

Notice of grant

43 Where a grant is issued, the personal representative shall, within such time as is prescribed, give notice of the grant in the prescribed form and manner to each person entitled to share in the distribution of the estate. 2000, c. 31, s. 43.

DEVOLUTION OF PROPERTY

Application of provisions

44 (1) Nothing in Sections 45 to 56 affects the interest of a spouse in a matrimonial home under the *Matrimonial Property Act*.

(2) Sections 45 to 55 do not apply with respect to

(a) real property that devolves under a will that was executed; or

(b) real property that devolves in an intestacy where the intestate dies,

before those Sections come into force.

(3) Sections 50 to 64 of Chapter 359 of the Revised Statutes, 1989, the *Probate Act*, apply with respect to

(a) real property that devolves under a will that was executed; and

(b) real property that devolves in an intestacy where the intestate dies,

before Sections 45 to 55 come into force. 2000, c. 31, s. 44; 2001, c. 5, s. 13.

Rights of personal representative not limited

44A Nothing in Sections 45 to 55 limits the powers, rights and immunities conferred on a personal representative by a will. 2001, c. 5, s. 14.

Devolution of personal property

45 (1) From the death of a person who has died intestate or has died testate but there is no executor, all personal property owned by the person immediately before that person's death is, until a grant is made with respect to the person's estate, vested in the Public Trustee, subject only to the power of a court of competent jurisdiction to grant administration in respect of the personal property.

(2) Nothing in subsection (1) means that the Public Trustee is authorized to take any action with respect to the personal property vested in the Public Trustee by subsection (1) or that the Public Trustee has any of the duties that are imposed by law on a personal representative with respect to the personal property and, notwithstanding any other enactment, no action, proceeding or prosecution lies against the Public Trustee by reason of the Public Trustee not taking any action with respect to the personal property or not dealing with the personal property.

(3) Notwithstanding any other enactment, the Public Trustee is not the assessed owner for municipal taxation purposes of any personal property that is vested in the Public Trustee by subsection (1). 2000, c. 31, s. 45.

Devolution of real property

46 (1) Notwithstanding any will, on the death of a deceased person, all real property that the deceased person owned immediately before the death of the deceased person for an interest not ceasing on the death and without a right in another person to take by survivorship devolves to and is vested in the personal representative of the deceased person as if it were personal property.

(2) For the purpose of this Act, the administrator of the estate of a deceased person is deemed to be administrator as if there has been no interval of time between the death of the deceased person and the grant of administration.

(3) A testator is deemed to have owned, immediately before the testator's death, any real property passing under any gift contained in the testator's will that operates as an appointment under a general power to appoint by will.

(4) The personal representative of a deceased person is the representative of the deceased person with respect to the real property as well as with respect to the deceased person's personal property.

(5) A grant may issue in respect of real property only, although there is no personal property.

(6) Subject to the powers, rights, duties and liabilities mentioned in this Act, the personal representative holds the real property as trustee for the persons by law beneficially entitled to the real property.

(7) Where any part of the real property of a deceased person vests in a personal representative under this Act, the personal representative, in the interpretation of any Act of the Legislature or in the construction of any instrument to which the deceased was a party or under which the deceased is interested, shall, while the estate remains in the personal representative, be deemed in law the deceased person's heir in respect of such part, unless a contrary intention appears, but nothing in this Section affects the beneficial right to any property or the construction of words of limitation of any estate in or by any deed, will or other instrument.

(8) *repealed 2001, c. 5, s. 15.*

2000, c. 31, s. 46; 2001, c. 5, s. 15.

Power of personal representatives

47 Except as otherwise provided in this Act, only the personal representative of a deceased person may dispose of and otherwise deal with the real property of the deceased person, with the like incidents, but subject to the like rights, equities and obligations as if the real property were personal property vested in the personal representative. 2000, c. 31, s. 47; 2001, c. 5, s. 16.

Effect of appointment

48 Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative with respect to real property does not, except as hereinafter provided, affect

- (a) any rule as to marshalling or as to administration of assets;
- (b) the beneficial interest in real property under any testamentary disposition;
- (c) any mode of dealing with any beneficial interest in real property or the proceeds of the sale thereof; or
- (d) the right of any person claiming to be interested in the real property to take proceedings for the protection or recovery thereof against any person other than the personal representative. 2000, c. 31, s. 48.

Application of rules to real property

49 Subject to this Act, the jurisdiction of any court with respect to the appointment of personal representatives or with respect to grants and all enactments and rules of law relating to the effect of grants as respects personal property and as respects the dealing with personal property before a grant is made and as respects the payment of costs of administration and other matters in relation to the administration of personal property and the powers, rights, duties and liabilities of personal representatives in respect of personal property applies to the real property vested in personal representatives so far as the same are applicable, as if the real property were personal property, except that some or only one of several joint personal representatives may not sell or transfer real property without the approval of the court. 2000, c. 31, s. 49.

Sale of real property

50 (1) Subject to any will, a personal representative may sell the real property for the purpose not only of paying debts but also for distributing the estate among the persons beneficially entitled thereto, whether there are or are not debts and it is not necessary that the persons beneficially entitled to the real property concur in such sale, except where the sale is made for the purpose of distribution only.

(2) Subject to this Act and any will, no sale of real property for the purpose of distribution only is valid with respect to any person beneficially interested, unless that person concurs in the sale.

(3) Except where otherwise provided in any will, where in the case of a sale for the purpose of distribution

- (a) a mentally incompetent person or an infant is beneficially interested;
- (b) an adult beneficiary does not concur in the sale;
- (c) there is, under a will, a contingent interest or interests not yet vested; or

(d) there is a person who may be a beneficiary who has not yet been ascertained,

the Supreme Court, upon being satisfied that it is just and appropriate to do so, may approve the sale and the sale so approved is valid with respect to the contingent interest and any interest not yet vested and is binding upon the incompetent person or infant, non-concurring person and beneficiary not yet ascertained.

(4) Notwithstanding subsections (1), (2) and (3), the non-concurrence of any person who is of the age of majority and entitled to share in immediate distribution does not invalidate the sale of real property if persons entitled to receive in the aggregate at least seventy-five per cent of the net proceeds concur in the sale and the sale is made in accordance with the concurrence and the personal representative is not answerable or chargeable to or by the non-concurring person for selling the real property at an undervalue if the sale has first been approved by the court.

(5) Where a person of the age of majority accepts a share of the purchase money knowing it to be such, that person is deemed to have concurred in the sale.

(6) *repealed 2001, c. 5, s. 17.*

2000, c. 31, s. 50; 2001, c. 5, s. 17.

Division of real property

51 Except as otherwise provided in a will, the personal representative may convey or divide the real property of a deceased person to or among the persons beneficially interested with the concurrence of

- (a) each person beneficially interested in the real property;
- (b) the guardian of each infant who is beneficially interested in the real property; and
- (c) the representative for each adult who
 - (i) is beneficially interested in the real property, and
 - (ii) is the subject of a representation order under the *Adult Capacity and Decision-making Act* that grants the representative authority in respect of the adult's real property. 2001, c. 5, s. 18; 2017, c. 4, s. 87.

Power to lease or mortgage

52 (1) A personal representative may, subject to any will affecting the real property

- (a) lease the real property or any part thereof for a term not exceeding one year;
- (b) lease the real property or any part thereof for a longer period, with the approval of the Supreme Court;

(c) raise money by way of mortgage on the real property or any part thereof for the payment of debts and, with the approval of the Supreme Court, for the erection, repair, improvement or completion of buildings or the improvement of lands, or for any other purpose beneficial to the estate.

(2) Where an infant or a mentally incompetent person is beneficially interested in the real property, a mortgage for the payment of debts is not valid unless it has first been approved by the Supreme Court. 2000, c. 31, s. 52; 2001, c. 5, s. 19.

Effect of failure to convey

53 (1) Where, after the expiration of one year after the grant, the personal representative fails to convey any of the real property to the person entitled thereto after the person has requested the personal representative to do so, the Supreme Court may, on the application of that person and after notice to the personal representative, order that the conveyance be made and, where the order is not complied with, may make an order vesting in that person all the right, title and interest in the real property that would have been conveyed to that person if the personal representative had made the conveyance that the Court ordered the personal representative to make.

(2) Where, after the expiration of one year after the grant, the personal representative either fails to convey any of the real property to the person entitled thereto or to sell or dispose of it, the Supreme Court may, on the application of a person beneficially interested, order that the real property be sold on such terms and within such period as the Court thinks reasonable and, where the personal representative fails to comply with the order, may direct such person as the Court thinks fit to sell the property for cash or credit or partly cash and partly credit upon such terms as the Court thinks fit. 2000, c. 31, s. 53; 2001, c. 5, s. 20.

Position of purchaser and grantee

54 (1) Notwithstanding any other provision of this Act, a person purchasing in good faith and for value, from a personal representative the real property or from a person beneficially entitled to the property to whom the property has been conveyed by the personal representative, holds the property free and discharged from all debts or liabilities of the deceased person, except such as are specifically charged thereon otherwise than by the will of the deceased person and, where the purchase is from the personal representative, freed and discharged from all claims of the persons beneficially interested.

(1A) Where, on a sale of real property pursuant to Section 50 or on a conveyance or division of real property pursuant to Section 51, a person relies, in good faith, on an affidavit of the personal representative verifying that the sale complies with Section 50 or the conveyance or division complies with Section 51, without actual notice to the contrary, the affidavit is sufficient proof that the sale complies with Section 50 or that the conveyance or division complies with Section 51, as the case may be, and neither the sale, the conveyance nor the division or any

instrument that implements the sale, conveyance or division is invalid by reason only of a failure to comply with Section 50 or 51, as the case may be.

(2) Real property that has been conveyed by the personal representative to a person beneficially entitled to the real property or that vests in that person by reason of subsection 53(1) continues to be liable to answer the debts of the deceased person so long as it is vested in that person or any person claiming under that person who is not a purchaser in good faith and for value, as it would have been had it remained vested in the personal representative and, in the event of a sale or mortgage thereof in good faith and for value by such person beneficially entitled, that person is personally liable for the debts to the extent to which the real property was liable when vested in the personal representative, but not beyond the value of the real property. 2000, c. 31, s. 54; 2001, c. 5, s. 21.

Requirement for conveyance

55 Where there are two or more personal representatives, a conveyance, mortgage, lease or other disposition of the real property shall not be made without the concurrence of all the personal representatives or by an order of the Supreme Court, but where the grant is made to one or some of two or more personal representatives, whether or not power is reserved to the other or others to probate, any conveyance, mortgage, lease or other disposition of the real property may be made by the personal representative to whom the grant has been issued for the time being, without an order of the Court and is as effectual as if all the persons named as personal representatives had concurred therein. 2000, c. 31, s. 55; 2001, c. 5, s. 22.

56 *repealed 2001, c. 5, s. 23.*

INVENTORY

Duties of personal representative

57 (1) Every personal representative shall, within three months after the grant or such extended time as the court allows, file with the court a full and true inventory in the prescribed form of the assets of the deceased.

(2) Where a personal representative does not file an inventory in accordance with subsection (1), the registrar may give the personal representative a notice, in the prescribed manner and form, requiring the personal representative to do so within thirty days after receipt of the notice.

(3) Where a person fails to comply with a notice given pursuant to subsection (2), the court may order the person to do so. 2000, c. 31, s. 57.

Duty to file further inventory

58 Where any real or personal property of the deceased comes into the possession or knowledge of the personal representative after the personal representative has filed the inventory or where any valuation in the inventory appears to have been in error, the personal representative shall, within thirty days after the personal

representative has come into possession or knowledge of the real or personal property or the error has come to the attention of the personal representative or such additional time as the registrar allows, file with the court a further inventory. 2000, c. 31, s. 58.

APPRAISERS

Power of court

59 The court may, by order, appoint one or more appraisers to estimate the value of the assets of the deceased person. 2000, c. 31, s. 59.

Duties of appraiser

60 The appraisers shall value the assets of the deceased and shall each prepare and submit to the registrar an appraisal in writing in such form as is prescribed. 2000, c. 31, s. 60.

REMOVAL OR DISCHARGE OF PERSONAL REPRESENTATIVES

Power of court and effect of removal

61 (1) On the application of any person, the court may remove a personal representative where the court is satisfied that removal of the personal representative would be in the best interests of those persons interested in the estate and, without limiting the generality of the foregoing, if the court is satisfied that

- (a) the personal representative has not complied with an order of the court;
- (b) the personal representative
 - (i) is neglecting to administer or settle the estate,
 - (ii) is wasting the estate,
 - (iii) has failed to comply with an order to pay into a chartered bank any money of the estate remaining in the hands of the personal representative,
 - (iv) is insolvent,
 - (v) is mentally incompetent,
 - (vi) has, within five years of the application, been convicted of theft, criminal breach of trust, destroying documents of title, fraudulent concealment, theft related to improper use of a credit card, possession of property obtained by crime, obtaining anything by false pretences or fraud under the *Criminal Code* (Canada), or
 - (vii) cannot be found or has left the Province without any apparent intention of returning.

(2) The court may discharge a personal representative who desires to be discharged.

(3) Where the court removes or discharges a personal representative, it shall appoint a new personal representative in the place of the personal representative that was removed or discharged.

(4) Where a new personal representative is appointed pursuant to subsection (3), the new personal representative has all the powers and shall perform all the duties of the personal representative who was removed or discharged.

(5) Notwithstanding the removal or discharge of a personal representative, each surety for the personal representative continues to be liable for any act or omission of the personal representative up to the time of the removal or discharge and for any asset of the estate that has come into the personal representative's hands.

(6) A personal representative who is removed or discharged shall make an accounting of the administration of the estate up to the time of the removal or discharge. 2000, c. 31, s. 61.

Effect of discharge

62 The personal representative applying for discharge shall execute any assurance or deed or do anything required for vesting the estate or part of it in a person appointed pursuant to subsection 61(3) in the place of that personal representative, whether the vesting is in the person alone or jointly with a personal representative continuing to act under a former appointment. 2000, c. 31, s. 62.

CLAIMS OF CREDITORS

Advertisement and effect of filing claim

63 (1) Before the payment of debts and expenses or distribution of an estate, the personal representative shall, by advertisement in the Royal Gazette for six months in such manner and at such times as is prescribed, call on all persons who have any demand upon the estate to file a claim within that six month period.

(2) Where no claim is filed within the six month period referred to in subsection (1), the personal representative may pay, from the assets of the estate, any debts and distribute the assets among those entitled thereto and no action or proceeding lies against the personal representative for so doing.

(3) Where a claim is filed within the six month period referred to in subsection (1), the personal representative may pay, from the assets of the estate, any debts and may distribute assets of the estate among those entitled thereto and, where the personal representative retains assets that are sufficient to pay the claim, no action or proceeding lies against the personal representative for paying the debts or distributing the assets. 2000, c. 31, s. 63.

Manner of filing

64 (1) A claim shall be in the prescribed form.

(2) No claim shall be filed after an order is issued pursuant to Section 72. 2000, c. 31, s. 64; 2001, c. 5, s. 24.

Deemed action

65 The filing of a claim is deemed to be the bringing of an action to prevent the operation of any statute of limitation. 2000, c. 31, s. 65.

Powers and duties of court

66 (1) The court shall adjudicate each claim either on the settlement of the estate or such earlier date as the court, on the application of the personal representative or the claimant, determines.

(2) At the time appointed for adjudication of claims or any adjournment thereof the court may

- (a) allow any claim;
- (b) disallow any claim;
- (c) direct an investigation of any or all of the claims;
- (d) require further particulars, information or evidence relating to any or all of the claims. 2000, c. 31, s. 66.

Effect on claim of executor

67 The naming of any person as executor in a will is not a discharge of any claim that the testator had against the executor, but the claim shall be included as part of the estate of the deceased in the inventory, and the executor is liable for the same as for so much money of the estate in the executor's hands at the time when the debt or demand is due and shall apply and distribute the same as part of the personal property of the testator. 2000, c. 31, s. 67.

Effect of designation of residence

68 (1) For greater certainty, where a deceased person has, before death, designated a residence pursuant to the *Social Assistance Act* or pursuant to regulations made pursuant to the *Employment Support and Income Assistance Act*, Section 13 of the *Social Assistance Act* or the regulations made pursuant to the *Employment Support and Income Assistance Act*, as the case may be, continue to apply with respect to the residence after that person's death.

(2) A personal representative shall not convey, sell, mortgage or encumber in any way a residence that is designated pursuant to the *Social Assistance Act* or pursuant to regulations made pursuant to the *Employment Support and Income Assistance Act* solely for the purpose of repaying assistance given to the deceased before the deceased's death pursuant to Part I of that Act. 2000, c. 31, s. 68.

SETTLEMENT AND DISTRIBUTION

Duty to give accounting

69 (1) A personal representative shall give the court an accounting of the administration of the estate within eighteen months from the date of the grant or such longer period as the court, on the application of the personal representative, may allow.

(2) Notwithstanding subsection (1), the court shall, upon the application of a person interested in the estate, including a creditor whose claim has not been paid or a surety on a bond given as security to the court, order the personal representative to give an accounting no later than such date as the court orders and the personal representative is personally liable for the costs of the application and of the accounting.

(3) Notwithstanding subsection (1), an accounting is not required where

- (a) the deceased died testate;
 - (b) all the unpaid beneficiaries are adult and competent;
- and
- (c) all the unpaid beneficiaries and any surety agree, in writing, in the prescribed manner and form, that an accounting is not required. 2000, c. 31, s. 69.

Duties of personal representative

70 (1) The personal representative shall give the accounting in the prescribed form and manner.

(2) Every personal representative, at the expiration of twelve months from the date of the grant, or such longer period as the court, on the application of the personal representative, may allow, shall pay all such legal and just claims as have been exhibited, so far as the estate of the deceased in the hands of the personal representative will enable the personal representative, and shall make such distribution of the estate as is directed by the will of the deceased or by the statutes in that behalf. 2000, c. 31, s. 70; 2001, c. 5, s. 25.

Powers of court

71 On passing the accounts of the personal representative, the court may

(a) enter into and make full inquiry and accounting of and concerning the whole property that the deceased was possessed of or entitled to, and the administration and disbursement thereof, including the calling in of creditors and adjudicating on their claims, and for that purpose take evidence and decide all disputed matters arising in the accounting; and

(b) inquire into and adjudicate on a complaint or claim by a person interested in the taking of the accounts of misconduct, neglect or default

on the part of the personal representative and, on proof of the claim, make any order the court considers necessary, including an order that the personal representative pay such sum as it considers proper and just to the estate, but any order made under this subsection is subject to appeal. 2000, c. 31, s. 71.

Further powers of court

72 (1) On passing of accounts the court may

(a) order that

(i) the accounts of the personal representative are passed and bills of costs are taxed pursuant to Section 91,

(ii) the personal representative is discharged,

(iii) any security be released,

(iv) the estate remaining undistributed after the passing of accounts be distributed among the persons entitled; and

(b) make any other order it thinks necessary to settle the estate.

(2) Where there is a contest as to how the remaining assets are to be distributed, the court shall hear evidence and determine who are the persons entitled to participate in the surplus of assets and the shares that they are respectively entitled to receive. 2000, c. 31, s. 72.

Same powers as Supreme Court

73 On passing the accounts of the personal representative and the distribution of the estate or in any matter relating thereto, a court has the same powers as the Supreme Court. 2000, c. 31, s. 73.

Appointment of expert

74 Where accounts submitted to the court are intricate or complicated and, in the opinion of the court, require expert investigation, the court may appoint an accountant or other skilled person to investigate and to assist it in auditing the accounts, and the costs thereof shall be borne by the estate or by the person that the court directs. 2000, c. 31, s. 74.

Effect of passing of accounts

75 A passing of accounts, or where there is an appeal from the passing of accounts the passing of accounts by the highest authority to which an appeal is taken or the confirmation by that authority of the passing of accounts, is conclusive evidence of the approval by the court of the accounts, except in respect of undisclosed acts, dishonest or unlawful conduct or breach of trust by a person while holding the office of personal representative, and is final and binding upon each person who was notified, or present, or represented and upon everyone claiming under such person. 2000, c. 31, s. 75.

Commission

76 On the settlement of an estate, the personal representative may be allowed, over and above all actual and necessary expenses as appear just and reasonable, a commission not exceeding five percent of the amount received by the personal representative and the court may further apportion the commission among the personal representatives as appears just and proper according to the labour bestowed or the responsibility incurred by them respectively. 2000, c. 31, s. 76.

Effect of provision in will

77 A provision in a will for specific compensation to an executor is a full satisfaction for the services of the executor in lieu of a commission, or the share of the executor thereof, unless the executor, before the earlier of the expiration of twelve months from the date of the grant or the issue of an order pursuant to Section 72, renounces all claim to the specific compensation and the renunciation is filed with the court. 2000, c. 31, s. 77.

Co-executor or co-administrator

78 A court may, on the application of a personal representative, order a co-executor or co-administrator to proceed to the settlement of the accounts of the estate as between the co-executor or co-administrator and the personal representative who applied for the order and may make an order thereon or may direct the personal representative to take out an order for, and proceed to, the passing of the accounts pursuant to this Act. 2000, c. 31, s. 78.

Satisfaction of debts to deceased

79 (1) The share of each person interested in the estate is subject to the payment of any debt due by that person to the deceased.

(2) Where the share of a person in the personal property is not sufficient for payment of the debt, the debt or the balance of the debt after deducting the value of that person's share in the personal property of the deceased shall be deducted from that person's share in the real property of the deceased and shall be taken into account when making a division of the real property or the proceeds thereof and the charge for the debt has priority over all judgments, mortgages, conveyances of and other charges and encumbrances upon the share, whether created by or against that person before or after the death of the deceased.

(3) The court may try and determine the validity and amount of the debt and direct such proceedings to be taken as are necessary to enable it to ascertain the amount of the debt upon the evidence brought before it and may make all orders necessary or proper to carry into effect and enforce this Section. 2000, c. 31, s. 79.

Presentation of remedies

80 Nothing contained in Section 79 prejudices any remedy that a personal representative has for the recovery of a debt or affects the liability of an heir, devisee, legatee or next of kin for the excess of that person's indebtedness over the

amount of that person's share in the estate to which that person is indebted. 2000, c. 31, s. 80.

Share of missing person

81 (1) Where, on application, the court is satisfied that

(a) a person who, if living, would be entitled to any money or lands of the estate, 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 supposing the person is dead,

the court may order the personal representative to distribute the share among such persons who would be entitled to the share if the death of the absent person had taken place immediately before the time at which the application was made.

(2) Before the share is distributed pursuant to subsection (1), there shall be given to the registrar security in such amount and in such form as is prescribed for the payment or re-delivery of the share 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 such share of or from the persons among whom the personal representative has distributed the same, but the personal representative making such payment or distribution is relieved from all further liability in respect to such share. 2000, c. 31, s. 81.

Order for distribution

82 (1) A personal representative may, without commencing any other proceeding, apply to the court for an order that

(a) the personal representative is at liberty to distribute the proceeds of the estate the personal representative is administering among the parties entitled to them, having regard only to the claims of the persons the personal representative has been able to ascertain to be entitled and whose residence and address the personal representative has been able to ascertain; and

(b) the personal representative is not to be liable for the proceeds of the estate or assets, or any part of them, so distributed to persons of whose claim and residence or address the personal representative did not have notice at the time of the distribution.

(2) On an application pursuant to subsection (1), the court may give directions with regard to the time for distribution and the notice that must be given to bring the fact of distribution to the notice of persons who may possibly be interested in the distribution.

(3) This Section does not prejudice the right of any creditor or claimant to follow the proceeds of the trust estate or assets, as the case may be, or any part of them, into the hands of the person or persons who may have received them. 2000, c. 31, s. 82.

INSOLVENT ESTATES

Powers of court and priorities

83 (1) The court may, upon the application of the personal representative, supported by such material as is prescribed, make an order declaring the estate to be insolvent.

(2) The personal representative may, in any legal proceedings instituted against the personal representative for any cause of action accruing against the deceased, apply to the court in which the proceedings are instituted, or a judge of that court, to stay proceedings on the production of a copy of the order made pursuant to subsection (1) and the court or the judge may, from time to time, make such order for a stay of proceedings or such other order or orders as justice requires, the costs to be in the discretion of the court or the judge.

(3) On the settlement of an insolvent estate the assets of the estate shall be distributed in the following order of priorities to those persons who have rendered their accounts, duly attested, in the following priority:

- (a) first - in payment of funeral expenses, including a headstone, to the extent such expenses appear reasonable;
- (b) second - in payment of probate taxes and court fees;
- (c) third - in payment of the personal representative's commission and legal fees, on an equal footing;
- (d) fourth - in payment of reasonable medical expenses incurred during the last thirty days of the deceased's life, on an equal footing;
- (e) fifth - in payment of all other debts. 2000, c. 31, s. 83.

Limitation on effect of Section 83

84 (1) Nothing in Section 83 affects

- (a) any debt secured by a mortgage of real property, a security interest in personal property within the meaning of the *Personal Property Security Act* or by a judgment that was registered in the lifetime of the deceased so as to bind the real property of the deceased; or

(b) the interest of a spouse in a matrimonial home under the *Matrimonial Property Act*.

(2) Any mortgage or judgment creditor may claim as any other creditor for any balance due to the creditor after realizing the value of the real and personal property. 2000, c. 31, s. 84.

PROBATE TAXES

Insurance money

84A Insurance money, as defined in the *Insurance Act*, that is, under Section 198 of that Act, not part of the estate of a deceased person by reason of a designation within the meaning of that Section made by the deceased person is not, for the purpose of Sections 85, 86 and 87 part of the assets of the deceased person or the deceased person's estate and shall not be included in the value of the estate of the deceased person for the purpose of calculating the tax payable to the registrar under those Sections. 2001, c. 5, s. 26.

Grants between October 1, 1982, and June 8, 2000

85 (1) This Section applies only with respect to estates of deceased persons in which the grant was made on or after October 1, 1982, and before June 8, 2000.

(2) Upon any grant, the following tax on all the assets of the deceased person that pass by a will or wills or that are transferred or will be transferred to a trust under a will or wills, whether or not the trust is described in the will as being separate from the estate or that pass upon intestacy is payable by the personal representative from the assets of the estate to the registrar:

(a) on and after October 1, 1982, to and including January 14, 1985, the amounts set out in items (1) and (2) of Schedule "D" in order in council 82-1110 dated September 14, 1982;

(b) on and after January 15, 1985, to and including the May 31, 1990, the amounts set out in items (1) and (2) of Schedule "D" in order in council 84-1501 dated December 21, 1984;

(c) on and after June 1, 1990, to and including January 14, 1995, the amounts set out in item (1) of Schedule "D" in order in council 90-558 dated May 8, 1990;

(d) on and after January 15, 1995,

(i) in estates not exceeding \$10,000, \$75,

(ii) in estates exceeding \$10,000 but not exceeding \$25,000, \$150,

(iii) in estates exceeding \$25,000 but not exceeding \$50,000, \$250,

(iv) in estates exceeding \$50,000 but not exceeding \$100,000, \$500,

(v) in estates exceeding \$100,000 but not exceeding \$150,000, \$600,

(vi) in estates exceeding \$150,000 but not exceeding \$200,000, \$800, or

(vii) in estates exceeding \$200,000, \$800 plus an additional \$5 for every \$1,000 or fraction thereof in excess of \$200,000.

(3) Where the personal representative pays the tax imposed by this Section, the registrar may provide the following services or documents:

(a) every necessary act or step up to and including the issuing of the original grant, including proof of the will in common form upon the affidavit or affidavits of subscribing witnesses, taking oaths, filing papers and oaths, and the fees on a preliminary hearing to take evidence in proof of a will or to determine the persons to whom the grant shall be made;

(b) any order for the appointment of an appraiser, taking and subscribing the affidavit verifying the inventory and all filing fees in connection therewith; and

(c) one of each of the following upon request:

(i) certified copy of the letters testamentary or of administration,

(ii) certificate of probate or administration,

(iii) certified copy of the will.

(4) Upon the examination by a court of a final account of the estate of a deceased person, together with the receipts and vouchers in support thereof and including the taking of any evidence of the personal representative in support of any items in the account, the subscribing of the affidavit in verification of the account and the filing of the account with the court, of the affidavits of service and all other necessary papers and documents, issuing orders, passing final accounts and allowing distribution upon closing and taxation of costs, the following tax on all the assets of the estate of the deceased person that pass by will or intestacy is payable by the personal representative from the assets of the estate to the registrar:

(a) on and after October 1, 1982, to and including January 14, 1985, the amounts set out in item (13) of Schedule "D" in order in council 82-1110 dated September 14, 1982;

(b) on and after January 15, 1985, to and including May 31, 1990, the amounts set out in item (13) of Schedule "D" in order in council 84-1501 dated December 21, 1984;

(c) on and after June 1, 1990,

- (i) in estates not exceeding \$10,000, \$50,
- (ii) in estates exceeding \$10,000 but not exceeding \$25,000, \$75,
- (iii) in estates exceeding \$25,000 but not exceeding \$50,000, \$125,
- (iv) in estates exceeding \$50,000 but not exceeding \$100,000, \$200,
- (v) in estates exceeding \$100,000 but not exceeding \$150,000, \$250,
- (vi) in estates exceeding \$150,000 but not exceeding \$200,000, \$350, or
- (vii) in estates exceeding \$200,000, \$350 plus an additional \$3 for every \$1,000 or fraction thereof in excess of \$200,000.

(5) Upon an application and grant of an order for adjournment respecting an estate of a deceased person, a tax of \$10 is payable by the personal representative from the assets of the estate to the registrar.

(6) The taxes collected pursuant to this Section shall be paid over to the Attorney General and Minister of Justice for the use of the Province. 2000, c. 31, s. 85; 2001, c. 5, s. 27.

Grants on or after June 8, 2000

86 (1) This Section applies only with respect to estates of deceased persons in which the grant was made on or after June 8, 2000, and before the coming into force of Section 87.

(2) Upon any grant, the following tax on all assets of the deceased person that pass by a will or wills or that are transferred or will be transferred to a trust under a will or wills, whether or not the trust is described in the will as being separate from the estate or that pass upon intestacy is payable by the personal representative of the estate from the assets of the estate to the registrar:

- (a) in estates not exceeding \$10,000, \$70;
- (b) in estates exceeding \$10,000 but not exceeding \$25,000, \$150;
- (c) in estates exceeding \$25,000 but not exceeding \$50,000, \$250;
- (d) in estates exceeding \$50,000 but not exceeding \$100,000, \$700;
- (e) in estates exceeding \$100,000 but not exceeding \$150,000, \$700 plus an additional \$12 for every \$1,000 or fraction thereof in excess of \$100,000;

(f) in estates exceeding \$150,000 but not exceeding \$200,000, \$700 plus an additional \$12 for every \$1,000 or fraction thereof in excess of \$150,000;

(g) in estates exceeding \$200,000, \$700 plus an additional \$12 for every \$1,000 or fraction thereof in excess of \$200,000.

(3) Where the personal representative of an estate pays the tax imposed by this Section, the registrar may provide the following services or documents:

(a) the services or documents referred to in subsection 85(3);

(b) the examination by the court of a final account of the estate of a deceased person, together with receipts and vouchers in support thereof;

(c) the taking of any evidence of the personal representative in support of any items in the account;

(d) the subscribing of the affidavit in verification of the account;

(e) the filing with the court of the account, affidavits of service and the publication of the citation and all other necessary papers and documents;

(f) the issue of all orders, including the order passing the accounts and the decree allowing distribution.

(4) The taxes collected pursuant to this Section shall be paid over to the Attorney General and Minister of Justice for the use of the Province. 2000, c. 31, s. 86; 2001, c. 5, s. 28.

Grants after Section in force

87 (1) This Section applies only with respect to estates of deceased persons in which the grant is made on or after the coming into force of this Section.

(2) Upon any grant, the following tax on all the assets of ~~of~~ the deceased person that pass by a will or wills or that are transferred or will be transferred to a trust under a will or wills, whether or not the trust is described in the will as being separate from the estate or that pass upon intestacy is payable by the personal representative of the estate from the assets of the estate to the registrar:

(a) in estates not exceeding \$10,000, \$85.60;

(b) in estates exceeding \$10,000 but not exceeding \$25,000, \$215.20;

(c) in estates exceeding \$25,000 but not exceeding \$50,000, \$358.15;

(d) in estates exceeding \$50,000 but not exceeding \$100,000, \$1002.65;

(e) in estates exceeding \$100,000, \$1002.65 plus an additional \$16.95 for every \$1,000 or fraction thereof in excess of \$100,000.

(3) Where, after a grant is issued any document, including any inventory that is, pursuant to this Act, filed with the registrar discloses that the value of the property of the deceased person at the time of the death of the deceased person exceeds the value of the estate given in the application for the grant, the value of the estate for the purpose of calculating the tax payable to the registrar is increased by an amount equal to the amount of the excess and the additional tax is payable by the personal representative of the deceased person out of the assets of the estate to the registrar when the document is filed.

(4) Where the personal representative of an estate pays the tax imposed by this Section, the registrar of the court may provide the following services or documents:

(a) the services or documents referred to in subsection 85(3);

(b) the examination by the court of the accounts of the estate of a deceased person, together with receipts and vouchers in support thereof;

(c) the taking of any evidence of the personal representative in support of any items in the account;

(d) the subscribing of the affidavit in verification of the account;

(e) the filing with the court of the account, affidavits of service and the publication of the citation and all other necessary papers and documents;

(f) the issue of all orders, including the order passing the accounts and the order allowing distribution.

(5) The taxes collected pursuant to this Section shall be paid over to the Attorney General and Minister of Justice for the use of the Province. 2000, c. 31, s. 87; 2001, c. 5, s. 29; 2002, c. 5, s. 47; 2004, c. 3, s. 31; 2007, c. 9, s. 35; 2009, c. 5, s. 26; 2011, c. 8, s. 20; 2013, c. 3, s. 13; 2015, c. 6, s. 45.

Power to commence proceedings

88 The Minister of Finance may commence proceedings to recover any tax payable under Section 85, 86 or 87 that has not been paid. 2000, c. 31, s. 88.

Regulations

89 (1) The Governor in Council may make regulations

- (a) providing for the refund of overpayment of the taxes imposed by Section 85, 86 or 87 and prescribing the manner in which an application for a refund must be made;
- (b) prescribing procedures to be followed and information or evidence to be given in order to establish the value of an estate;
- (c) prescribing forms and providing for their use;
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2000, c. 31, s. 89.

COSTS AND FEES

Fees for registrar

90 The registrar is entitled to such fees as provided by the *Costs and Fees Act*. 2000, c. 31, s. 90.

Taxation of bill

91 All bills of costs may be taxed by the registrar, and every such taxation may be reviewed by a judge, upon notice given by the party aggrieved to the opposite party, if any. 2000, c. 31, s. 91; 2001, c. 5, s. 30.

Costs in contested matters

92 (1) In any contested matter, the court may order the costs of and incidental thereto to be paid by the party against whom the decision is given or out of the estate and if such party is a personal representative order that the costs be paid by the personal representative personally or out of the estate of the deceased.

(2) An order made pursuant to subsection (1) may be reviewed by the Nova Scotia Court of Appeal or any judge thereof in chambers, upon notice given in the prescribed manner and form by the party aggrieved to the opposite party, and such order may be made thereon as the Court or the judge considers just and proper.

(3) An order for the costs of an application may be made personally against a personal representative where the application is made as the result of the personal representative failing to carry out any duty imposed on the personal representative by this Act.

(4) An order for costs in an application may be made personally against a personal representative who has made the application where the application is frivolous or vexatious. 2000, c. 31, s. 92.

APPEALS

Powers of court on appeal

93 (1) Any party aggrieved by an order or decision of the registrar, other than a grant, may in the prescribed manner, appeal from the order or decision of the registrar to the judge.

(2) On an appeal taken pursuant to subsection (1),

(a) the judge may hear such appeal and, where the judge thinks fit, any of the parties thereto may adduce the same evidence as that given before the registrar and, so that the judge may hear the same evidence and any further or other evidence, any further or other evidence and the judge may confirm, vary or set aside the order or decision appealed from, and may make any decree, order or decision which the registrar should have made;

(b) the judge may rescind, set aside, vary or affirm the order or decision appealed from or make any decision or order the registrar could have made;

(c) costs of the appeal are in the discretion of the court.
2000, c. 31, s. 93.

Appeal to Nova Scotia Court of Appeal

94 Any party aggrieved by an order or decision of the judge may, pursuant to the *Civil Procedure Rules*, appeal from the order or decision to the Nova Scotia Court of Appeal. 2000, c. 31, s. 94.

Appeal not a stay

95 An appeal to the Nova Scotia Court of Appeal is not a stay of proceedings, but the appellant may apply to the Nova Scotia Court of Appeal or a judge thereof for a stay on such terms and conditions as the Court or the judge considers appropriate. 2000, c. 31, s. 95.

PUBLIC TRUSTEE

Immunity from proceedings

96 No proceeding for damages shall be commenced against the Public Trustee for anything done or omitted in good faith in connection with the powers and duties of the Public Trustee under this Act. 2000, c. 31, s. 96.

PRACTICE

Jurisdiction to hear and determine

97 (1) The following matters shall be heard and disposed of by a judge of the Supreme Court:

- (a) an application for the approval, pursuant to Section 50, of a sale;
- (b) an application for the approval, pursuant to Section 52, of the lease or mortgaging of real property;
- (c) an application for an order, pursuant to Section 53, requiring that real property be conveyed or vesting real property;
- (d) an application for an order pursuant to Section 55.

(2) The following matters shall be heard and disposed of by the judge of the court, or, where all interested persons and the registrar agree in writing, by the registrar:

- (a) the hearing of proof of a will in solemn form;
- (b) an application to have a personal representative removed.

(3) All other applications and other matters before the court shall be heard and disposed of by the registrar and, subject to subsection (1), the registrar may make any order that the judge may make. 2000, c. 31, s. 97.

Right to appear

98 At the hearing of any application pursuant to this Act any person interested in the estate may appear at the hearing either personally or by counsel and may adduce evidence, cross-examine any witness called by any other party, re-examine any witness and make submissions and arguments. 2000, c. 31, s. 98.

Transfer of application

99 (1) Any application pursuant to this Act may be transferred by the registrar to the judge.

(2) Where an application is transferred to a judge pursuant to subsection (1), the judge may hear, determine and dispose of the application. 2000, c. 31, s. 99.

Powers of judge or registrar

100 A judge or a registrar may, in hearing and disposing of an application pursuant to this Act, exercise the powers and functions of the court. 2000, c. 31, s. 100.

Making order a Supreme Court order

101 An order of the court may be filed, in the prescribed manner, with a prothonotary of the Supreme Court and, when so filed, is an order of the Supreme Court. 2000, c. 31, s. 101.

Application of Civil Procedure Rules

102 Where no provision is made in this Act or in the Probate Rules with respect to practice or evidence and in so far as this Act or the Probate Rules do not extend, the *Civil Procedure Rules* apply. 2000, c. 31, s. 102.

Amendment of minutes of evidence

103 The judge or the registrar may, upon application, supported by affidavit, amend minutes of evidence taken in any matter before the court. 2000, c. 31, s. 103.

Limitation period

104 No order for *certiorari* shall be granted, issued or allowed to remove or quash any order, decision, judgment, report, award or other proceeding had or made before any judge, registrar, commissioner or other officer of a court unless the order for *certiorari* is applied for within six months after the order, decision, judgment, report, award or other proceeding is had or made. 2000, c. 31, s. 104.

William Fairbanks

105 (1) William B. Fairbanks ceases to be a registrar of probate on March 31, 2001.

(2) The order of the Governor in Council appointing William B. Fairbanks as a registrar of probate is revoked.

(3) Notwithstanding any enactment, all contracts, agreements and orders relating to or fixing the amount of compensation, remuneration, fees, entitlements or benefits, including pension benefits, of William B. Fairbanks with respect to the office of registrar of probate are null and void on and after March 31, 2001.

(4) Notwithstanding the *Interpretation Act* and any other enactment or any contract, agreement or order, William B. Fairbanks has no right to compensation for the loss of the office of registrar of probate or the emoluments of that office and no compensation, remuneration or fees shall be paid to William B. Fairbanks on and after March 31, 2001.

(5) Notwithstanding subsections (3) and (4), William B. Fairbanks is entitled to such compensation as management and excluded employees with the same length of service and the same termination date are entitled to under regulations made pursuant to the *Civil Service Act* from time to time.

(6) Notwithstanding subsections (3), (4) and (5), William B. Fairbanks is entitled to such superannuation allowance as is provided for by the *Public Service Superannuation Act*.

(7) For the purpose of determining the entitlements referred to in subsections (5) and (6), the date of termination of the employment of William B. Fairbanks is March 31, 2001.

(8) This Section has effect on and after March 31, 2001. 2000, c. 31, s. 105; 2001, c. 5, s. 31.

Regulations

- 106 (1)** The Governor in Council may
- (a) make rules of court for the purpose of carrying this Act into effect and, in particular, may make rules of court
 - (i) regulating the sittings of courts,
 - (ii) regulating the practice and procedure in courts, including the manner in which applications are made and evidence is taken and facts and documents are proved,
 - (iii) regulating appeals,
 - (iv) providing for the appointment of guardians *ad litem* for parties to proceedings in courts,
 - (v) providing for the manner in which notices are given and documents are served, including service out of the jurisdiction,
 - (vi) providing for the enforcement of orders of courts,
 - (vii) regulating the payment, transfer and deposit into or out of court of any money or property or the dealing therewith,
 - (viii) providing for the payment of costs and the manner in which they are taxed,
 - (ix) providing for the manner in which claims of secured creditors are realized against the estates of deceased persons,
 - (x) respecting the manner in which personal representatives deal with bad or doubtful debts of deceased persons and providing for their division and distribution amongst persons entitled or for their sale and for the distribution of the proceeds of such sale,
 - (xi) respecting the amount and form of security to be given to registrars by personal representatives for the due collecting, getting in and administering of the property of deceased persons,
 - (xii) prescribing the manner in which an order of a court may be filed with a prothonotary of the Supreme Court,
 - (xiii) prescribing the manner and times of an advertisement pursuant to subsection 63(1),

(xiv) providing for any other matter for better attaining the ends of justice;

(b) prescribe the manner in which documents filed in courts are maintained and indexed;

(c) prescribe the manner in which registrars of deeds index documents that are recorded in registries of deeds pursuant to this Act;

(d) prescribe forms and provide for their use;

(e) prescribe the duties and functions of registrars and deputy registrars;

(f) prescribe the days and hours during which the offices of registrars shall be open for business;

(g) prescribe seals for use by courts;

(h) define any word or expression used but not defined in this Act;

(i) make regulations for the purpose of carrying out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2000, c. 31, s. 106.

Application of Act to estates

106A (1) In this Section, “grant” means a grant of probate or letters of administration of the estate of a deceased person whether granted for general, special or limited purposes and includes administration with the will annexed, a re-sealing of probate or administration and ancillary probate or ancillary administration.

(2) Subject to subsection (3), this Act does not apply with respect to estates in which the grant was made before the coming into force of this Section and Chapter 238 of the Revised Statutes, 1989, the *Probate Act*, continues to apply with respect to those estates as if it had not been repealed.

(3) Sections 85 to 89 apply with respect to the estates of deceased persons in which the grant was made before, on or after the coming into force of this Section. 2001, c. 5, s. 32.

Repeal

107 (1) Chapter 359 of the Revised Statutes, 1989, the *Probate Act*, except Sections 9A to 9D, is repealed.

(2) Sections 9A to 9D of Chapter 359 are repealed. 2000, c. 31, s. 107.

Proclamation

108 Sections 1 and 3 to 84, 90 to 103, Sections 105 and 106 and subsection 107(1) come into force on such day as the Governor in Council orders and declares by proclamation. 2000, c. 31, s. 108; 2001, c. 5, s. 33.

Proclaimed (s. 105)	-	March 30, 2001
In force (s. 105)	-	March 30, 2001
Proclaimed (ss. 1, 3-84, 90-103, 106 and 107(1))	-	September 28, 2001
In force (ss. 1, 3-84, 90-103, 106 and 107(1))	-	October 1, 2001
