

RULE 65
ESTATES OF DECEASED PERSONS

REGISTRAR

65.01 The deputy registrar of the Estates Section may perform any ministerial act of the Estates Section, including any act entrusted to the Registrar of the Estates Section by the *Probate Act*, and including such other duties as may be assigned by any statute or by the Rules of Court or by a Judge presiding in the Estates Section.

Seal

65.02 The seal to be used in the Estates Section shall be the seal established and declared and which seal shall be impressed on all documents requiring to be issued, exemplified or otherwise authenticated under the seal in that section.

Signing and Sealing Grants

- 65.03** (1) All grants of probate, administration or guardianship and every exemplification thereof, all orders and decrees issued by the court, and all citations, warrants and subpoenas shall be signed by the registrar and issued under the seal of the Estates Section.
- (2) Any copy of a will or other document forming part of or attached to a grant or other document issued under the seal of the court shall be authenticated by the signature of the registrar.
- (3) A judge may sign all documents requiring the signature of the registrar and in lieu of the registrar.
- (4) All decrees passing accounts shall, in addition to being signed by the registrar, be signed on the face thereof by a judge.

Wills to Be Copied

65.04 Every will filed with the registrar shall be copied in a book kept for the purpose, and such copy when certified by a judge or registrar shall be deemed to be a true copy of such will.

Papers to Be Drawn by Parties

65.05 The registrar is not permitted to draw up or prepare any petitions, inventories or other papers to be presented for filing but the same shall be furnished by the applicant or person presenting the same for filing.

Acting Registrar

65.06 An acting registrar or deputy registrar appointed by the Lieutenant-Governor-in-Council shall have all the power and authority of a registrar and shall perform the duties assigned to him by a judge or registrar.

Petition for Solemn Form

- 65.07** (1) Any person seeking to propound a will by proof in solemn form may file a petition therefor according to the present practice, and such petition shall allege due execution of the will and capacity of the testator.
- (2) Such petition shall be accompanied by an inventory of the property owned by the alleged testator at the time of his death and made to the best of the propounder's knowledge and information.
- (3) Upon the filing of such petition the petitioner shall present a citation according to the form and practice heretofore in use and the same shall thereupon be issued by the registrar. The petitioner may, in special circumstances, apply for an abstract of such citation to be settled and signed by a judge in chambers.

Caveat to Require Proof in Solemn Form

- 65.08** Any person filing a caveat, pursuant to section 40 of the *Probate Act* may at any time thereafter serve a notice upon the executor, administrator, or party acting in loco executoris, calling upon the said executor, administrator, or party to prove the will in solemn form within ten days of the service of the notice, and any time after the service of such notice and prior to further proceedings being taken by such caveator, the propounder may proceed according to Rule 65.07.

Petition by Caveator

- 65.09** After the expiration of ten days from the service of the notice referred to in Rule 65.08, the caveator may file a petition and extract a citation calling upon the propounder of the will to prove the same in solemn form by proceedings to be commenced within ten days of the service of the citation. If probate has been taken in common form before any caveat filed, such petition shall set out one or more of the following grounds:
- (1) Lack of due execution;
 - (2) Lack of capacity of the testator;
 - (3) Lack of knowledge and approval of the contents of the will;
 - (4) Allegation of undue influence or fraud.

Statement by Caveator

- 65.10** Where a propounder of a will proceeds under Rule 65.07 or 65.08 no costs out of the estate shall be allowed to any caveator who has not, at least eight days before the return of the citation to prove in solemn form, filed a statement of grounds (being one or more of the grounds

set out in Rule 65.09), upon which he questions or opposes probate of the will.

Proceeding on Return of Citation

- 65.11** (1) On the return of every citation to prove a will in solemn form the petitioner shall first present to the court his petition, citation, and proof that all persons to be notified have been duly notified according to any order for service in the citation or otherwise.
- (2) The propounder of the will, except as to the fourth ground denoted in Rule 65.09, shall proceed as and be in the position of the plaintiff (and be designated as such) in a civil action and the caveat or shall proceed as and be in the position of the defendant (and be designated as such).
- (3) Where there is an allegation of undue influence or fraud the party so alleging shall proceed as and be in the position of a counterclaiming defendant in a civil action.

Joinder of Parties

- 65.12** After proof of service as required in Rule 65.11 the court may join any person with the plaintiff or the defendant, as their interest may appear, upon such directions as to costs as the court may order.

No Costs Unless Party

- 65.13** (1) No person other than a party to the action shall be entitled to costs out of the estate nor liable to pay any costs of any person or party.

Adducing Evidence

- (2) No person other than a party to the action shall be entitled to adduce any evidence at the hearing but any person showing interest may, with leave of the court, cross-examine the witnesses of either party.

No More than Two Sets of Costs

- 65.14** (1) No more than two sets of costs shall be payable out of the estate.
- (2) In all other respects except as herein otherwise directed the rights and liabilities of the parties to costs shall be according to the practice heretofore prevailing.

Practice on Re-Sealing

- 65.15** (1) On an application for resealing a document, pursuant to Section 44 of the Act, the following papers shall be filed:
- (a) the original grant and exemplification or other verified copy of the original grant;

- (b) petition of the executor or other than the person receiving the original grant setting forth the relevant facts and praying that the original grant (or as may be) may be sealed with the seal of the Estates Section;
- (c) an inventory of the property of the deceased detailed as to property within and general as to property without the Province;
- (d) a statement of the names, ages and relationship to the deceased of the beneficiaries of the property passing on the death of the deceased;
- (e) certificate required by sub-section (3);
- (f) filing of the original grant may be dispensed with by order of the court if it is established that the original grant cannot be obtained.

Real Estate on Prince Edward Island

- (2) Where there is real estate in Prince Edward Island it shall be shown that the will was executed in manner and form sufficient to pass real estate in Prince Edward Island.
- (3) Upon the application being so perfected the presiding judge shall make an order for the sealing of the original grant or other document submitted for the purpose with seal of the section and the registrar shall duly affix such seal after endorsing the substance of the judge's order on the document so to be sealed.

Grant of Ancillary Probate and Administration

65.16 Where probate or administration with the will annexed has been granted by a court of a foreign country in which the deceased was domiciled, and there is real or personal property of the deceased within the Province, ancillary letters probate or ancillary letters of administration with the will annexed shall issue on application and upon payment of the prescribed fees.

Procedure on Application for Ancillary Probate and Administration

65.17 On an application for ancillary letters probate or ancillary letters of administration with the will annexed, the following papers shall be filed:

- (1) Exemplification of the foreign grant including a copy of the will;
- (2) Petition of the executor, or other person receiving the foreign grant, substantially in the form of the petition for such a grant in the estate of a deceased domiciled in the Province;

- (3) An inventory of all the property of the deceased detailed as to property within and general as to property without the Province;
- (4) Unless described in the petition a statement of the names, ages and relationships to the deceased of the beneficiaries of the property passing on the death of the deceased;
- (5) A bond in double the amount of the personal property and real estate in the Province or otherwise as the presiding judge may direct, which bond shall be guaranteed by a person having assets in this Province or by a guarantee company;
- (6) Petitioner's oath of office;
- (7) Where there is real estate in Prince Edward Island it shall be shown that the will was executed in manner and form sufficient to pass real estate in Prince Edward Island.

Vesting Order

65.18 The practice as to proceedings and forms under section 113 of the *Probate Act*, sub-sections (2) and (3), shall mutatis mutandis be comfortable to the practice and forms in the Rules of Court relating to sales of land for like proceedings.

Formalities of Documents

65.19 Every document filed in the Estates Section shall be dated and intituled in the name of the court and the section and the matter to which it relates. The nature of every such document shall be designated by appropriate words on the face thereof above or below the name of the court, eg., "Petition for Probate", "Inventory", "Affidavit". Numbers may be stated in figures.

Affidavit of Verification

- 65.20** (1) For the purposes of Rule 65.18 an affidavit of verification is deemed to be part of any document it verifies.
- (2) Any document referred to and annexed to an affidavit or declaration shall be initialled by the deponent and the person administering the oath or declaration.

Filing

65.21 Unless otherwise directed by a judge, all documents filed in court shall be so filed with the registrar.

Size of Paper

65.22 All proceedings in court shall be written on sheets of paper eight and one-half inches in width and eleven inches in length but a judge may permit any proof affidavit or other proceeding to be written on paper

of other size. No document purporting to be impressions or second or carbon copy of the original shall be accepted for filing.

Petition for Probate

- 65.23** (1) All applications for Letters Probate or Letters of Administration shall be made by Petition setting out:
- (a) The date of the death of the person whose will is to be probated or whose estate is to be administered;
 - (b) The marital status of the deceased at the time of death e.g. unmarried, married, widow or widower, or divorced;
 - (c) Whether any marriage of the deceased, or a person with whom a form of marriage was celebrated, has been dissolved or annulled and if so the particulars of such dissolution or annulment;
 - (d) Where it appears that a marriage of the deceased may have been dissolved or annulled there shall be shown the name of any person with whom the deceased has gone through a form of marriage and the names and addresses of all issues of any such marriage.
- (2) Petitions may be in the following forms:
- (a) Petition for Probate, Form 65A;
 - (b) Petition for Administration with will annexed, Form 65B;
 - (c) Petition for Administration, Form 65C;
 - (d) Petition for Administration of Goods Unadministered either with will annexed or on intestacy (no form provided, other forms may be varied to set up such a petition).
- (3) The personal representative shall file an inventory of the estate as required by section 48 of the Act and may be in Form 65E.

Before Whom Sworn

65.24 Revoked 1991.

Witness May Not Act as a Commissioner

65.25 No proof of any will shall be accepted where the commissioner taking the affidavit of proof is himself a witness to the will.

Inventory Necessary When Will Filed and Registered

65.26 Every will presented for filing unaccompanied by a petition for probate shall be accompanied by an inventory of the property owned by the testator at the time of his death, and such inventory shall state the date of death.

Inventories and Accounts To Be Totalled

65.27 All inventories and accounts before being accepted for filing shall be totalled both as to assets or receipts and liabilities, notwithstanding that additional items may be furnished subsequently to such filing.

Verification

65.28 All petitions, inventories and accounts presented for filing shall be verified by affidavit.

Remain in Court

65.29 All proceedings of the section shall remain of record in the section but they may at all reasonable times be inspected by any person upon payment of a search fee.

Proceedings on Search

65.30 Every person making a search shall declare to the registrar the name of the matter or estate which he may be searching.

Notice of Motion

65.31 Any application in any action or proceeding the procedure for which is not prescribed by the Act or these Rules and the practice whereon is not clearly defined may, unless otherwise directed by the judge, be made by motion, and notice of the motion shall be given to all parties to be affected by order sought.

Notice to Be Given

65.32 If on the hearing of a motion it appears that any person to whom notice has not been given ought to have had notice, the court may adjourn the hearing thereof in order that proper notice may be given.

Order for Production of Document

- 65.33** (1) No subpoena for the production of an original record or of an original document from the Estates Section shall be issued, but an order for its production or transmission to any other section or division of the Supreme Court may be made by any Judge of the Supreme Court.
- (2) Except in special circumstances requiring or justifying the production of the original, no such order shall be made where the document may be proved by a certified copy.

Mode of Service

65.34 (1) All notices, citations and other documents requiring or ordered to be served shall be served in the same manner as an originating process may be served if no other method of service is specified.

- (2) An order or direction for service by registered mail shall be deemed to mean and include the mailing of a copy of the document to be served by registered mail prepaid for acknowledgement of receipt addressed to the person to be served at his last known address.

Double Probate

- 65.35** (1) Where all of the executors named in a will have not made application for probate and the right has been reserved to one or more of them to make application for probate at some future time, or if an alternative executor is called upon to complete the administration, and, in either case, if it is desired to have the appointment of such executor or executors confirmed by the court, the grant for which the application is made shall be termed "double probate".
- (2) The application shall state, in addition to the fact of the original probate having been granted to the original applicant, the reason for the second application.
 - (3) The will or the copy contained in the original grant shall be marked as an exhibit to the affidavit of the applicant and shall be identified by his signature.
 - (4) The original letters probate shall be surrendered with the application.

Undated Will

- 65.36** If a will is not dated or is dated imperfectly, one of the attesting witnesses shall furnish evidence of the date of execution, or where such evidence cannot be obtained, evidence shall be furnished of the execution between two definite dates, or that search has been made and that no will of presumably later date has been found.

Citation to Accept Probate

- 65.37** (1) Where an executor fails to bring in a will for probate, any person interested may cite the executor to accept or refuse the probate and execution of the will, or to show cause why probate or administration with the will annexed, as the case may be, should not be granted to the applicant or to such other person having the prior right thereto who is willing to accept the same.
- (2) No such citation shall issue until after the lapse of fourteen days from the testator's death.

Citation to Bring in Will

- 65.38** Where it is shown to the satisfaction of the judge that any testamentary document may be in the custody of a person, a citation may be issued

to such person, calling upon him to deposit in the office of the registrar any testamentary document in his possession or control, or to state under oath that no such document is in his possession or control.

Subpoena to Examine Person Having Knowledge of Will or Assets of an Estate

65.39 Where it is shown to the satisfaction of a judge that a person has knowledge of any will or other document or any asset relating or belonging to an estate, a subpoena may by leave of the judge be served upon such person calling upon him to attend at a time and place to be named and to be examined concerning the same.

Citation Where Intestacy

- 65.40** (1) Where upon an intestacy letters of administration have not been issued, any person interested shall before himself applying for grant cite those having a prior right to accept or refuse administration and in default of application being made by them, he may file his own petition and proofs.
- (2) Unless otherwise ordered, no such citation shall issue until after the expiration of one month from the date of death of the intestate.

Revocation of Grant

- 65.41** (1) Where it is sought to revoke a grant, a citation may issue calling upon the person in whose favour the grant has been made to bring the grant into the registrar's office within the time specified in the citation and pending the determination of the proceedings, the person holding the grant shall not act thereunder without the leave of the judge.
- (2) Upon the revocation of a grant of probate, administration or guardianship, an entry thereof shall be made by the registrar across the face of the grant recorded by the registrar in the following form:
- "Revoked by Judge's Order, dated the _____ day of _____, 19__."

Passing of Accounts

65.42 Executors, administrators, trustees under a will shall render an account of the administration of the estate to the court, in accordance with section 54 of the *Probate Act*.

Procedure

65.43 (1) A petition with inventories and accounts duly verified by affidavits shall be filed with the registrar and thereupon the

judge shall fix a time and place for the passing of the accounts and shall issue a citation to pass accounts.

- (2) Before a citation to pass accounts is issued the petitioner shall satisfy the registrar by affidavit that the provisions of sections 49 to 49(a) of the Act have been complied with and no such citation shall issue until after the expiration of the time limits for presentation of claims in accordance with the notice of the personal representative published as required by section 48 of the Act.
- (3) The judge shall give all necessary directions for the service and publication of the citation, and, if he deems it proper, for the service of a copy of the accounts, upon those interested therein including a representative of any deceased beneficiary.
- (4) Where an infant is concerned, contingently or otherwise, notice shall be given to the official guardian who shall be informed of the name and interest of the infant and given the address of the person with whom the infant resides, and there shall also be served upon the official guardian a copy of the petition, the inventories and accounts duly verified by affidavits and a copy of the letters probate or letters of administration.
- (5) Where a mentally incompetent person is concerned, contingently or otherwise, notice shall be given to his committee, or guardian.
- (6) Where there is no committee of such person notice shall be given to the public trustee who shall be informed of the name and interest and the latest known address of such person and there shall also be served upon the public trustee a copy of the petition, the inventories and accounts duly verified by affidavits and a copy of the letters probate of the last will and testament of the deceased.
- (7) The accounts shall be passed before the judge sitting in chambers.

Contents

- 65.44** (1) The accounts shall contain a true and perfect inventory of the whole property in question, including:
- (a) an account showing of what the original estate consisted;
 - (b) an account of all money received,
 - (c) an account of all money disbursed;
 - (d) an account of all property remaining on hand;

- (e) a statement of compensation claimed by the executor or administrator; and
 - (f) such other accounts as the judge requires.
- (2) Where principal and income are dealt with separately by the will or instrument creating any trust estate, the accounts shall be divided as to show separately, receipts and disbursements in respect of principal and income and in every other case the amounts may be so divided if the accounts of principal and income have been kept separate.
- (3) Where executors, administrators, trustees or guardians have made investments of trust funds, the accounts shall show separately particulars of:
- (a) all money so invested;
 - (b) all money received by way of repayment of or realization upon such investments in whole or in part; and
 - (c) the balance of all such investments remaining on hand.
- (4) The inventory shall be in Form 65AAA.

Costs

65.45 Upon passing accounts, the judge may reduce any bill of costs and charges of solicitors employed by the executors, administrators, trustees, or guardians, or refer the same for taxation by the prothonotary.

Decree in Duplicate, Filing and Service

- 65.46** (1) Every decree made upon passing accounts shall be made in duplicate and one of such duplicates shall be filed with the registrar.
- (2) The decree shall be served by registered mail or in such other manner as the judge directs upon the persons who attended or were represented at the passing of the accounts.

Registrar's Fees

- 65.47** (1) The fee for a reference by the registrar to the index of records or to a file, and reporting thereon by letter, including the search fee, shall be five dollars.
- (2) The fee for a photocopy of any document on file shall be twenty-five cents a page.

Forms

- 65.48** (1) Forms 64A to 64ZZ shall be used for the purposes of this rule with such variations or modifications as circumstances may

require, but any variance therefrom, not being in matter of substance, does not affect their regularity.

- (2) The provisions contained in the forms prescribed shall be deemed to be authorized by these Rules.

Application of Rules

65.49 Insofar as the *Probate Act* and this Rule (Rule 65) do not specifically provide, the general Rules applying in the Supreme Court shall apply to proceedings in the Estates Section.

Re Stewart Estate (1994), 119 Nfld. & P.E.I.R. 344 (P.E.I.S.C.-T.D.)

Costs may be payable out of an estate where it is necessary to have a declaration determining the rights of the parties. On the same principles, costs of other parties may be allowed out of the estate where the doubts are caused by the condition in which the testatrix has left her testamentary papers. As this Rule limits payment of only two sets of costs, the executor and the beneficiaries only were entitled to their costs.