

RULE 65
ESTATES OF DECEASED PERSONS

ACTING REGISTRAR

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

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.

FORMALITIES OF DOCUMENTS

65.06 Every document filed in the Estates Section shall be dated and identified with 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.

FILING

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

SIZE OF PAPER

65.08 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 document to be written on paper of other size. No document purporting to be a copy of the original shall be accepted for filing unless otherwise ordered by a judge.

REMAIN IN COURT

65.09 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

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

PETITION FOR PROBATE AND ADMINISTRATION

65.11 (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;
- (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) the name, age and address of every child of the deceased.

(2) Petitions shall 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 *Probate Act* and may be in Form 65E.

WITNESS MAY NOT ACT AS COMMISSIONER

65.12 No proof of any will shall be accepted where the commissioner taking the affidavit of proof is him or herself a witness to the will.

INVENTORY NECESSARY WHEN WILL FILED AND REGISTERED

65.13 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 or her death, and such inventory shall state the date of death.

INVENTORIES AND ACCOUNTS TO BE TOTALLED

65.14 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

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

PRACTICE ON RE-SEALING

- 65.16** (1) On an application for resealing a document, pursuant to Section 44 of the *Probate 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 person receiving the original grant setting forth the relevant facts and requesting that the original grant (or as the case 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 outside 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; and

- (e) certificate required by section 44(3) of the *Probate Act*.
- (2) 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.
- (3) 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.
- (4) 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 the seal of the Estates 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

65.17 Where probate or administration has been granted by a court in 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 shall issue upon application and upon payment of the prescribed fees.

PROCEDURE ON APPLICATION FOR ANCILLARY PROBATE AND ADMINISTRATION

65.18 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 outside 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) On Ancillary Administration only, 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.

DOUBLE PROBATE

- 65.19** (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 or her signature.
 - (4) The original letters probate shall be surrendered with the application.

UNDATED WILL

65.20 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

- 65.21** (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 thirty days from the testator's death.

CITATION TO BRING IN WILL

65.22 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 or her to deposit in the office of the registrar any testamentary document in his or her possession or control, or to state under oath that no such document is in his or her possession or control.

SUBPOENA TO EXAMINE PERSON HAVING KNOWLEDGE OF WILL OR ASSETS OF AN ESTATE

65.23 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 to or purporting to relate to or belong to an estate, a subpoena may by leave of the judge be served upon such person calling upon him or her to attend at a time and place to be named and to be examined concerning the same.

CITATION WHERE INTESTACY

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

REVOCAION OF GRANT

- 65.25** (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 _____, 20__."

CAVEATS AND OBJECTIONS

- 65.26** (1) A caveat pursuant to section 39 of the *Probate Act* shall be in Form 65EE and the registrar shall thereafter, during the validity of the caveat, provide notice of any application made in the matter of the estate in Form 65HH.
- (2) A caveat pursuant to section 40 of the *Probate Act* shall be in Form 65 CC and the registrar shall thereafter, during the validity of the caveat, provide notice of any application made in the matter of the estate in Form 65HH and such caveator shall, within 30 days, make a motion seeking directions pursuant to Rule 65.30.
- (3) Any person claiming an interest in an estate may file a caveat in Form 65DDD, and the registrar shall thereafter, during the validity of the caveat, provide notice of any application made in the matter of the estate in Form 65 HH and such caveator may make a motion seeking directions pursuant to Rule 65.30.

PROOF IN SOLEMN FORM

65.27 Any person filing a caveat pursuant to section 39 of the *Probate Act* shall within 30 days of filing the caveat or a renewal thereof deliver a notice in Form 65 II upon the executor, administrator, or party acting in place of the executor, calling upon the said executor, administrator, or party to prove the will in solemn form within 30 days of the service of such notice and prior to further proceedings being taken by such caveator, the executor, administrator, or party may proceed according to Rule 65.28.

- 65.28** (1) Any person seeking to propound a will by proof in solemn form may file a petition therefor in Form 65 BBB, 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 death and made to the best of the propounder's knowledge and information, and an Affidavit of the Petitioner verifying the allegations contained in the petition.
- (3) Upon filing of such petition the petitioner shall present a citation in Form 65 FF, and the same shall thereupon be issued by the registrar.

- (4) A citation issued under Rule 65.28 (3) shall be served on any person who has filed a caveat under section 39 of the *Probate Act*.
- (5) Following the issuance of a citation under Rule 65.28 (3) the propounder may move for directions under Rule 65.30.

65.29 (1) After the expiration of 30 days from the service of the notice referred to in Rule 65.27, any person who has filed a caveat under section 39 of the *Probate Act* may file a petition in Form 65 CCC calling upon the propounder of the will to prove the same in solemn form due to one or more of the following grounds:

- (a) lack of due execution;
 - (b) lack of capacity of the testator;
 - (c) lack of knowledge and approval of the contents of the will;
 - (d) Allegation of undue influence or fraud.
- (2) Such a petition shall be accompanied by an Affidavit of the Petitioner verifying the allegations contained in the petition.
 - (3) Upon the filing of such petition by the caveator, the caveator shall present a citation in Form 65 FF and same shall be issued by the registrar.
 - (4) A citation issued under Rule 65.29 (3) shall be served on any person who has filed a caveat under section 39 of the *Probate Act* as well as executor, administrator, or party acting in place of the executor.
 - (5) Following the issuance of a citation under Rule 65.29 (3) the caveator may move for directions under Rule 65.30 if the executor, administrator, or party acting in place of the executor has failed to propound the will.

MOTIONS FOR DIRECTIONS

65.30 (1) Any person who appears to have an interest in an estate may move for directions, or move for directions in another

proceeding under this rule, as to the procedure for bringing or continuing any matter before the court.

- (2) A motion for directions shall be served on all persons appearing to have a financial interest in the estate, or as the court directs, at least 10 days before the hearing of the motion.
- (3) On a motion for directions, the court may direct,
 - (a) the issues to be decided;
 - (b) the conduct of any Discovery of Documents or Examination for Discovery;
 - (c) who are parties, and the order of presentation at the hearing of the motion;
 - (d) who shall be served with the order for directions, and the method and times of service;
 - (e) procedures for bringing the matter before the court in a summary fashion, where appropriate;
 - (f) that an estate trustee be appointed during litigation, and file such security as the court directs;
 - (g) that a settlement conference be conducted under Rule 50.1;
 - (h) direct a reference under Rule 55;
 - (i) such other procedures as are just.
- (4) Rule 37 shall apply to any motion under this Rule, with necessary modifications.

PROCEEDING ON RETURN OF CITATION

- 65.31** (1) On the return of every citation to prove a will in solemn form the petitioner shall first present to the court his or her 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 65.29(1), shall proceed as and be in the position of the plaintiff (and be designated as such) in a civil action and the caveator 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

65.32 After proof of service as required in Rule 65.30 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.

VESTING ORDER

65.33 The practice as to proceedings and forms under section 108 of the *Probate Act*, sub-sections (2) and (3), shall mutatis mutandis be comparable to the practice and forms in the Rules of Court relating to sales of land for like proceedings.

NOTICE OF MOTION

65.34 Any application in any action or proceeding the procedure for which is not prescribed by the *Probate 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

65.35 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

65.36 (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 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

65.37 (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 or her last known address.

PASSING OF ACCOUNTS

65.38 Executors, administrators and trustees who are passing accounts shall render an account of the administration of the estate to the court in accordance with section 54 of the *Probate Act*.

65.39 Any person who appears to have an interest in the estate may, where a petition to pass accounts has been filed, move for directions under Rule 65.30.

PROCEDURE

- 65.40** (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 section 49 of the *Probate 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 47 of the *Probate Act*.
 - (3) The judge shall give all necessary directions for the service and publication of the citation, and, if he or she 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 or her 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

- 65.41** (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

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

DECREE IN DUPLICATE, FILING AND SERVICE

- 65.43**(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.

FORMS

- 65.44** (1) Forms 65A to 65AAA 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

65.45 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.