PLEASE NOTE

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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*****.**

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CHAPTER P-21

PROBATE ACT

1. In this Act — Definitions

(a) "action" means a civil proceeding in any Section of the Supreme Court other than the Estates Section; — action

(b) "court" means the Estates Section of the Supreme Court; — court

(c) repealed by 2008,c.20,s.72; — court of appeal

(d) "descendants of any ancestor" extends to all persons who must trace their descent through such ancestor; — descendants of any ancestor

(e) "descent" means the title to inherit real property by reason of consanguinity, as well when the heir is an ancestor or collateral relation as where he is a child or other issue; — descent

(f) "Estates Section" means the Estates Section of the Supreme Court; — Estates Section

(g) "file" means file in the court; — file

(h) "judge" means a judge of the Supreme Court; — judge

(i) "judgment" includes decree; — judgment

(j) "mentally incompetent person" means a person — mentally incompetent person
(i) in whom there is a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
(ii) who is suffering from such a disorder of the mind, that he requires care, supervision and control for his protection and the protection of his property;

(k) "oath" includes a solemn affirmation and statutory declaration; — oath

(l) "personal estate" or "personal property" means leasehold estate and other chattels real, and also moneys, shares, stocks, debentures, bonds, securities for money, (not being real estate), debts, choses in action, rights, credits, goods, and all other property which prior to October 2, 1939, devolved upon the executor or administrator, and any share or interest therein; — personal estate, property

(m) "personal representative" means the executor, original or by representation, or administrator, for the time being of a deceased person, appointed by letters under the seal of the court; — personal representative

real estate, property

(n) "real estate" or "real property" means lands, rent and hereditaments, whether freehold or any other tenure, and whether corporeal, incorporeal or personal, and whether converted or not, and any undivided share thereof, and any estate, right or interest (other than a chattel interest) therein;

Registrar

(o) "Registrar" means the Registrar of the Court of Appeal and the Supreme Court and includes the deputy registrar of the Estates Section of the Supreme Court;

rules of court

(p) "rules of court" means rules of court made pursuant to this Act, or pursuant to the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1;

seal

(q) "seal" means seal of the court;

Supreme Court

(r) repealed by 2008,c.20,s.72;

the last person entitled to land

(s) "the person last entitled to land" extends to the last person who had the right thereto, whether he did or did not obtain the possession or the receipt of the rent and profits thereof;

will

(t) "will" means the last will and testament of a deceased person, and includes codicil and testamentary disposition; and also includes an appointment by will, or by writing, in the nature of a will, in the exercise of a power;

Probate Court

(u) "Probate Court" in this or in any other Act means the Estates Section of the Supreme Court and "former probate court" means the Probate Court heretofore existing. R.S.P.E.I. 1974, Cap. P-19, s.1; 1974,c.65,s.4; 1988,c.53,s.5; 2008,c.20,s.72(74).

PART I
GENERAL PROVISIONS

Jurisdiction of Estates Section of Supreme Court

2. From and after July 29, 1960, the power and jurisdiction theretofore exercised by or conferred upon the former Probate Court, as well as any power or jurisdiction (other than appellate jurisdiction) thereafter conferred on the Supreme Court in relation to the administration of estates of deceased persons, shall be exercised by a special section of the Supreme Court, to be known as the "Estates Section". R.S.P.E.I. 1974, Cap. P-19, s.2; 1988,c.53,s.5; 2008,c.20,s.72(74).

Assignment of judge to Estates Section

3. The Chief Justice of the Supreme Court shall assign one of the judges of the Supreme Court ordinarily to preside in the Estates Section and ordinarily to exercise the powers and jurisdiction exercisable by that division. R.S.P.E.I. 1974, Cap. P-19, s.31; 1988,c.53,s.5 2008,c.20,s.72(74).

Seal of Estates Section

4. The Lieutenant Governor in Council may establish, determine and declare the seal to be used in the court, by which its proceedings shall be certified and authenticated. R.S.P.E.I. 1974, Cap. P-19, s.4; 1988,c.53,s.5.

Registrar

5. The Registrar may perform any ministerial act of the court including any act entrusted to the Registrar of the former Probate Court by the *Probate Act* R. S.P.E.I. 1951, Cap.124 and including such other duties as may be assigned to the Registrar by any statute or by the rules of court or by a judge presiding in the court. R.S.P.E.I. 1974, Cap. P-19, s.5; 1988,c.53,s.5; 2008,c.20,s.72(74).

Custody of seal & keeping of books

6. Repealed by 2009,c.84,s.1. R.S.P.E.I. 1974, Cap. P-19, s.6; 2009,c.84,s.1.

Oath of office of Registrar

7. Every Registrar before entering upon the duties of his office shall take and subscribe the following oath:

> "I, ……do swear that I will diligently and faithfully execute the office of Registrar of the Supreme Court of Prince Edward Island …… Estates Section, and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done of any will or testamentary paper, or other document or paper committed to my charge. So help me God!"

R.S.P.E.I. 1974, Cap. P-19, s.7; 1988,c.53,s.5.

Duties of Registrar

8. The Registrar shall

(a) upon the probate of any will, make and enter in a book of records a true copy of every will and of letters probate thereon, and shall file and preserve the original will probated and shall prepare the letters; and

(b) upon the granting of letters of administration or a warrant of guardianship, make and enter in a book of records to be kept in the Supreme Court, a copy of such letters or warrant and shall prepare the letters or warrant. R.S.P.E.I. 1974, Cap. P-19, s.8; 2008,c.20,s.72(74); 2009,c.84,s.2.

Deputy Registrar, appointment, duties & oath of

9. Repealed by 2008,c.20,s.72. R.S.P.E.I. 1974, Cap. P-19, s.9; 2008,c.20,s.72(74).

Costs discretionary

10. Costs of any proceedings are discretionary with the presiding judge. R.S.P.E.I. 1974, Cap. P-19, s.10.

Remuneration of personal representative

11. No personal representative shall make any profit out of any estate, but the court may allow him, on the gross amount received, a reasonable commission, not exceeding five per cent, over and above all necessary expenses. R.S.P.E.I. 1974, Cap. P-19, s.11.

Determination of validity of claims

12. The Estates Section shall determine in the first instance all questions arising before it in relation to the validity of claims, whether disputed or

otherwise, against or in favour of estates of deceased persons. R.S.P.E.I. 1974, Cap. P-19, s.12; 1988,c.53,s.5.

Direction to parties to prepare issues, inquiries or accounts

13. The court or a judge may at any stage of the proceedings direct the interested parties to prepare an issue, or direct any necessary inquiries or accounts to be made or taken, and the rules of the Supreme Court apply to any such direction. R.S.P.E.I. 1974, Cap. P-19, s.13.

Guardian for infant, appointment of

14. (1) The court may appoint, on application, a guardian for any infant or minor entitled to real or personal estate within the jurisdiction of the court, and may appoint litigation guardians according to the practice of the Supreme Court.

Removal or discharge of guardian

(2) The court may remove or discharge any such guardian for inefficiency, misconduct, or any due cause, and may, if required, appoint a new guardian in the place of the guardian so removed or discharged. R.S.P.E.I. 1974, Cap. P-19, s.14; 1974,c.65,s.4.

Legacy reduced to a certainty, suit for and recovery

15. (1) Where any certain legacy is or shall be bequeathed and given by any person in his will, or where any residuary or uncertain legacy is, or shall by the account of any executor, be reduced to a certainty, every such legacy may be sued for and recovered at common law, any law, custom, or usage to the contrary notwithstanding, but in any action to recover the legacy no final judgment shall be given within twelve months from the date of the death of the testator.

Recovery by next of kin under intestacy

(2) A next of kin may recover his share of the estate of an intestate in the manner provided by this section for the recovery of legacies. R.S.P.E.I. 1974, Cap. P-19, s.15.

Residuary legatee rights of action by

16. Every personal representative, being a residuary legatee, may bring an action of account against his co-personal representative or co-executor of the estate of the testator in his hands, and may also sue for and recover his equal and rateable part thereof, and any other residuary legatee may have the like remedy against any personal representative or executor. R.S.P.E.I. 1974, Cap. P-19, s.16.

Powers of personal representative in dealing with estate

17. (1) A personal representative

(a) may pay debts or claims upon evidence that he may think sufficient;

(b) may accept any composition or any security, real or personal, for any debts due to the deceased;

(c) may allow such time for payment of any such debts as he thinks fit;

(d) may compromise, compound or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased,

and for any of the purposes referred to in charges (a) to (d) may enter into, give and execute such agreements, instruments of composition, releases and other things as he shall think expedient, without being responsible for any loss to be occasioned thereby.

Creditor's claim after six months

(2) Where a personal representative has applied the assets of the deceased to the payment of debts, or any proportion thereof, of which he had notice, and six months have elapsed since the date of the publication in the Gazette as set forth in section 47, and a creditor afterwards brings an action for any demand against him, it is a good defence to the action that the assets have been applied before he had notice thereof, and the proof of having given notice of his claim is on the plaintiff. R.S.P.E.I. 1974, Cap. P-19, s.17; 1977,c.30,s.1.

Preference in payment of debts

18. No preference shall be given in the payment of any debt over any other debt of the same class, whether specialty or simple contract, legal or equitable, nor is a debt due and payable entitled to preference over debts not due. R.S.P.E.I. 1974, Cap. P-19, s.18.

Assets insufficient to pay all debts in full, order of payment

19. If the assets of the estate are insufficient to pay all the debts of the deceased in full, the personal representative shall make payment thereof in the following order

(a) mortgages on real or personal property and liens including judgment and execution liens as against the property on which they severally attach;

(b) funeral expenses in an amount not exceeding $2,500;

(c) expenses of administration or probate, including any allowance to the personal representative;

(d) medical and nursing expenses of last illness but not exceeding the last one month's expenses;

(e) all other debts on an equal footing including the balance of funeral expenses and the balance of medical and nursing expenses, if any. R.S.P.E.I. 1974, Cap. P-19, s.19; 1974,c.37,s.1; 1987,c.55,s.1; 1995,c.32,s.9; 2015,c.36,s.41(2).

Executor of sole or surviving executor

20. The executor of a sole or surviving executor of any will shall not be the executor to the first testator's will, but he may apply for administration with the will annexed. R.S.P.E.I. 1974, Cap. P-19, s.20.

Appointment as personal representative not a discharge of claim

21. Any legal claim of an estate against any person is not discharged by his being appointed personal representative of the deceased, but the claim shall be assets of the estate. R.S.P.E.I. 1974, Cap. P-19, s.21.

Final decree & passing of accounts, effect of on creditors

22. (1) After the making of a final decree and the passing of the accounts by the court in the matter of any estate pending before it, every creditor of the estate who has, before the making of the decree and passing of the

accounts, failed to take steps to enforce or collect the claim or amount alleged to exist or be due, either

(a) by causing a duly attested account respecting the claim or account to be filed, or mailed by registered letter to the address designated for presenting of claims, by the notice published in the Gazette as provided in section 47; or

(b) by commencing an action against and serving the process thereof upon, the personal representative in respect of such claim or amount,

is forever thereafter barred from enforcing the claim or collecting the amount, any statutory or other provision to the contrary notwithstanding; but the final decree may, at the judge's discretion, expressly preserve the rights of any creditor or claimant.

Limitation period for commencement of action by creditor

(2) Every creditor referred to in subsection (1) shall, however, be so barred if, whether or not he complies with clause (1)(a), he fails to commence and proceed with an action to recover his claim within three months after the personal representative gives him notice so to proceed. R.S.P.E.I. 1974, Cap. P-19,s.22.

Cost of grave stone & upkeep of grave, permitted, where

23. If the rights of creditors of the deceased are not affected and having regard to the circumstances of the case

(a) the cost of a grave stone or monument suitable to the rank or position in life of the deceased, and not disproportionate to the value of the estate, may be defrayed by the personal representative out of the assets of the deceased, upon the written consent of the judge; and

(b) the allowing of a sum not disproportionate to the value of the estate to be set aside in trust for the upkeep and care of the grave of the deceased in perpetuity shall be in the discretion of the court. R.S.P.E.I. 1974, Cap. P-19, s.23.

Commissioners for taking affidavits & oaths, appointment

24. The judge may appoint, under his hand, commissioners for the purpose of taking affidavits and administering oaths in all matters necessary to be done in the court, and affidavits and oaths taken before such commissioner have the same effect as if sworn before the judge. R.S.P.E.I. 1974, Cap. P-19, s.24.

Procedures *re* affidavits

25. Any affidavit to be read or filed may be sworn as provided in the *Affidavits Act* R.S.P.E.I. 1988, Cap. A-7 or before a commissioner appointed as in section 24, or before the judge or the Registrar. R.S.P.E.I. 1974, Cap. P-19, s.25.

Bonds, put into action, order for

26. No bond given under this Act shall be put in any action without an order of the judge for that purpose, to be made on the application of some person interested in the estate, either as creditor, legatee, heir, or next of kin. R.S.P.E.I. 1974, Cap. P-19, s.26.

Effect of order

27. An order made under section 26 has the effect of an assignment of the bond to the party so interested and suing, and entitles him to proceed thereon in his own name as assignee thereof in any court of competent jurisdiction. R.S.P.E.I. 1974, Cap. P-19, s.27.

Delivery of bond

28. The judge may further order the delivery of any such bond, for the purpose of being read in evidence in any such court, and again returned to the court where it is filed. R.S.P.E.I. 1974, Cap. P-19, s.28.

Recovery on a bond

29. Whenever a bond is put in evidence, recovery may be had thereon to the full extent of any injury sustained through the act or omission of the personal representative within the purview of the bond, and to the full value of all property of the deceased person within the purview of the bond received and not duly administered by the personal representative, and the amount recovered on the bond (after deducting all legal and other necessary expenses attending the recovery) shall be deemed legal assets, and shall be applied and distributed under the order and direction of the court. R.S.P.E.I. 1974, Cap. P-19, s.29.

Court order to put bond in action

30. The court may order the bond to be put in action as occasion may require; but the whole amount to be recovered in any action shall never exceed the penalty of the bond. R.S.P.E.I. 1974, Cap. P-19, s.30.

Appeal to Court of Appeal

31. Any person aggrieved by any decision, decree, order, or other official act of the court or a judge may within fourteen days thereafter appeal thereform to the Court of Appeal in the manner prescribed by the rules of court. R.S.P.E.I. 1974, Cap. P-19, s.31; 2008,c.20,s.72(74).

Rules of court

32. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee constituted under section 34 of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1 may make rules of court in relation to practice and procedure in probate and estate matters. 1990,c.47,s.1; 2008,c.20,s.72(74).

PART II
PROCEDURE

Duties of executor upon being named

33. (1) Every resident of the province named as executor in any will shall, within thirty days after he is informed that he is so named as executor, cause the will to be proved and filed in the court, and either apply for letters probate thereto, or file a written declaration of his refusal of the executorship.

Non-resident named as executor

(2) Where any non-resident is named as executor, he shall comply with this section within three months after the death of the testator, on his nomination as executor being made known to him. R.S.P.E.I. 1974, Cap. P-19, s.33.

Penalty for failure to comply with s.33

34. (1) Any person neglecting the duties imposed in section 33 is liable to a penalty not exceeding $100 per month for each and every month from and after the expiration of the thirty days or three months mentioned in section 33, respectively, until he complies with the provisions thereof; the penalty to be recoverable by action in any court of competent jurisdiction at the suit of any heir, legatee or creditor who proves that any injury has accrued to him by the delay.

Order excusing delay

(2) If the executor so in default shows just excuse for his delay to the court before the action is brought, the judge may grant an order excusing the delay; which order is a good defence to any such action. R.S.P.E.I. 1974, Cap. P-19, s.34; 1995,c.32,s.9.

Concealing or suppressing a will, penalty

35. (1) Any person who conceals or suppresses any will is liable to the penalty mentioned in section 34 to be recovered as therein provided.

Exception

(2) This section shall not be construed to apply to any fraudulent concealment contemplated by the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46. R.S.P.E.I. 1974, Cap. P-19, s.35.

All executors file declaration of refusal, where

36. If a sole executor or, if more than one, all the executors named in a will files or file the declaration of refusal as provided in section 33, or if the executor or executors fail to take out probate after thirty days notice requiring him to do so has been given by a party interested, letters of administration with the will annexed may be granted by the court in the same manner as if the deceased had died testate but without naming an executor. R.S.P.E.I. 1974, Cap. P-19, s.36.

Proof of execution of a will

37. (1) The execution of any will may be proved in common form for the purpose of filing the same and for granting letters probate thereon, by the oath or affidavit of any one subscribing witness to the will, sworn in the same manner as any affidavit to be read or filed in the court.

Subscribing witnesses to will are dead etc.

(2) If the subscribing witnesses to the will are dead or if from other circumstances an affidavit cannot be obtained from either of them, proof of their signatures or either of them, together with proof of the signature of the testator, which may be dispensed with where the testator was a marksman, or such other evidence as may be determined by the judge is sufficient proof of the execution of any will for the purposes of this section. R.S.P.E.I. 1974, Cap. P-19, s.37.

Contentious testamentary matters, hearing & adjudication on

38. (1) The court may hear and adjudicate upon contentious testamentary matters, and nothing in this Act limits the right of any person named executor in a will from having it proved through witnesses or in solemn form of law, and such person may apply for a citation therefor notwithstanding the filing of a caveat under section 39.

Order for presumption of death

(2) Where a person has disappeared in circumstances leading to a belief that he has died by reason of disaster, accident, murder or suicide, on land, water or in the air, any person interested may apply at any time to the judge for an order of presumption of the death of the missing person; and when in the opinion of the judge the evidence in support of the application so warrants, the judge may make such order accordingly.

Date of death, order stating

(3) The order may set forth the date on or about which the death is presumed to have occurred. R.S.P.E.I. 1974, Cap. P-19, s.38.

Caveat against will, right to file

39. (1) Any person interested in a will, as next of kin or otherwise, may file a caveat against the will and thereafter, on his application and upon notice thereof to the executor a citation may issue from the court for proof of the will through witnesses or in solemn form.

Practice & procedure

(2) The practice and procedure shall be according to the rules of court.

Caveat, expiration of

(3) Every caveat filed under this section or section 40 expires after three months from the date of filing, unless it is renewed by filing another similar caveat, which itself expires in three months; but no more than one such renewal shall be filed without an order of the judge in exceptional circumstances.

Where letters granted within seven days of death

(4) Where letters probate or letters of administration are granted within seven days after the death of the testator or intestate, and a caveat is filed under this section or section 40, within the like period, the caveat shall be deemed to have been filed immediately before the grant of the letters, and the court shall thereupon suspend the letters and give notice accordingly.

Court appointed administrator, rights & powers

(5) Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate, or any grant of administration, the court may appoint an administrator of the property of the deceased person, and the administrator so appointed has all the rights and powers of a general administrator, other than the right of distributing the residue of the property and every such administrator is subject to the immediate control of the court and shall act under its direction and for his service may be paid such reasonable remuneration out of the estate as the court may allow. R.S.P.E.I. 1974, Cap. P-19, s.40.

Objection by certain persons *re* grant of letters, caveat & hearing

40. If any objection is made by any creditor of a testator, or any beneficiary, legatee, next of kin, or other party financially interested in his estate, against granting letters probate to one or more of the persons named in the will as executors, he may file a caveat, and thereupon the judge shall inquire into such objection, and, if it appears that the circumstances of any person named as executor are such that, in the opinion of the judge, they would not afford adequate security to the

creditor, beneficiary, legatee or next of kin, for the due administration of the estate, the judge may refuse letters probate to any such person, until he gives the like bond as is required of personal representatives in cases of intestacy. R.S.P.E.I. 1974, Cap. P-19, s.41.

Proving will executed abroad, examination of absent witnesses

41. (1) Where any person is desirous of proving any will which has been executed abroad, or of examining any of the witnesses to any will who may be absent from this province, or residing abroad, or to take any evidence in any matter cognizable by the court, the judge may issue a commission to any person he thinks fit, directed to examine or to take the declarations or affidavits or evidence of the witness.

Powers of commissioner

(2) The commissioner may examine any witness or take the evidence referred to in subsection (1) by virtue of the commission and generally may execute the power and authority thereby given to him, without being sworn.

Form of commission, oaths, affidavits or declarations

(3) The judge shall settle the form of the commission in each case, and the forms of oaths, affidavits, or declarations, to be taken by the commissioner and the witnesses to be examined before him.

Direction *re* evidence to be produced before commissioner

(4) The judge may, in any matter where no notice is given, or in any contested suit or matter when no cross interrogations have been filed, direct that the evidence of the witnesses to be produced before any such commissioner shall be taken by affidavit or declaration, to the truth of which the witnesses shall be sworn by the commissioner, or shall declare unto before him.

Effect of evidence taken by commissioner

(5) The evidence to be taken by a commissioner and the affidavits or declarations taken, made, or declared before him, when filed, shall be taken and acted upon as if the evidence had been taken, and the affidavits or declarations taken, made, or declared by or before the judge. R.S.P.E.I. 1974, Cap. P-19, s.42.

Procedure *re* admission of will made in Quebec

42. (1) When any will is drawn and executed in authentic form in the province of Quebec and in accordance with its laws, and a certified copy of the will under the hand and seal of the notary public in whose custody the original thereof remains or under the seal of the court in which it is on file, if that is the case, (e.g. holograph wills), is filed with an affidavit of an attesting witness, an executor or some other person to the satisfaction of the judge, setting forth

(a) the date of the testator's death;

(b) that at the time of executing the will he was of sound disposing mind and memory according to the best discerning of the deponent;

(c) that at the time of his death he was the owner of property within this province;

(d) that the original will cannot be obtained;

(e) that he believes the copy produced to be a true copy of the testator's last will and testament;

(f) the place where the will was executed;

(g) the name and address of the notary public or court who holds the original,

the judge may admit the copy to probate and grant letters probate of the will to the executor or executors therein named, and the letters probate of the will are of the like force and effect as if they had been granted of the original will.

Effect of letters when granted by P.E.I. court

(2) The letters probate and the certified copy of the will shall be taken and received whenever offered in any court in this province, or before any person having by law or consent of parties authority to hear, receive and examine evidence as *prima facie* evidence of the execution of the will and of the contents thereof, and also of the death of the testator.

Executors named in Quebec will refuse to act, powers of court

(3) In the case of the death or refusal to act of the executor or executors named in the certified copy of any will, the judge has the same power and authority as he now or may at any time hereafter possess when an executor or executors named in any original will proved before him died or refused to act.

Will defined

(4) In this section "will" includes a document having the effect of a will in the province of Quebec. R.S.P.E.I. 1974, Cap. P-19, s.43.

Ancillary probate & administration right to grant not affected

43. Nothing in this Act affects the right and power of the court to grant ancillary probate or administration and issue ancillary letters probate or letters of administration, subject to the rules of the court. R.S.P.E.I. 1974, Cap. P-19, s.44.

Letters probate or administration granted in any part of Commonwealth, resealing in province, effect thereof

44. (1) Where any letters probate or letters of administration, or other legal document purporting to be of the same nature, or having the like effect, granted by a court of competent jurisdiction in any part of the British Commonwealth, outside this province, are presented to the court, and the prescribed fees are paid, the letters probate or letters of administration or other document aforesaid, shall, under the direction of the judge, be sealed with the seal of the court, and are thereupon of the like force and effect in Prince Edward Island as if the same had been originally granted by the court, and are so far as regards this province subject to any orders of the court or on appeal therefrom, as if the letters probate or letters of administration had been granted thereby.

Exemplification of letters probate or administration, resealing

(2) Upon cause shown, an exemplification of any such letters probate or letters of administration may be resealed with the seal of the court

with the like effect as if the original thereof had been resealed as provided in subsection (1).

Condition precedent to resealing, certificate that sufficient security given

(3) The letters of administration shall not be sealed with the seal of the court until a certificate has been filed under the hand of the Registrar or other officer of the court which issued the original letters, that security had been given in the court in a sum of sufficient amount to cover as well the assets within the jurisdiction of the court as the assets within Prince Edward Island, or in the absence of the certificate, until like security is given to the judge covering the assets in Prince Edward Island, as in the case of granting original letters of administration. R.S.P.E.I. 1974, Cap. P-19, s.45.

Grant of letters probate

45. (1) Upon a will having been proved and filed as in this Part provided the court shall grant letters probate.

Oath or affidavit of executor

(2) The executor shall first file an oath or affidavit. R.S.P.E.I. 1974, Cap. P-19, s.46.

Who may be administrator

46. (1) Subject to subsection (3), where a person dies intestate or the executor named in a will refuses to prove the same, administration of the property of the deceased may be committed by the court to the spouse, to the next of kin, or to both, as in the discretion of the court seems best, and where more persons than one claim the administration as next of kin who are equal in degree of kindred to the deceased, or where only one desires the administration as next of kin where there are more persons than one equal kindred, the administration may be committed to such one or more of the next of kin as the court may think fit.

Request by persons entitled to administration that one of them act

(2) Subject to subsection (3), where a person dies wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof, or an executor willing and competent to take probate, and the persons entitled to administration, or a majority of such of them as are resident in the province, request that another person be appointed to be the administrator of the property of the deceased, or of any part of it, the right which such persons so entitled possessed to have administration granted to them belongs to such other person.

Appointment of administrator, discretion in court

(3) Where a person dies wholly intestate as to his property, or leaving a will affecting property but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Prince Edward Island, and it appears to the court to be necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the property of the deceased, or of any part of such property, other than the

person who if this subsection had not been enacted would have been entitled to the grant of administration, it is not obligatory upon the court to grant administration to the person who if this subsection had not been enacted would have been entitled to a grant thereof, but the court may appoint such person as the court thinks fit upon his giving such security as the court directs or this Act provides, and every such administration may be limited as the court thinks fit.

Trust company, may be appointed

(4) A trust company may be appointed as administrator under subsections (2) or (3), either alone or jointly with another person.

Requirements may be dispensed with

(5) As a condition precedent to the grant of administration the applicant for the same shall execute and file a bond to the Registrar and his successors with two or more sureties who shall justify if and as required by the judge, and shall also file an oath or affidavit, but the requirements of this subsection may be dispensed with by the judge upon application made by or on behalf of the applicant. R.S.P.E.I. 1974, Cap. P-19, s.47; 2008,c.8,s.19(2).

Estate notices

47. (1) Upon the granting of probate or letters of administration to any person, the Registrar shall cause an estate notice to be published in the Gazette calling on all persons who have any demand upon the estate of the deceased to present such demand to the personal representative named in the notice within six months of the date of advertisement set out in the notice.

Demand to be attested by claimant

(2) Subject to subsection (3), every such demand, when presented, shall be attested by the claimant or his agent by affidavit and on no account shall be rejected by a judge in his final decree for any mere informality therein or the attestation thereof.

(3) The judge may dispense with the requirement of attestation by affidavit under subsection (2) if the demand is not contested and is approved by the personal representative. R.S.P.E.I. 1974, Cap. P-19, s.48; 1977,c.30,s.2; 1988,c.53,s.1; 2008,c.20,s.72(74).

Inventory, filing and contents

48. Every personal representative shall, before the granting of probate or letters of administration, file an inventory, which shall contain a true description and estimate of the real and personal estate of the deceased person, as well in possession as in action, and shall, if required by the court, also specify the names of all the debtors of the deceased known to the personal representative, together with the nature of the debt, and the security therefor, whether by judgment, bond, mortgage, promissory note, book debt, or otherwise, and the date of each security, the sum originally payable, and the payments, if any, which have been made thereon, and shall distinguish those debts which, in the opinion of the

personal representative are doubtful or desperate, and shall contain an account of all moneys, whether in specie or bank bills, belonging to the deceased, which came to the hands or knowledge of the personal representative, and the inventory shall be verified by the affidavit of the personal representative. R.S.P.E.I. 1974, Cap. P-19, s.49.

Notice of granting of probate

49. (1) Every personal representative shall serve on each person to or for whose benefit any of the property passes, a notice of the granting of probate in the manner following:

(a) service upon any person apparently having legal capacity whose address is known shall be personal or by prepaid registered post to the address of such person within one month from the time the address is or becomes known to the personal representative;

(b) service upon any person who does not have legal capacity shall be by personal service on, or by prepaid registered post to the address of a parent, guardian or other person or institution responsible for the control or estate of that person;

(c) service where the address of the person to be served is unknown shall be by posting of the notice directed to such person in the hall of the court house in the county of his last permanent residence within one month from the time of the granting of probate or administration, but if the person's last permanent residence was outside the province the posting shall be in the court house of Charlottetown.

Additional or alternative notice & service

(2) The judge, in lieu of or in addition to the foregoing, may order that the notice be served upon such persons and in such manner as he directs.

Proof of compliance before citation

(3) Proof of compliance with this section shall be made before the extraction of a citation to pass the accounts of the estate. R.S.P.E.I. 1974, Cap. P-19, s.50.

Failure to return an inventory

50. If a personal representative fails to return an inventory within the time limited for that purpose, he may be required so to do by a citation from the court; the citation to be issued on the application of some person having an interest in the estate of the deceased. R.S.P.E.I. 1974, Cap. P-19, s.51.

Property not included in inventory comes to attention of personal representative

51. When any property not mentioned in any inventory filed as aforesaid comes to the possession or knowledge of the personal representative, he shall make and file an inventory thereof, within three months after the discovery thereof, verified in the same manner as the first inventory, and the making of such further inventory may be required in the same manner, as in the case of the first inventory. R.S.P.E.I. 1974, Cap. P-19, s.52.

Estate where child advanced during lifetime of intestate

52. Each estate, wherewith any child has been advanced in the lifetime of the intestate, shall be accounted for upon the oath of the child before the judge or by other evidence, to the satisfaction of the judge; and in case of refusal to account upon oath, the child so refusing is debarred of any share in the estate of the intestate. R.S.P.E.I. 1974, Cap. P-19, s.53.

Account of administration to be rendered to court by personal representative

53. (1) Every personal representative shall render an account of his administration to the court when cited to do so on the application of any person financially interested in the estate.

Failure to render, penalty

(2) On failing so to do at the time fixed by order of the court for the rendering of the account, he is liable to a penalty of $100 for each month so in default, to be recovered by the injured party in any court of competent jurisdiction.

Powers of court where failure to render accounts

(3) After the default, the personal representative may be superseded, on application, by the appointment of another person by the court and such further order may be made thereupon, respecting the estate unadministered, as the judge may consider just.

Cancellation of security upon distribution

(4) Where a personal representative has produced evidence to the satisfaction of the judge, that the debts of the deceased have been paid and the residue of the estate duly distributed, the judge may make an order directing the bond or other security furnished by the personal representative to be delivered up to be cancelled.

Infants, notice to Official Guardian

(5) Where an infant is entitled to a part of the estate under the distribution, an order under subsection (4) shall not be made until after notice, as the judge may direct, has been given to the Official Guardian.

Persons under disability, notice to Public Trustee

(6) Where any person is a person under a disability and was or is entitled to any part of the estate under the distribution, the order shall not be made until after notice has been given to the Public Trustee. R.S.P.E.I. 1974, Cap. P-19, s.54; 1988,c.53,s.2; 1995,c.32,s.9.

Citation requiring all persons interested to appear

54. (1) On the filing of any accounts, a citation may issue on the application of the party filing it, or of any person having an interest therein, requiring all parties interested to appear before the court at a time not less than thirty days from the service or publication thereof, to attend the passing thereof, and the court may cite all persons interested in the estate generally, without naming such persons specifically.

Notice of citation, publication of

(2) A notice of the citation shall be published

(a) by posting up four weeks before the return thereof in three public places as the judge directs; and

(b) by insertion in four weekly issues of a newspaper published in the province.

Service of citation

(3) The judge may order that the citation be served upon such persons and in such manner as he directs. R.S.P.E.I. 1974, Cap. P-19, s.55.

Vouchers for all expenditures

55. (1) Every personal representative shall produce vouchers for all his expenditures; he may be examined on oath before the court touching the effects and disposition of the estate, and may be allowed any payment not exceeding $75 without voucher if he swears to it.

Allowance for property perished or lost

(2) The court on passing the accounts, may make an allowance to every personal representative for property which has perished or is lost through no fault of his. R.S.P.E.I. 1974, Cap. P-19, s.56; 1995,c.32,s.9.

Distribution of remaining assets of estate

56. After all just allowances for funeral expenses, administration expenses, taxes, debts, liabilities, and disbursements in any other wise properly chargeable, the court may decree distribution of the remaining goods and estate of the deceased as well real as personal to and among the persons appearing by law entitled thereto under the will of the deceased or on intestacy as the case may be, subject to the right of appeal as hereinbefore provided and in the absence of fraud the decree is final and conclusive against all other persons claiming under the will of the deceased or on intestacy. R.S.P.E.I. 1974, Cap. P-19, s.57.

Forms to be used under Act

57. The forms in the rules of court shall be used in proceedings under this Act. R.S.P.E.I. 1974, Cap. P-19, s.58.

PART III
WILLS

What can be disposed of by will

58. (1) Any person may devise, bequeath, or dispose of by his will, executed in manner hereinafter required,

(a) all real estate, and all personal estate, which he is entitled to, either at law or in equity at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon his heir at law of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator;

(b) estates for the life of another whether there is, or is not any special occupant thereof, and whether they are freehold, or of any other tenure, and whether they are a corporeal or incorporeal hereditament;

(c) all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom they respectively may become vested, and whether he may be entitled thereto under the instrument by which they respectively were created, or under any disposition thereof by deed or will;

(d) all rights of entry for conditions broken, and other rights respectively; and

(e) other such real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the estate subsequently to the execution of his will.

Estate for the life of another not disposed of by will

(2) If no disposition by will is made of any estate for the life of another, of a freehold nature, it is chargeable in the hands of the heir, if it comes to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there is no special occupant of any estate for the life of another, whether freehold or of any other tenure, and whether a corporeal or incorporeal hereditament, it goes to the personal representative of the party that had the estate thereof by virtue of the grant; and if the same comes to the personal representative either by reason of a special occupancy, or by virtue of this Act, it is assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate. R.S.P.E.I. 1974, Cap. P-19, s.59.

Age of capacity to make a will

59. No will made by any unmarried person under the age of eighteen years is valid. R.S.P.E.I. 1974, Cap. P-19, s.60.

Formalities of a will

60. (1) No will is valid, unless it is in writing, and executed as prescribed in this section.

Will to be signed by or for testator

(2) A will shall be signed at the foot or end thereof, by the testator or by some other person in his presence, and by his direction, and the signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and the witnesses shall attest and shall subscribe the will in the presence of the testator and of each other; but no form of attestation is necessary.

Position of signatures

(3) Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid if the signature is so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will, that the testator intended to give effect by the signature to the writing signed as his will.

Circumstances that do not invalidate a will

(4) No will is affected by the circumstance

(a) that the signature does not follow or is not immediately after the foot or end of the will;

(b) that the signature

(i) is placed among the words of the testimonium clause, or of the clause of attestation,

(ii) follows, or is after or under the clause of attestation, either with or without a blank space intervening,

(iii) follows, or is after, or under, or beside the names of, or one of the names of the subscribing witnesses;

(c) that the signature is on a side or page or other portion of the paper or papers containing the will, whereon no clause or paragraph, or disposing part of the will is written above the signature; or

(d) that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the paper on which the will is written, to contain the signature,

but clauses (a) to (d) do not restrict the generality of subsections (1) and (2), and no signature is operative to give effect to any disposition or direction inserted after the signature is made. R.S.P.E.I. 1974, Cap. P-19, s.61.

Appointments made by will, valid only if

61. No appointment made by will, in exercise of any power, is valid, unless it is executed in the manner set forth in section 60 and every will executed in the manner set forth in section 60 is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of the power should be executed with some additional or other form of execution or solemnity. R.S.P.E.I. 1974, Cap. P-19, s.62.

Holographic will of member of forces or seaman

62. (1) The will of any member of the Armed Forces of Canada, or of any mariner or seaman when at sea or in course of a voyage, disposing of real or personal property, or both, may be made by a writing signed by him without any further formality or any requirement as to the presence of or attestation or signature by any witness.

Age of capacity to make will

(2) The fact that the member of the Armed Forces of Canada or the mariner or seaman is under the age of eighteen years at the time he makes his will does not invalidate it.

Revocation of will

(3) A will made by member of the Armed Forces of Canada, mariner or seaman while under the age of eighteen years may be revoked by the person who made it after he ceases to be a member of the Armed Forces of Canada, mariner or seaman and before he attains the age of eighteen years, but the revocation is subject to the formalities of section 72.

Member of the Armed Forces of Canada defined

(4) In this section, “member of the Armed Forces of Canada” means a member thereof who, having been placed on active service or called out for training, service or duty, is serving therein. R.S.P.E.I. 1974, Cap. P-19, s.63.

Publication of will not required

63. Every will executed in the manner set forth in section 60 is valid without any other publication thereof. R.S.P.E.I. 1974, Cap. P-19, s.64.

Witness incompetent to prove will, effect on will

64. If any person who attests the execution of a will, at the time of the execution thereof, or at any time afterwards, is incompetent to be admitted a witness to prove the execution thereof, the will is not on that account invalid. R.S.P.E.I. 1974, Cap. P-19, s.65.

Person attests will who is also a beneficiary or whose spouse is a beneficiary, legacy void

65. If any person attests the execution of any will, to whom, or to whose spouse, any beneficent devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), is thereby given or made, the devise, legacy, estate, interest, gift, or appointment is so far only as concerns the person attesting the execution of the will, or the spouse of that person, or any person claiming under that person, or spouse, is utterly null and void; but the person so attesting, shall be admitted as a witness to prove the execution of the will, or to prove the validity or invalidity thereof, notwithstanding the devise, legacy, estate, interest, gift, or appointment mentioned in the will. R.S.P.E.I. 1974, Cap. P-19, s.66; 2008,c.8,s.19(3).

Creditor attests will, effect on claim & on will

66. In case by any will, any real or personal estate charged with any debt or debts, and any creditor, or the spouse of any creditor, whose debt is so charged, attests the execution of the will, the creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of the will, or to prove the validity or invalidity thereof. R.S.P.E.I. 1974, Cap. P-19, s.67; 2008,c.8,s.19(3).

Executor competent to prove execution of will

67. No person is, on account of his being an executor of a will, incompetent to be admitted a witness to prove the execution of the will or to prove the validity or invalidity thereof. R.S.P.E.I. 1974, Cap. P-19, s.68.

Marriage revokes a will

68. (1) Every will made by a man or woman is revoked by his or her marriage.

Application of section

(2) This section does not apply to a will

(a) made in contemplation of a marriage of the testator which marriage actually takes place within one month after the making of the will;

(b) made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of the appointment, pass to his or her heir, executor or administrator, or the person entitled as his or her next of kin, under Part IV. R.S.P.E.I. 1974, Cap. P-19, s.69.

Effect of divorce

69. (1) Where in a will

(a) a devise or bequest of a beneficial interest in property is made to a spouse;

(b) a spouse is appointed executor or trustee; or

(c) a general or special power of appointment is conferred upon a spouse,

and after the making of the will and before the death of the testator, the marriage of the testator is terminated by divorce or his marriage is found to be void or declared a nullity by a court in a proceeding to which he is a party, then, unless a contrary intention appears in the will, the devise, bequest, appointment or power is revoked and the will shall be construed as if the spouse had predeceased the testator.

Spouse

(2) Repealed by 2008,c.8,s.19(4). 1988,c.53,s.3; 2008,c.8,s.19(4).

Substantial compliance

70. If on application to the Estates Section the court is satisfied

(a) that a document was intended by the deceased to constitute his will and that the document embodies the testamentary intentions of the deceased; or

(b) that a document or writing on a document embodies the intention of a deceased to revoke, alter or revive a will of the deceased or the testamentary intentions of the deceased embodied in a document other than a will,

the court may, notwithstanding that the document or writing was not executed in compliance with all the formal requirements imposed by this Act but provided that the document or writing is signed by the deceased, order that the document or writing, as the case may be, be fully effective as though it had been executed in compliance with all the formal requirements imposed by this Act as the will of the deceased or as the revocation, alteration or revival of the will of the deceased or of the testamentary intention embodied in that other document, as the case may be. 1988,c.53,s.3.

Alteration in circumstances, presumption *re*

71. No will is revoked by any presumption of an intention on the ground of an alteration in circumstances. R.S.P.E.I. 1974, Cap. P-19, s.70.

Revocation of will or codicil

72. No will or codicil, or any part thereof, is revoked otherwise than as aforesaid, or by another will or codicil executed in the manner set forth in section 60, or by some writing declaring an intention to revoke it, and executed, in the manner in which a will is required to be executed by section 60, or by the burning, tearing, or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it. R.S.P.E.I. 1974, Cap. P-19, s.71.

Obliteration, interlineation or alteration of will

73. No obliteration, interlineation or other alteration made in any will after the execution thereof, is valid or has any effect, except so far as the words or effect of the will, before the alteration, is not apparent, unless

the alteration is executed in like manner, as is required for the execution of the will by section 60; but the will, with the alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator, and the subscription of the witnesses is made in the margin or on some part of the will opposite or near to the alteration, or at the foot or end of, or opposite to a memorandum referring to the alteration, and written at the end or some other part of the will. R.S.P.E.I. 1974, Cap. P-19, s.72.

Revival of a will

74. No will or codicil, or any part thereof, which is in any manner revoked, is revived, otherwise than by the re-execution thereof, or by a codicil executed in the manner set forth in section 60, and showing an intention to revive it, and when any will or codicil which is partly revoked, and afterwards is wholly revoked, is revived, the revival does not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. R.S.P.E.I. 1974, Cap. P-19, s.73.

Disposition of property by testator after making will

75. No conveyance or other act made or done subsequently to the execution of a will, of or relating to any real or personal estate therein comprised, except an act by which the will is revoked as aforesaid prevents the operation of the will with respect to such estate or interest in such real or personal estate, as the testator has power to dispose of by will at the time of his death. R.S.P.E.I. 1974, Cap. P-19, s.74.

Will deemed to speak at date of death

76. Every will shall be construed with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. R.S.P.E.I. 1974, Cap. P-19, s.75; 1978,c.6,s.62.

Certain devises fall into residue

77. Unless a contrary intention appears by the will, the real estate or interest therein as shall be comprised or intended to be comprised, in any devise in the will contained, which fails or is void by reason of the death of the devisee in the lifetime of the testator, or by reason of the devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residue, if any, contained in the will. R.S.P.E.I. 1974, Cap. P-19, s.76.

Leasehold estates, devise of

78. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator, to which the description extends, as the case may be, as well as freehold estates, unless a contrary intention appears by the will. R.S.P.E.I. 1974, Cap. P-19, s.77.

General devise or bequest includes power of appointment

79. A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person, mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or real estate to which the description extends, which he may have power to appoint in any manner he may think proper, and operates as an execution of the power, unless a contrary intention appears by the will; and in like manner, a bequest of the personal property of the testator or any bequest described in a general manner, shall be construed to include any personal estate, or any personal estate to which the description extends, which he may have power to appoint in any manner he may think proper, and operates as an execution of the power, unless a contrary intention appears by the will. R.S.P.E.I. 1974, Cap. P-19, s.78.

Fee simple presumed

80. Where any real estate is devised to any person without any words of limitation, the devise shall be construed to pass the fee simple or other the whole estate or interest, which the testator had power to dispose of by the will, in the real estate, unless a contrary intention appears by the will. R.S.P.E.I. 1974, Cap. P-19, s.79.

"Die without issue" etc. defined

81. In any devise or bequest of real or personal estate, the words "die without issue", or "die without leaving issue", or "have no issue", or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want of failure of issue in the lifetime, or at the time of the death of the person, and not an indefinite failure of his issue, unless a contrary intention appears by the will, by reason of the person having a prior estate tail, or of a preceding gift, being without any implication arising from the words, a limitation of an estate tail to the person or issue, or otherwise; but this Part does not extend to cases where the words, as aforesaid, import, if no issue described in the preceeding gift are born, or if there are no issue who live to attain the age, or otherwise answer the description required for obtaining a vested estate, by a preceding gift to the issue. R.S.P.E.I. 1974, Cap. P-19, s.80.

Real estate devised to a trustee or executor, fee simple passed

82. Where any real estate is devised to any trustee or executor, the devise shall be construed to pass the fee simple, or other the whole estate or interest, which the testator had power to dispose of by will, in the real estate, unless a definite term of years, absolute or determinable, or an estate of freehold other than the fee simple is thereby given to him expressly or by implication. R.S.P.E.I. 1974, Cap. P-19, s.81.

Idem

83. Where any real estate is devised to a trustee, without any express limitation of the estate to be taken by the trustee, and the beneficial interest in the real estate, or in the surplus rents, and profits thereof, are

not given to any person for life, or the beneficial interest is given to any person for life, but the purposes of the trust may continue beyond the life of the person, the devise shall be construed to vest in the trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in the real estate, and not an estate determinable when the purposes of the trust are satisfied. R.S.P.E.I. 1974, Cap. P-19, s.82.

Real estate devised, for an estate tail or in quasi entail

84. Where any person, to whom any real estate is devised for an estate tail, or an estate in quasi entail, dies in the lifetime of the testator, leaving issue, who would be inheritable under the entail, and any such issue is living at the time of the death of the testator, the devise does not lapse, but takes effect as if the death of the person had happened immediately after the death of the testator, unless a contrary intention appears by the will. R.S.P.E.I. 1974, Cap. P-19, s.83.

Devisee or beneficiary dies at or before death of testator distribution of property

85. Where any person being a child, or other issue of the testator to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of the person, dies in the lifetime of the testator, leaving issue, and any such issue of the person is living at the time of the death of the testator, the devise or bequest does not lapse, but the real or personal estate so devised or bequeathed passes to the said issue of the person by stocks as it would if the testator had died intestate in respect of the real or personal estate and the issue last above mentioned or some of them stood as his only heirs at law and next of kin. R.S.P.E.I. 1974, Cap. P-19, s.84.

PART IV
DISTRIBUTION OF ESTATES OF INTESTATES

Definition

86. In this Part

estate

(a) “estate” means the “net estate” after payment of the charges thereon and the debts, funeral expenses, and expenses of administration, and includes both real and personal property;

issue

(b) “issue” includes all lawful lineal descendants of the ancestor. R.S.P.E.I. 1974, Cap. P-19, s.85.

Entitlement of surviving spouse, if one child

87. (1) If an intestate dies leaving a surviving spouse and one child, one-half of the estate goes to the surviving spouse.

More than one child

(2) If an intestate dies leaving a surviving spouse and children, one-third of the estate goes to the surviving spouse.

Child died leaving issue

(3) If a child has died leaving issue and the issue is alive at the date of the intestate’s death, the surviving spouse shall take the same share of the

estate as if the child had been living at that date. R.S.P.E.I. 1974, Cap. P-19, s.87; 2008,c.8,s.19(5).

Distribution among issue of child

88. If an intestate dies leaving issue, the estate shall be distributed, subject to the rights of the surviving spouse, if any, by stocks among the issue. R.S.P.E.I. 1974, Cap. P-19, s.88; 2008,c.8,s.19(5).

Intestate succession, surviving spouse but no issue

89. If an intestate dies leaving a surviving spouse but no issue, the estate goes to the surviving spouse. R.S.P.E.I. 1974, Cap. P-19, s.89; 1988,c.53,s.4; 2008,c.8,s.19(5).

No surviving spouse or issue, distribution of estate

90. If an intestate dies leaving no surviving spouse or issue, the estate goes to the parents in equal shares if both are living but, if either of them is dead, the estate goes to the surviving parent. R.S.P.E.I. 1974, Cap. P-19, s.90; 2008,c.8,s.19(5).

No surviving spouse, issue, father, mother, distribution of estate

91. If an intestate dies leaving no surviving spouse or issue or parents, the estate goes to the brothers and sisters in equal shares and, if any brother or sister is dead, the children of the deceased brother or sister take the share their parent would have taken, if living. R.S.P.E.I. 1974, Cap. P-19, s.91; 2008,c.8,s.19(5).

Nephews & nieces, entitled, where

92. If an intestate dies leaving no surviving spouse, issue, parents, brother or sister, the estate goes to the nephews and nieces in equal shares and in no case shall representation be admitted. R.S.P.E.I. 1974, Cap. P-19, s.92; 2008,c.8,s.19(5).

Distribution among next of kin

93. If an intestate dies leaving no surviving spouse, issue, parents, brother, sister, nephew or niece, the estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted. R.S.P.E.I. 1974, Cap. P-19, s.93; 2008,c.8,s.19(5).

Computation of degrees of kindred

94. For the purposes of this Part, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative; and the kindred of the half-blood inherit equally with those of the whole-blood in the same degree. R.S.P.E.I. 1974, Cap. P-19, s.94.

Persons begotten before death of intestate

95. Descendants and relatives of the intestate, begotten before his death but born thereafter, inherit as if they had been born in the lifetime of the intestate and had survived him. R.S.P.E.I. 1974, Cap. P-19, s.95.

Child of intestate has been advanced a portion

96. (1) If any child of a person who has died wholly intestate has been advanced by the intestate by portion, the portion shall be reckoned, for the purpose of this section only, as part of the estate of the intestate distributable according to law; and, if the advancement is equal to or

greater than the share of the estate which the child would be entitled to receive as above reckoned, the child and his descendants are excluded from any share in the estate; but if the advancement is not equal to the share, the child and his descendents are entitled to receive so much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

Value of portion, determination of

(2) The value of any portion advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in writing, otherwise the value is the value of the portion when advanced.

Onus of proof *re* advancement

(3) The onus of proving that a child has been maintained or educated or has been given money, with a view to a portion, is upon the person so asserting, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing. R.S.P.E.I. 1974, Cap. P-19, s.96.

Estate not distributed by will, distributed under Part IV

97. All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate. R.S.P.E.I. 1974, Cap. P-19, s.97.

Distribution of estates intestate women

98. Repealed by 2008,c.8,s.19(6). R.S.P.E.I. 1974, Cap. P-19, s.102; 2008,c.8,s.19(6).

No share for surviving spouse living in a conjugal relationship with another

99. (1) If an intestate dies leaving a surviving spouse who is cohabiting in a conjugal relationship with another person at the time of the intestate's death, the surviving spouse takes no part of the intestate's estate.

Husband living in adultery, no share

(2) Repealed by 2008,c.8,s.19(7).

Uniform construction of Part IV

(3) The foregoing provisions of this Part shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. R.S.P.E.I. 1974, Cap. P-19, s.103; 2008,c.8,s.19(7).

Tracing descent

100. To the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title require, every descent shall be traced from the person last entitled to the land; when any land is devised by any testator to the heir or to the person who is the heir of the testator, the heir shall be considered to have acquired the land as a devisee and not by descent; and when any land is limited by any instrument other than a will to the person, or to the heirs of the person who thereby conveyed the same land, the person shall be considered to have acquired it as a purchaser by virtue of the instrument, and shall not be considered to be entitled thereto as his former estate, or part thereof. R.S.P.E.I. 1974, Cap. P-19, s.104.

Acquisition of land by purchase under a limitation to the heirs

101. When any person acquires any land by purchase under a limitation to the heirs, or to the heirs of the body, of any of his ancestors, contained in any instrument other than a will or under a limitation to the heirs or the heirs of the body of any of his ancestors, or under any limitation having the same effect contained in a will of any testator then, and in any such case, the land descends, and the descent thereof shall be traced as if the ancestors named in the limitation had been the purchaser and the last entitled to the land; and when the person for whom the descent of any land is to be traced, has had any relative, who, having been attainted, died before the descent has taken place, then the attainder does not prevent any person from inheriting the land who would have been capable of inheriting it by tracing his descent through the relative if he had not been attainted. R.S.P.E.I. 1974, Cap. P-19, s.105.

Lineal ancestors capable of being heir to any of his issue

102. Every lineal ancestor is capable of being heir to any of his issue, and in every case where there is no issue of the person last entitled to any real estate his nearest lineal ancestor is his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through the lineal ancestor or in consequence of there being no descendant of the lineal ancestor, so that the father is preferred to a brother or sister, and a more remote lineal ancestor to any of his issue other than a nearer ancestor or his issue; but the heirs on the maternal side shall share equally with those on the paternal side. R.S.P.E.I. 1974, Cap. P-19, s.106.

PART V
DEVOLUTION OF REAL PROPERTY

Devolution of real property upon death, to personal representative

103. (1) Real property to which a deceased person was entitled for an interest not ceasing on his death shall on his death, notwithstanding any testamentary disposition devolve upon and become vested in his personal representative from time to time as if it were personal property vesting in him.

Testator deemed entitled to interest in real property, where appointment

(2) A testator shall be deemed to have been entitled at his death to any interest in real property passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.

Personal representative represents deceased in realty & personalty

(3) The personal representative is the representative of the deceased in regard to his real property to which he was entitled for an interest not ceasing on his death as well as in regard to his personal property.

Where realty but no personalty

(4) Letters probate and letters of administration may be granted in respect of real property only, although there is no personal property.

(5) Subject to the powers, rights, duties and liabilities in this Part hereinafter mentioned, the personal representative holds the real property as trustee for the persons by law beneficially entitled thereto, and those persons have the same right to require a transfer of real property as persons beneficially entitled to personal property have to require a transfer of such personal property. R.S.P.E.I. 1974, Cap. P-19, s.108.

Personal representative holds as trustee

104. Subject to the provisions in this Part hereinafter contained, all enactments and rules of law, and all jurisdiction of the Probate Court and of the judge thereof and of the Surrogate with respect to the appointment of administrators or to letters testamentary or letters of administration, or dealings before probate in the case of personal property, and with respect to costs and other matters in the administration of personal property in force immediately prior to October 2, 1939, and all powers, duties, rights, equities, obligations, and liabilities of an executor or administrator in force immediately prior to October 2, 1939, with respect to personal property, apply and attach to the personal representative and have effect with respect to real property vested in him. R.S.P.E.I. 1974, Cap. P-19, s.109.

Certain personal representatives bound by earlier law

105. Without prejudice to the rights and powers of a personal representative, the appointment of a representative in regard to real property does not, save 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;

(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. R.S.P.E.I. 1974, Cap. P-19, s.110.

Appointment of a personal representative, effect on certain rules, interests & rights

106. In the administration of the assets of a deceased person his real property shall be administered in the same manner, subject to the same liabilities for debts, costs and expenses and with the same incidents, as if it were personal property, but nothing in this Part contained alters or affects the order in which real and personal assets respectively were, immediately prior to October 2, 1939, applicable, as between different beneficiaries, in or toward the payment of funeral and testamentary expenses, debts or legacies, or the liability of real property to be charged with payment of legacies. R.S.P.E.I. 1974, Cap. P-19, s.111.

Administration of realty subject to same liabilities & incidents as personal property

In interpretation of statutes & documents personal representative deemed an heir, where

107. When any part of the real property of a deceased person vests in his personal representative under this Part, 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 he was interested, shall, while the estate remains in the personal representative be deemed in law the heir of the deceased, as respects 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 limitations of any estate in or by any deed, will or other instrument. R.S.P.E.I. 1974, Cap. P-19, s.112.

Conveyance of realty to person entitled thereto

108. (1) At any time after the date of letters probate or letters of administration, the personal representative may convey the real property to any person entitled thereto, and may make the conveyance either subject to a charge for the payment of any money which the personal representative is liable to pay, or without any such charge; and on the conveyance being made subject to a charge for all moneys which the personal representative is liable to pay, all liabilities of the personal representative in respect of the real property cease, except as to any acts done or contracts entered into by him before the conveyance.

Non-conveyance of realty after 8 months from grant of letters, court order

(2) At any time after the expiration of eight months from the date of letters probate or of letters of administration, if the personal representative has failed, on the request of the person entitled to any real property, to convey the real property to that person, the court may, on the application of that person and after notice to the personal representative, order that the conveyance be made, and in default may make an order vesting the real property in such person as fully and completely as might have been done by a conveyance thereof from the personal representative.

Sale of land upon application of person beneficially interested

(3) If, after the expiration of the eight months, the personal representative has failed with respect to the real property or any portion thereof, either to convey it to a person entitled thereto or to sell and dispose of it, the court may, on the application of any person beneficially interested, order that the real property or portion be sold on such terms and within such period as may appear reasonable; and, on the failure of the personal representative to comply with such order, may refer the matter to the Prothonotary directing a sale of the real property or portion upon such terms of cash or credit, or partly one and partly the other, as may be considered advisable. R.S.P.E.I. 1974, Cap. P-19, s.113; 1974,c.65,s.4; 2008,c.20,s.72(74).

Sale of realty by personal representative

109. (1) The personal representative may sell the real property for the purpose not only of paying debts but also of 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 concur in any such sale except where it is made for the purpose of distribution only.

Deed to contain recitals

(2) Every deed given by a personal representative shall contain recitals to show his title from the deceased. R.S.P.E.I. 1974, Cap. P-19, s.114.

Sale subject to concurrence of person beneficially interested

110. (1) Subject to the provisions hereinafter contained no sale of real property for the purpose of distribution only is valid as respects any person beneficially interested, unless he concurs therein.

Person beneficially interested is an infant or mentally incompetent person

(2) Where, in the case of such a sale, an infant or a mentally incompetent person is beneficially interested, or adult beneficiaries do not concur in the sale, or where under a will there are contingent interests or interests not yet vested or the persons who may be beneficiaries are not yet ascertained, the parties interested may apply to the Supreme Court.

Concurrence deemed, where

(3) If an adult accepts a share of the purchase money, knowing it to be such, he shall be deemed to have concurred in the sale.

Sale where infant interested

(4) No sale, where an infant is interested, shall be valid without an order of the Supreme Court.

Concurrence from all of several persons beneficially interested not required

(5) Notwithstanding subsections (1) to (4) the non-concurrence of any person or persons beneficially interested, if he or they are adult and entitled to share in immediate distribution, does not invalidate any sale of real property if concurrence in the sale has been had from persons entitled to receive in the aggregate at least seventy-five per cent of the distribution of the net proceeds of the sale and if the sale is made in accordance with the concurrence; the personal representative who effects the sale is not answerable or chargeable to or by the non-concurring person or persons for selling at under-value if the sale was by public auction after reasonably proper advertisement. R.S.P.E.I. 1974, Cap. P-19, s.115; 1974,c.65,s.4.

Division or partition of land among persons beneficially interested

111. The personal representative may, with the concurrence of the adult persons beneficially interested, with the approval of the guardian appointed by the court on behalf of infants and, in the case of a mentally incompetent person with the approval of his committee appointed by the Supreme Court, if any infants or mentally incompetent persons are so interested, divide or partition and convey the real property of the deceased person, or any part thereof, to or among the persons beneficially interested. R.S.P.E.I. 1974, Cap. P-19, s.116; 1974,c.65,s.4.

Power to lease or mortgage realty

112. (1) The personal representative may, from time to time, subject to the provisions of any will affecting the property

(a) lease the real property or any part thereof for any term not exceeding one year;
(b) lease the real property or any part thereof, with the approval of the court, for a longer term;
(c) raise money by way of mortgage of the real property or any part thereof for the payment of debts, or for payment of taxes on the real property to be mortgaged, and, with the approval of the court, for the payment of other taxes, the erection, repair, improvement or completion of buildings, or the improvement of lands, or for any other purpose beneficial to the estate.

Application to court required, where

(2) Where infants or mentally incompetent persons are interested, an application to the Supreme Court shall be required in the case of a mortgage, under clause (1)(c), for payment of debts or payment of taxes on the real property to be mortgaged. R.S.P.E.I. 1974, Cap. P-19, s.117; 1974,c.65,s.4.

Purchasing realty in good faith & for value from personal representative, title acquired

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

Realty vested in person beneficially interested remains liable to answer debts of deceased

(2) Real property which has been conveyed by the personal representative to a person beneficially entitled thereto continues to be liable to answer the debts of the deceased owner so long as it remains vested in that person, or in any person claiming under him not being a purchaser in good faith and for value, as it would have been if it had remained vested in the personal representative, and in the event of a sale or mortgage thereof in good faith and for value by the person beneficially entitled he 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 thereof. R.S.P.E.I. 1974, Cap. P-19, s.118.

Two or more personal representatives, concurrence of all for sale, lease, mortgage or conveyance

114. Where there are two or more personal representatives a conveyance, mortgage, lease or other disposition of real property devolving under this Part shall not be made without the concurrence therein of all the representatives or an order of the court; but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance, mortgage, lease or other disposition of the real property may be made by the proving executor or executors for the time being, without an order of

the court, and is as effectual as if all the persons named as executors had concurred therein. R.S.P.E.I. 1974, Cap. P-19, s.119.

Rights & immunities of personal representative under Part V

115. The rights and immunities conferred by this Part upon personal representatives are in addition to, and not in derogation of, the powers conferred by any other Part or Act, or by the will. R.S.P.E.I. 1974, Cap. P-19, s.120.

Duties payable not affected

116. Nothing in this Part alters any duty payable in respect of real property or imposes any new duty thereon. R.S.P.E.I. 1974, Cap. P-19, s.121.

Uniform construction of Part V

117. This Part shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. R.S.P.E.I. 1974, Cap. P-19, s.123.

PART VI
FEES AND RETURNS

Fees payable according to Schedule

118. (1) The Lieutenant Governor in Council, after consultation with the Rules Committee established under the *Judicature Act*, may make regulations prescribing fees in respect of every cause, matter or proceeding in the court.

Where not prescribed in Schedule

(2) The fees payable in respect of proceedings not covered by the regulations shall be as may be fixed by rules of court and in the absence of such rules of court, the fees shall be the fees payable for similar proceedings in the Supreme Court. R.S.P.E.I. 1974, Cap. P-19, s.124; 1974,c.65,s.4; 1987,c.16,s.6; 2008,c.20,s.72(74).

Sitting of court outside of Charlottetown

119. Where by reason of the infirmity of the personal representative or for other cause it is made to appear to the judge that it is in the interest of justice to hold sittings of the court outside of Charlottetown, the sittings, or the adjournment of any sittings may be held at such place in the province as the judge may determine; the necessary travelling expenses shall be certified by and paid to the judge.

Probate value

119.1 (1) In this section, “probate value” means the gross assets of the estate, but not including life insurance money passing on the death to a named beneficiary under a life insurance policy.

Fees

(2) In this Act, “fees” includes fees, levies, charges, tariffs, rentals, taxes and any kind of payment for licenses, goods or services provided by government under this Act.

Fees payable

(3) The fees payable pursuant to this Act are as set out in this section.

Petitions

(4) The fees for every petition for probate or administrator or for administration with the will annexed or for ancillary probate or ancillary administration with the will annexed or for resealing probate or administration with the will annexed or for proof of will in solemn form are as follows:

On estates with a probate value	Fee
up to $10,000	$50
$10,001 to $25,000	$100
$25,001 to $50,000	$200
$50,001 to $100,000	$400
exceeding $100,000	$400 plus $4 for each $1,000 or fraction thereof in excess of $100,000

Includes documents

(5) Fees under subsections (4) and (15) include the filing of all papers and the swearing by a judge or Registrar of all oaths necessary to ground the application, except where otherwise subject to a fee under this section.

Value exceeds $1,000

(6) There is an additional fee of $1 for every renunciation and every dedimus for estates where the probate value exceeds $1,000.

Vesting title only

(7) Notwithstanding subsection (6), where probate is required solely for the purpose of vesting the title to real property the fee is $50.

Probate value within province

(8) The fees payable on a petition for resealing an extra-provincial grant or for ancillary probate of a foreign grant are based on the probate value of the assets within the province.

File will, only

(9) The fee for filing and registering a will without application for the appointment of a personal representative is $10.

Guardian

(10) The fee for the appointment of a guardian for one or more infants in one petition is

(a) where the probate value of the infant's estate is $1,000 or less, $3;

(b) where the probate value is over $1,000, $5 for the first $1,000 and $2 for each additional fraction of $1,000.

Letters probate, or administration

(11) When probate or administration, whether limited or otherwise, or guardianship is granted, the Registrar shall, without fee, furnish one fully

complete and duly executed set of the letters with all necessary copies of papers annexed.

Duplicates

(12) The fee for additional copies or certified copies of documents provided under subsection (11) is $2 for each copy of the letters of administration or guardianship and $4 for each copy of letters probate or administration with the will annexed.

Petitions, etc.

(13) For every petition for double probate, cessate probate, or to remove an executor or guardian, or for revocation of a grant the fee is $10.

Administration *de bonis non*

(14) The fee for every petition for an administration *de bonis non*, with or without the will annexed, is calculated in accordance with subsections (4),(5),(6) or (7) based on the probate value of the estate left unadministered.

Orders, decrees, etc.

(15) The fees for every order or decree on passing accounts, or an application to prove a will in solemn form, or any other contested application, the fees are as follows:

On estates with a probate value	Fee
up to $500	3% of gross assets
$501 to $3,000	1% of gross assets
$3,001 to $10,000	0.7% of gross assets
$10,001 to $15,000	.0.5% of gross assets
$15,001 to $40,000	0.4% of gross assets
$40,001 to $90,000	0.3% of gross assets

Where the probate value exceeds $90,000 the fee is 0.2% of the gross assets of the estate.

Certified copies

(16) For every certified copy of any document on file, prepared by the Registrar the fee is $5.

No assets

(17) Where the deceased has no assets other that personal clothing and effects and administration is sought to assert an action for damages for tort, the fee payable on a petition is $10.

Bankrupt estate

(18) Where it appears on an application to pass the accounts of a personal representative that the estate is bankrupt, the fee payable in respect of the petition for the passing and all subsequent proceedings is one-half that payable under subsection (15).

Subsequent grants

(19) Where there has been more than one grant of probate or administration, the fee for any subsequent grant is $100.

Fee book

(20) There shall be kept among the records of the court a book to be called the "fee book" and the Registrar shall enter therein a minute showing the cause, matter or proceeding in respect of which a fee is chargeable, the fee charged, and the name of the person by whom the same is, or is to be, paid. 2000,c.17,s.2; 2002,c.36,s.1; 2008,c.20,s.72(74); 2015,c.36,s.41(3).

PART VII
INTERNATIONAL WILLS

Definitions

120. In this Part,

Convention

(a) "Convention" means the Convention Providing a Uniform Law on the Form of an International Will, a copy of which is set out in the Schedule to this Act;

effective date

(b) "effective date" means the day that is six months after the date on which the Government of Canada submits to the government of the United States of America a declaration that the Convention extends to Prince Edward Island;

registrar

(c) "registrar" means the person responsible for the operation and management of the registration system;

registration system

(d) "registration system" means a system for the registration, or the registration and safekeeping, of international wills established under section 125 or pursuant to an agreement entered into under section 126. 1994,c.47,s.1.

Application of Convention

121. On and after the effective date, the Convention is in force in Prince Edward Island and applies to wills as the law of Prince Edward Island. 1994,c.47,s.1.

Uniform law in effect

122. On and after the effective date, the uniform law on the form of an international will set out in the Annex to the Convention is law in Prince Edward Island. 1994,c.47,s.1

Validity under other laws

123. Nothing in this Part detracts from or affects the validity of a will that is valid under the laws in force in Prince Edward Island other than this Part.

Authorized persons

124. All active members of the Law Society of Prince Edward Island are designated as persons authorized to act in connection with international wills. 1994,c.47,s.1.

Registration system

125. The Minister of Justice and Public Safety and Attorney General shall, in accordance with the regulations, establish a system of

(a) registration; or

(b) registration and safekeeping,

of international wills. 1994,c.47,s.1; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.

Agreements *re* registration system

126. With the approval of the Lieutenant Governor in Council, the Minister of Justice and Public Safety and Attorney General for and on behalf of Her Majesty in right of Prince Edward Island may enter into an agreement with the government of another province or a Minister or official of the government of another province relating to the establishment of a system of registration or registration and safekeeping of international wills for Prince Edward Island and that other province, and for the joint operation of that system, or relating to the exchange of information contained in a system established under section 125 and a similar system established for that other province. 1994,c.47,s.1; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.

Joint registration system

127. If a registration system is established pursuant to an agreement entered into under section 126, the Minister of Justice and Public Safety and Attorney General is relieved of his obligation under section 125. 1994,c.47,s.1; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.

Disclosure of information etc.

128. (1) Information contained in the registration system concerning the international will of a testator shall not be released from the system except in accordance with an agreement made under section 126 or except to a person who satisfies the registrar that

(a) he is the testator;

(b) he is a person who is authorized by the testator to obtain that information; or

(c) the testator is dead and the person is a proper person to have access to the information.

Release of will held for safekeeping

(2) When the registration system provides for the safekeeping of international wills, an international will of a testator deposited in the system shall not be released except to a person who satisfies the registrar that

(a) he is the testator;

(b) he is a person who is authorized by the testator to obtain the will; or

(c) the testator is dead and the person is a proper person to have custody of the will for the purposes of the administration of the estate of the testator or the agent of such a person. 1994,c.47,s.1.

Use of registration system

129. (1) If a member of the Law Society of Prince Edward Island has acted during any month in respect of one or more international wills in his capacity as a person authorized to act in connection with international wills, the member shall, on or before the tenth day of the next month, file

with the registrar, in a sealed envelope, a list on a form prescribed under the regulations, certified by him or his agent, setting out the name, address and description of the testator and the date of execution of each international will in respect of which he so acted, and the registrar shall enter the information in the registration system.

Failure to comply

(2) The failure of a member of the Law Society of Prince Edward Island to comply with subsection (1) in respect of an international will does not affect the validity of the international will. 1994,c.47,s.1.

Regulations

130. The Lieutenant Governor in Council may make regulations respecting the operation, maintenance and use of the registration system, and without limiting the generality of the foregoing, may make regulations

(a) prescribing forms for use in the system; and

(b) prescribing fees for searches of the registration system. 1994,c.47,s.1.

SCHEDULE
CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than 6 months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.
2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.
3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.
4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduces into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad insofar as the local law does not prohibit it.
2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.
2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.
2. The Convention shall be subject to ratification.
3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.
2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force 6 months after the date of deposit of the 5th instrument of ratification or accession with the Depositary Government.
2. In the case of each State which ratifies this Convention or accedes to it after the 5th instrument of ratification or accession has been deposited, this Convention shall enter into force 6 months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.
2. Such denunciation shall take effect 12 months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.
2. Such declaration shall have effect 6 months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.
3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has 2 or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial

units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has 2 or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.
2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of
   (a) any signature;
   (b) the deposit of any instrument of ratification or accession;
   (c) any date on which this Convention enters into force in accordance with Article XI;
   (d) any communication received in accordance with Article I, paragraph 4;
   (e) any notice received in accordance with Article II, paragraph 2;
   (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
   (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
   (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

ANNEX

UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.
2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by 2 or more persons in one instrument.

Article 3

1. The will shall be made in writing
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of 2 witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.
2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, ...
(name, address and capacity)
a person authorized to act in connection with international wills
2. certify that on ..... at .....
(date) (place)
3. .....
(testator)
in my presence and that of the witnesses
4. (a).....
(name, address, date and place of birth)

(b) .....
(name, address, date and place of birth)
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses
(1) the testator has signed the will or has acknowledged his signature previously affixed;
*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason
-I have mentioned this declaration on the will
*-the signature has been affixed by .....
(name, address)
7. (b) the witnesses and I have signed the will;
8. *(c) each page of the will has been signed by.....and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:
.....
.....
12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

*To be completed if appropriate.

Article 11
The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12
In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13
The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14
The international will shall be subject to the ordinary rules of revocation of wills.

Article 15
In interpreting and applying the provisions of this Law, regard shall be had to its international origin and to the need for uniformity in its interpretation.