

# 1992

## CHAPTER 62

### An Act to amend *The Queen's Bench Act*, repeal *The Surrogate Court Act* and make Consequential Amendments to Certain Other Acts resulting from the Amalgamation of the Surrogate Court and the Court of Queen's Bench

(Assented to August 24, 1992)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

**1 This Act may be cited as *The Queen's Bench (Surrogate Procedures) Amendment Act, 1992*.**

R.S.S. 1978, c.Q-1 amended

**2 *The Queen's Bench Act* is amended in the manner set forth in this Act.**

Section 2 amended

**3 Section 2 is amended:**

**(a) by adding the following clause after clause (g):**

"(g.1) `letters of administration' includes all letters of administration of the property of deceased persons, whether with or without the will annexed and whether granted for general, special or limited purposes"; **and**

**(b) by adding the following clauses after clause (u):**

"(v) `testamentary matters' includes all matters and causes relating to the granting and revoking of letters probate and letters of administration, including the interpretation of wills;

"(w) `will' includes:

(i) a testament;

(ii) a codicil;

(iii) an appointment by will or by writing in the nature of a will in the exercise of a power; and

(iv) any other testamentary disposition".

Section 11.1 repealed

**4 Section 11.1 is repealed.**

Section 12 amended

**5 The following subsection is added after subsection 12(4):**

"(5) All jurisdiction and authority in relation to testamentary matters and in relation to all matters arising out of or connected with the grant or revocation of letters probate or letters of administration that was vested in or exercised by the Supreme Court of the Northwest Territories immediately prior to September 16, 1907, shall be exercised in the name of Her Majesty in the court".

New sections 12.1 and 12.2

**6 The following sections are added after section 12:**

Testamentary jurisdiction

"12.1(1) Without limiting the generality of subsection 12(5), the court has full power, jurisdiction and authority:

(a) to grant letters probate and letters of administration and to revoke letters probate and letters of administration;

- (b) to hear and determine all questions, causes and actions in relation to:
    - (i) the granting and revoking of letters probate and letters of administration; and
    - (ii) all other testamentary matters;
  - (c) to require an executor or administrator to bring in his or her accounts of the administration of an estate with respect to which letters probate or letters of administration have been granted, and to examine and pass those accounts;
  - (d) on passing the accounts of an executor or administrator or on dispensing with the passing of those accounts:
    - (i) to order that the executor or administrator be discharged; and
    - (ii) in the case of an administrator, to order that the bond be cancelled or delivered to the administrator.
- (2) On an application to pass the accounts of an executor or administrator, the court may conduct a full inquiry concerning, and a full accounting of, all property that the deceased was possessed of or entitled to and the administration and disbursement of it, including inquiry and accounting on the basis of wilful default and neglect, in as full and ample a manner as can be done in an action for administration.
- (3) For the purposes of subsection (2), the court may take evidence and decide all disputed matters arising in the inquiry and accounting.
- (4) Subject to this Act, the court has the same powers, and the grants and orders of the court have the same effect, throughout Saskatchewan and in relation to the estates of deceased persons as the Supreme Court of the Northwest Territories and its grants and orders respectively had immediately prior to September 16, 1907, in relation to testamentary matters.
- (5) All powers and duties that by statute or otherwise were exercised by or imposed on the court mentioned in subsection (4) or a judge of that court with respect to probate, administration and testamentary matters shall be performed by the court and the judges of the court.

Practice in testamentary matters

"12.2 Unless otherwise provided by this Act or by the rules of court, the practice of the court in matters described in subsection 12(5) and in section 12.1 shall be according to the practice in the Court of Probate in England as it stood on July 15, 1870, so far as the circumstances of the case permit".

Section 60 amended

**7 Section 60 is amended by striking out "surrogate".**

Section 89 amended

**8 Subsection 89(1) is amended:**

- (a) by striking out "and the Surrogate Court for Saskatchewan":**
  - (i) in the portion of clause (a) that precedes subclause (i);**
  - (ii) in subclause (a)(i);**
  - (iii) in paragraph (e)(i)(A); and**
  - (iv) in paragraph (e)(i)(B);**
- (b) by repealing subclause (e)(iii) and substituting:**  
 "(iii) subject to section 60, of all fees, charges and allowances provided for pursuant to this Act and the rules of court";
- (c) by repealing clause (g.3);**
- (d) by striking out "pursuant to subsection 12(2) of *The Surrogate Court Act*" in clause (g.4);**
- (e) by striking out "pursuant to section 13 of *The Surrogate Court Act*" in clause (g.5); and**
- (f) by repealing clause (g.6) and substituting the following:**  
 "(g.6) requiring local registrars to provide the registrar with:
  - (i) information respecting grants and revocations of letters probate and letters of administration;

- (ii) copies of wills to which grants of letters probate and letters of administration relate;
- “(g.7) prescribing the manner and form in which the information and wills mentioned in clause (g.6) are to be provided and the particulars to be provided”.

New sections 100 to 142

**9 The following sections are added after section 99:**

**“APPLICATIONS FOR PROBATE OR ADMINISTRATION**

Application for probate or administration

“100(1) Letters probate or letters of administration, as the case may require, may be granted under the seal of the court on proof:

- (a) that the deceased:
    - (i) resided in Saskatchewan at the time of death; or
    - (ii) resided outside of Saskatchewan at the time of death and left real or personal property within Saskatchewan; and
  - (b) of the will or of the fact that the deceased died intestate.
- (2) On an application for letters probate or letters of administration, the applicant shall file proof in the form and manner prescribed in the rules of court with respect to whether or not infants are interested in the estate of the deceased.
- (3) On the request of the applicant, where the local registrar is satisfied that no infants are interested in the estate of the deceased, the local registrar shall provide the applicant with a certificate to that effect together with the letters probate or letters of administration.
- (4) An executor or administrator may apply to the Public Trustee for a certificate that no infants are interested in the estate of the deceased:
- (a) where the local registrar does not issue a certificate stating that no infants were interested in the estate at the time when the letters probate or letters of administration were granted; or
  - (b) where letters probate or letters of administration were granted by the Surrogate Court for Saskatchewan before the coming into force of this section.

Notice of application

“101(1) Where an application is made for letters probate or letters of administration, the local registrar shall immediately send notice of the application to the registrar.

- (2) A notice mentioned in subsection (1) must set out:
- (a) the name of the deceased;
  - (b) the residence of the deceased at the time of death;
  - (c) the name of the applicant;
  - (d) the date of death of the deceased; and
  - (e) any other particulars required by the rules of court.
- (3) Except on an order of the court granted in exceptional circumstances, no letters probate or letters of administration shall be granted until the local registrar has received a certificate from the registrar stating that no other application appears to have been made with respect to the same deceased person.
- (4) The registrar shall file and keep notices of applications received by the registrar from all judicial centres pursuant to this section.

Duty of registrar re notices

“102(1) Where the registrar receives a notice mentioned in subsection 101(1), the registrar shall examine the notices filed pursuant to subsection 101(4) to determine whether or not another application for letters probate or letters of administration has been made with respect to the same deceased person.

- (2) Where the registrar's certificate states that an application for letters probate or letters of administration has been made at more than one judicial centre:

- (a) all of the proceedings with respect to those applications are stayed; and
  - (b) one or more of the parties shall apply to the court for directions at the judicial centre at which the first application was filed.
- (3) On an application pursuant to subsection (2), the court shall inquire into the matter in a summary way and determine which application for letters probate or letters of administration shall proceed.

Duty of local registrar to prepare documents

"103(1) On the request of an individual described in clause (b), the local registrar shall prepare the necessary papers leading to a grant of letters probate or letters of administration, as the case may require, and the bond required, if any, and administer the oaths where:

- (a) the value of the property of the deceased person does not exceed \$10,000;
  - (b) letters probate or letters of administration are sought by an individual who:
    - (i) is a resident of Saskatchewan;
    - (ii) is acting on his or her own behalf; and
    - (iii) is a person, other than a creditor, entitled to seek letters probate or letters of administration; and
  - (c) the individual who makes the request provides the material required by the local registrar and pays the fee prescribed in the regulations.
- (2) The local registrar shall endorse on any letters probate or letters of administration prepared pursuant to subsection (1) the following notation: 'The value of the property in this estate does not exceed \$10,000'.

Proof of execution of will

"104(1) The due execution of a will is to be proved in the form and manner prescribed in the rules of court.

- (2) In addition to the proof mentioned in subsection (1), a judge may require:
- (a) an affidavit of plight and condition, in the form prescribed in the rules of court;
  - (b) any further or other proof that the judge considers necessary; or
  - (c) proof in solemn form.

"DISPOSAL OF PROPERTY WITHOUT GRANT

Disposal of property under \$5,000 without grant

"105(1) On the application of any person interested, which may be made *ex parte* unless the court orders otherwise, the court may, without granting letters probate or letters of administration, as the case may be, order that the personal property of a deceased person be paid or delivered to a person named by the court to be disposed of by that person as the court directs and in accordance with subsection (2), where:

- (a) the deceased owned no real property in Saskatchewan that will pass through the estate; and
  - (b) the value of the personal property of the deceased does not exceed \$5,000.
- (2) The person named in an order made pursuant to subsection (1) shall, in accordance with the order:
- (a) pay out of the personal property of the deceased:
    - (i) the reasonable funeral expenses of the deceased; and
    - (ii) the debts of the deceased; and
  - (b) pay over any balance to the beneficiaries or next of kin, as the case may require.
- (3) A receipt given by a person for personal property received by that person pursuant to an order of the court made pursuant to subsection (1) discharges the person who pays over or delivers the property from liability with respect to that payment or delivery.
- (4) The provisions of this Act with respect to the grant of letters probate or letters of administration and to bonds on administration do not apply to cases in which an order is made pursuant to subsection (1).

“GRANT OF ADMINISTRATION IN PARTICULAR SITUATIONS

Grant to person not next of kin

“106(1) Where an application is made for letters of administration by a person who is not entitled to letters of administration as next of kin to the deceased, the next of kin or other persons who have or allege they have an interest in the property of the deceased and who are resident in Saskatchewan are to be served with a notice of motion by the applicant requiring them to show cause why letters of administration should not be granted to the applicant.

(2) If none of the persons mentioned in subsection (1) reside in Saskatchewan, a copy of the notice of motion mentioned in subsection (1) is to be served or published by the applicant in any manner that a judge may direct on an *ex parte* application.

Temporary administration

“107(1) If the next of kin usually residing in Saskatchewan and regularly entitled to administer an estate is absent from Saskatchewan, the court, on the application of any person interested, may:

- (a) grant temporary letters of administration of the property of the deceased person that are:
    - (i) for a limited period; or
    - (ii) to be revoked on the return of the next of kin; and
  - (b) appoint the applicant or any other person that the court thinks fit to be the administrator.
- (2) An administrator appointed pursuant to subsection (1):
- (a) shall give the security directed by the court;
  - (b) has all the rights and powers of a general administrator; and
  - (c) is subject to the immediate control of the court.

Grant of administration to attorney

“108(1) The next of kin regularly entitled to administer, whether or not he or she resides in Saskatchewan, may appoint an individual or a trust corporation within the meaning of *The Trust and Loan Corporations Act* as his or her attorney to apply for and receive a grant of letters of administration.

(2) The court may grant letters of administration to an attorney appointed pursuant to subsection (1).

Appointment of administrator in special circumstances

“109(1) The court may appoint any person that the court considers fit to be the administrator of an estate:

- (a) where:
    - (i) a person dies intestate;
    - (ii) a person dies leaving a will without having appointed an executor who is willing and competent to take probate; or
    - (iii) the executor is, at the time of the death of the deceased, resident outside Saskatchewan; and
  - (b) where, by reason of the insolvency of the estate or other special circumstances, it appears to the court to be necessary or convenient to appoint as administrator, of all or part of the property of the deceased, some person other than the person who is by law entitled to a grant of letters of administration.
- (2) Letters of administration granted pursuant to subsection (1) may be as limited as the court considers fit.
- (3) An administrator appointed pursuant to subsection (1) shall give any security that the court directs.

Administration pending litigation

“110(1) Where an action touching the validity of the will of a deceased person or for obtaining, recalling or revoking letters probate or letters of administration is pending, the court may appoint an

administrator of the property of the deceased person.

(2) An administrator appointed pursuant to subsection (1) has all the rights and powers of a general administrator other than the right to distribute the residue of the property.

(3) An administrator appointed pursuant to subsection (1) is subject to the immediate control of the court and shall act under its direction.

(4) The court may direct that an administrator appointed pursuant to subsection (1) shall receive, out of the property of the deceased, the remuneration that the court considers appropriate.

“SECURITY FOR ADMINISTRATION

Bond required

“111(1) Except where otherwise provided by law, every person to whom letters of administration are granted shall give a bond to the local registrar at the judicial centre at which the grant is made, for the due collecting, getting in and administering of the real and personal property of the deceased.

(2) A bond mentioned in subsection (1) shall be in the form prescribed in the rules of court or in the form that the court may direct, with one or more sureties as the court may require.

(3) The court may dispense with the giving of a bond where there are no debts for which the estate is or may be liable and:

(a) the value of the estate does not exceed \$5,000;

(b) the administrator is the beneficiary; or

(c) all persons, other than infants or dependent adults, who are or may be beneficially interested in the estate consent in writing, the Public Trustee consents in writing on behalf of any infant who is or may be beneficially interested in the estate and the Public Trustee or the property guardian, as the case may be, consents in writing on behalf of any dependent adult who is or may be beneficially interested in the estate.

(4) Where there are debts for which an estate is or may be liable, the court may dispense with the giving of a bond if the creditors and all persons mentioned in clause (3)(c) consent in writing.

Amount of bond

“112(1) Unless the court directs that the amount be reduced, the bond required by section 111 is to be in an amount that is:

(a) double the sworn value of the real and personal property of the deceased; or

(b) equal to the sworn value of the real and personal property of the deceased where the bond is given by a guarantee company as defined in *The Guarantee Companies Securities Act*.

(2) The court may direct that more than one bond be given in order to limit the liability of a surety to an amount that the court considers reasonable.

(3) For the purposes of subsection (1), the sworn value of the real and personal property of the deceased is to be decreased:

(a) in the case of real property, by the amount of:

(i) any mortgage or other encumbrance registered against it; and

(ii) the unpaid balance of any purchase price due with respect to it; and

(b) in the case of personal property, by the amount of:

(i) any security interest registered against the personal property; and

(ii) any liens or charges against the personal property created by any statute.

(4) In the case of letters of administration with the will annexed, for the purposes of subsection (1), the sworn value of the real and personal property of the deceased includes the value of:

(a) all real property over which, or over any estate in which, the executor named in the will was given a power of disposition; and

(b) all real property that was, by the will, directed to be disposed of.

Assignment of bonds

“113(1) On the application of a person interested and on being satisfied that a condition of a bond has been broken, the court may order the local registrar to assign the bond to a person named in the order.

- (2) A person to whom a bond is assigned is entitled:
- (a) to sue on the bond in the person's name as if the bond had been originally given to the person; and
  - (b) to recover on the bond, as trustee for all persons interested, the full amount recoverable for any breach of a condition of the bond.

New or additional security

"114(1) Where a surety for an administrator dies or becomes insolvent or where for any other reason the security furnished by an administrator becomes inadequate or insufficient, the court may, by order, require other or additional security to be furnished.

- (2) Where security ordered pursuant to subsection (1) is not furnished as directed, the court may revoke the letters of administration.
- (3) An order pursuant to this section may be made by the court on the application of any person interested.

Substitution of security

"115(1) The court may, by order, allow security other than the security previously given by an administrator to be furnished on any terms that the court considers necessary where:

- (a) a surety for an administrator wishes to be discharged; or
  - (b) an administrator wishes to substitute other security for the security furnished by the administrator.
- (2) Where an order is made pursuant to subsection (1), the court may direct that the previous surety be discharged:
- (a) on the substituted security being furnished; and
  - (b) if the court considers it advisable, on the accounts of the administrator being passed.
- (3) An application for an order pursuant to subsection (1) may be made *ex parte* or on any notice that the court may direct.

Reduction of security

"116 The amount of the security furnished by an administrator may, from time to time, be reduced by the court to an amount that will secure the due collecting, getting in and administering of the real and personal property of the deceased that is shown to be in the hands of the administrator after the passing of the administrator's accounts by the court.

"EFFECT OF GRANT

Subsequent proceedings

"117(1) After letters probate or letters of administration are granted, all subsequent proceedings with respect to the estate shall be carried on at the judicial centre where the grant is made, unless otherwise ordered by the court.

- (2) An application for a transfer of the records with respect to an estate from one judicial centre to another may be made *ex parte* or on any notice that the court may direct.

Payments by person pursuant to grant

"118 A person who makes or permits to be made any bona fide payment or transfer pursuant to letters probate or letters of administration shall not be liable for so doing, notwithstanding any defect or circumstance that affects the validity of the letters probate or letters of administration.

Effect of grant of administration on executor

"119 After letters of administration are granted, no person shall commence or conduct any action or otherwise act as executor of the deceased as to the property to which the letters of administration apply, unless the letters of administration are recalled or revoked.

"REVOKING OF GRANT, RENOUNCING OF PROBATE

Payments prior to revocation

"120 Where letters probate or letters of administration are revoked:

- (a) all bona fide payments made to an executor or administrator pursuant to the letters probate or letters of administration before the revocation shall be a legal discharge to the persons who made the payments; and
- (b) an executor or administrator who has acted pursuant to the letters probate or letters of administration before the revocation shall not be liable with respect to payments made by the executor or administrator that the person to whom letters probate or letters of administration are afterwards granted might have lawfully made.

#### Effect of revocation on pending actions

"121(1) Where proceedings are commenced by or against the administrator before the revocation of temporary letters of administration, a judge may, on application, order that a notation be made by the local registrar on the record of the revocation of the temporary letters of administration and the subsequent grant of letters probate or letters of administration.

(2) After a notation is made pursuant to subsection (1), the proceedings shall be continued in the name of the new executor or administrator as if the proceedings had been originally commenced by or against the new executor or administrator, but subject to any conditions and variations that the court directs.

(3) An application pursuant to subsection (1) is to be made at the judicial centre at which the proceedings are pending.

#### Renouncing of probate

"122 Where a person who is named as an executor by a will renounces probate of the will:

- (a) the person's rights with respect to the executorship and any trusteeship pursuant to the will cease; and
- (b) the representation of the deceased and the administration of the property of the deceased may, without any further renunciation, pass to another executor or be granted to an administrator as if the person had not been named as executor.

#### "CAVEATS

#### Practice re caveats

"123(1) A caveat against a grant of letters probate or letters of administration may be filed with the registrar or with the local registrar at any judicial centre.

(2) Unless otherwise provided by this Act or by the rules of court, the practice and procedure of the court with respect to caveats shall be according to the practice and procedure with respect to caveats in the Court of Probate in England as it stood on July 15, 1870, so far as the circumstances of the case permit.

#### Notice of caveats

"124(1) Where a caveat is filed with a local registrar, the local registrar shall immediately send a copy of the caveat to the registrar.

(2) On receiving notice of an application pursuant to section 101 from a local registrar, the registrar shall forward to the local registrar notice of any caveat that has been filed that affects the application.

(3) A notice mentioned in subsection (2) is to accompany or be embodied in the certificate mentioned in section 101.

#### "CLAIMS OF CREDITORS, DISTRIBUTION OF ASSETS

#### Notice to claimants

"125(1) Subject to subsection (3), an executor or administrator may cause a notice to claimants in the form prescribed in the rules of court to be published once a week for two successive weeks in a newspaper described in subsection (2).

- (2) A notice mentioned in subsection (1) is to be placed in:
  - (a) the newspaper published nearest to the last residence of the deceased; or
  - (b) any other newspaper designated by the court on an *ex parte* application by the executor or administrator.
- (3) A judge may, by an order that may be obtained *ex parte*, dispense with publication of the notice in the case of:
  - (a) an original grant of letters probate or letters of administration, where the value of the estate does not exceed \$5,000; or
  - (b) letters probate, letters of administration or other legal documents purporting to be of the same nature that are duly resealed in Saskatchewan.

#### Distribution of assets

- "126(1) At the expiration of the time fixed in the notice mentioned in subsection 125(1), the executor or administrator may, unless otherwise ordered by the court, distribute the assets of the deceased, or any part of the assets among the persons entitled to them, having regard only to the claims of which the executor or administrator then has notice.
- (2) An executor or administrator who distributes assets pursuant to subsection (1) is not liable for the assets so distributed to a person of whose claim the executor or administrator did not have notice at the time of distribution.
  - (3) Nothing in this section prejudices the right of a claimant to follow the assets into the hands of the person who receives them.

#### Verification of claims and valuation of securities

- "127(1) A creditor who presents a claim to an executor or administrator shall verify the claim by a statutory declaration in which the creditor:
- (a) states whether the creditor holds any security for the claim or part of the claim; and
  - (b) gives full particulars of the security.
- (2) Whether the security mentioned in subsection (1) is on the property of the deceased or on the property of a third party for whom the deceased is only secondarily liable, the creditor shall put a specified value on the security.
  - (3) An executor or administrator may:
    - (a) consent to the right of the creditor to rank for the claim, after deducting the value of the security; or
    - (b) require from the creditor an assignment of the security at the specified value to be paid out of the estate when sufficient moneys are realized from the estate.
  - (4) Where an assignment of security is required pursuant to clause (3)(b), the amount for which the creditor ranks with respect to the estate is the difference between:
    - (a) the value at which the security is retained by the executor or administrator; and
    - (b) the amount of the gross claim.
  - (5) Where an assignment of security is required pursuant to clause (3)(b), the creditor shall assign the security to the executor or administrator on payment to the creditor of the specified value of the security, together with interest to the date of payment where the indebtedness bears interest.
  - (6) Until payment is made in accordance with subsection (5), nothing in this section curtails, abridges or otherwise prejudicially affects the rights or remedies of the creditor with respect to the security.
  - (7) Where the executor or administrator is not prepared to accept an assignment of a security at the specified value placed on it by a creditor, the executor or administrator may release the security to the creditor.
  - (8) Where a security is released pursuant to subsection (7), the creditor:
    - (a) shall take the security at the specified value; and
    - (b) is entitled to rank with respect to the estate for the balance, if any, of the creditor's claim.
  - (9) If the executor or administrator has not required an assignment of a security and has not released the security within one year after the creditor has valued the security, or within any further

time that a judge may allow:

- (a) the creditor may, by notice in writing, require a release of the security; and
  - (b) on receiving a notice pursuant to clause (a), the executor or administrator shall release the security to the creditor at the specified value.
- (10) Where a security is released pursuant to subsection (9), the creditor ranks with respect to the estate for the balance, if any, of the creditor's claim.
- (11) Where a creditor holds a claim that is based on negotiable instruments on which the deceased is only indirectly or secondarily liable, and that is not mature or exigible, the creditor:
- (a) is considered to hold security within the meaning of this section; and
  - (b) shall put a value on the liability of the person who is primarily liable on the negotiable instrument as being the creditor's security for the payment of the claim.
- (12) After the maturity of the liability mentioned in subsection (11) and its nonpayment, the creditor is entitled to amend and revalue his or her claim.
- (13) Where a creditor fails to value the security that the creditor holds on a claim against an estate, a judge may, on an application by the executor or administrator, order that the creditor shall be wholly barred of any right to share in the proceeds of the estate with respect to the claim or the part of the claim for which the security is held unless the creditor places a specified value on the security and notifies the executor or administrator in writing of that value within a time specified in the order.
- (14) If a creditor does not comply with an order made pursuant to subsection (13) within the time specified in the order, the claim or the part of the claim, as the case may be, is wholly barred as against the estate.

**"ACCOUNTS OF EXECUTORS AND ADMINISTRATORS**

**Duty to account**

- "128(1) An executor or an administrator shall render a just and full account of the executorship or administration within two years after the grant of letters probate or letters of administration.
- (2) The oaths to be taken by executors and administrators, the bonds or other security to be given by administrators, and letters probate and letters of administration must set out the duty of the executor or administrator described in subsection (1).
- (3) An executor who is also a trustee under the will is required to account for the trusteeship in the same manner as the executor is required to account with respect to the executorship.

**Approval of accounts binding**

- "129 Except to the extent that mistake or fraud is shown, the approval by the court of the accounts of an executor or an administrator with respect to the executor's or the administrator's dealings with the estate is binding on:
- (a) each person who was:
    - (i) notified of the proceedings;
    - (ii) present at the proceedings; or
    - (iii) represented at the proceedings; and
  - (b) each person who claims through a person described in clause (a).

**"RESEALING FOREIGN GRANTS**

**Application for resealing**

- "130(1) A person who has been granted letters probate, letters of administration or another legal document purporting to be of the same nature by a court of competent jurisdiction in any province or territory of Canada, in the United Kingdom, in any other country of the British Commonwealth or in any of the states of the United States of America may apply for resealing pursuant to this section.
- (2) An applicant for resealing shall:
- (a) produce the document to be resealed to a local registrar and deposit a copy of it with the local registrar; and
  - (b) pay the fees prescribed in the regulations for a grant of letters probate or letters of

administration.

- (3) Subject to section 131, under the direction of the court, the letters probate, letters of administration or other document shall be resealed by the local registrar with the seal of the court.
- (4) A document resealed pursuant to subsection (3):
  - (a) has the same effect in Saskatchewan as if it had been originally granted by the court; and
  - (b) is subject to any orders of the court or the Court of Appeal as if letters probate or letters of administration had been granted in Saskatchewan.
- (5) For the purposes of this section, the following have the same effect as an original:
  - (a) a duplicate or an exemplification of letters probate, letters of administration or other legal document purporting to be of the same nature that is sealed with the seal of the court that granted it;
  - (b) a copy of letters probate, letters of administration or other legal document purporting to be of the same nature that is certified as correct by or under the authority of the court that granted it.

#### Security required on resealing

- “131(1) Letters of administration shall not be resealed pursuant to section 130 until:
- (a) a certificate of the clerk or registrar of the court that issued the letters is filed, stating that security has been given in that court in an amount that is sufficient to cover the assets within the jurisdiction of that court and the assets within Saskatchewan; or
  - (b) in the absence of a certificate described in clause (a), security is given to the court that covers the assets in Saskatchewan in the same manner as for an original grant of letters of administration.
- (2) Notwithstanding that a certificate has been filed pursuant to clause (1)(a), the court may refuse to reseat letters of administration until security is given in an amount that is sufficient to cover the assets in Saskatchewan.

#### “OFFICIAL ADMINISTRATOR

#### Official administrator

- “132(1) Subject to subsection (2), the Public Trustee for Saskatchewan is the official administrator for each judicial centre.
- (2) Every official administrator appointed pursuant to *The Surrogate Court Act* prior to the coming into force of this section continues to hold office for the purpose of administering any estates being administered by that person in his or her capacity as official administrator when this section comes into force, unless the official administrator's appointment is sooner terminated by:
- (a) resignation;
  - (b) the official administrator's ceasing to be licensed pursuant to *The Trust and Loan Corporations Act*; or
  - (c) an order of the Lieutenant Governor in Council removing the official administrator from office.
- (3) Where the appointment of an official administrator mentioned in subsection (2) is terminated, the administration of any estates mentioned in subsection (2) shall be carried on to completion by the Public Trustee without any further order or grant of the court, and for that purpose:
- (a) all real and personal property belonging to the estates being administered by the official administrator vest in the Public Trustee on the day of the termination; and
  - (b) the official administrator shall hand over to the Public Trustee on the day of the termination all property that is capable of delivery and all documents, records, accounts, letters and papers relating to the estate or the administration of the estate that are in the possession of the official administrator or in the possession of some person on behalf of the official administrator.
- (4) Where property is vested in the Public Trustee pursuant to subsection (3), the name of the Public Trustee is deemed to be substituted for the name of the former official administrator in all documents and instruments that relate to the estate to which the property belongs and in which the

name of the former official administrator appears, and no registration is required to give effect to that substitution.

(5) For the purposes of every land titles office, registry office and other public office in Saskatchewan, every officer who administers one of those offices and every transaction carried out in any of those offices, a vesting of property in the Public Trustee pursuant to subsection (3) is deemed to be a legal and valid transfer of the real and personal property that belongs to the estate and stands in the name of the former official administrator or was vested in the former official administrator.

(6) Where property is vested in the Public Trustee pursuant to subsection (3), it is not necessary:

(a) to register, file or issue any document or to make any entry showing the transfer and vesting of the property;

(b) in the case of lands governed by *The Land Titles Act*:

(i) to have certificates of title issued in the name of the Public Trustee; or

(ii) to have mortgages, charges, encumbrances or other documents transferred to the name of the Public Trustee;

(c) to recite or set out the transfer or vesting in any instrument or document in which the Public Trustee deals with the property; or

(d) to pay any fees in connection with the transfer and vesting of the property.

(7) Where the accounts in an estate have not been passed immediately prior to the vesting of the estate in the Public Trustee pursuant to subsection (3), the Public Trustee shall, immediately after the vesting, apply to the court to pass the accounts in the estate.

(8) The former official administrator is a party to an application pursuant to subsection (7) and is entitled to claim compensation and reimbursement for conducting the administration prior to the vesting of the estate in the Public Trustee.

(9) The Public Trustee shall pay the compensation and reimbursement of the former official administrator out of the proceeds of the estate.

(10) During the month of January in each year, an official administrator mentioned in subsection (2) shall furnish the minister with a detailed statement, verified on oath, of the fees received by the official administrator for the preceding year ending on December 31.

(11) The Lieutenant Governor in Council may make regulations respecting any matter governed by this section.

#### Neglected property of deceased persons

"133(1) Where it is brought to the attention of the official administrator that a person has died and the person's executors or next of kin have not taken possession of the person's real and personal property, the official administrator shall take possession of that property for the purpose of preserving and protecting it.

(2) Pending the grant of letters probate or letters of administration, as the case may be, the official administrator has all the powers of an executor or administrator with respect to the property mentioned in subsection (1).

#### Grant of administration to official administrator

"134(1) Where no application for letters probate or letters of administration is made within one month after the death of a person, the court may, on the application of the official administrator, grant letters of administration with respect to the real and personal property of that person to the official administrator.

(2) Where letters of administration are granted to the official administrator:

(a) the official administrator is to be described in the letters in that capacity; and

(b) the official administrator is deemed to be acting in that capacity when acting pursuant to the letters.

(3) Letters of administration granted to the official administrator may at any time be revoked on the application of:

(a) any executor applying for letters probate; or

- (b) any next of kin or any domiciliary executor or administrator of the deceased applying for letters of administration.
- (4) Subject to subsection (5), after the expiration of two years from the date of the grant of letters of administration to the official administrator, any person who is interested in the estate as beneficiary or creditor may require the official administrator to pass the accounts of the administration before a judge.
- (5) Subsection (4) does not apply to estates with a value of \$5,000 or less.

Security by official administrator

"135 The official administrator is not required to furnish security as administrator of any estate.

Official administrator required to act

- "136(1) After the expiry of one month from the death of a person who leaves property, any person who is interested in the estate may, by written notice, require the official administrator to apply for letters of administration.
- (2) Subject to subsection (3), on receiving a notice pursuant to subsection (1), the official administrator shall apply for letters of administration.
- (3) On an application by the official administrator, the court may require a person who gives a notice pursuant to subsection (1) to deposit with the official administrator an amount that the court considers sufficient to cover the costs, charges and expenses of the official administrator.

Intestacy where estate is under \$5,000

- "137(1) Subject to any order made pursuant to section 105, the court may, on the application of the official administrator, order that the official administrator shall administer an estate as if letters of administration were granted but without a formal grant being made, where:
  - (a) the deceased person does not leave a will; and
  - (b) the value of the estate of the deceased does not exceed \$5,000.
- (2) An application pursuant to subsection (1) may be made:
  - (a) after the expiration of 60 days after the death of the person; or
  - (b) earlier than clause (a) provides if ordered by a judge.
- (3) An application pursuant to subsection (1) may be made only if no other person has applied for and been granted letters of administration.
- (4) On request, the local registrar shall give to the official administrator a certificate with respect to the granting of an order pursuant to this section, stating:
  - (a) the effect of the order; and
  - (b) the date of death of the deceased.
- (5) Unless an order pursuant to subsection (6) is obtained, where the official administrator becomes the administrator of an estate pursuant to this section, the official administrator:
  - (a) shall advertise for claims once in a newspaper that is published weekly or semi-weekly at or near the last place of residence of the deceased; and
  - (b) after the expiration of two months from the date of publication of the advertisement, shall proceed to distribute the estate, having regard only to the claims of which the official administrator then has notice.
- (6) The official administrator may apply *ex parte* to the court for an order dispensing with publication of an advertisement pursuant to subsection (5).

Remuneration

- "138(1) The Lieutenant Governor in Council may, by regulation, fix the remuneration to be paid to the official administrator for the administration of an estate or the performance of duties pursuant to section 133 or 137.
- (2) On an application, made *ex parte* or on any notice that the court may direct, by the official administrator or any person interested in the estate, a judge may increase or decrease the amount of the remuneration to be paid to the official administrator.

Common fund

"139 The Public Trustee may place moneys received by the Public Trustee as official administrator in the common fund mentioned in section 47 of *The Public Trustee Act*.

"MISCELLANEOUS

Production of testamentary documents

"140(1) Whether or not an action or other proceeding is pending in the court with respect to a testamentary matter, the court may, on application, order any person to produce and bring before the local registrar, or otherwise as the court directs, any document that is or purports to be testamentary and that is shown to be in the possession or under the control of that person.

(2) If it is not shown that a document described in subsection (1) is in the possession or under the control of the person mentioned in that subsection, but it appears that there are reasonable grounds for believing that the person has knowledge of it, the court may direct the person to attend for the purpose of being examined before the local registrar or in open court or on interrogatories respecting the document.

(3) A person described in subsection (1) or (2):

(a) is bound to answer all questions or interrogatories and, if so ordered, to produce and bring in the document; and

(b) is subject to the same process of contempt, in case of default in not attending or in not answering the questions or interrogatories or in not bringing in the document, as the person would have been subject to if the person had been a party to an action in the court and had made the same default.

Jury trials

"141(1) The court may, on application, order that a question of fact arising in a proceeding with respect to a testamentary matter be tried by a jury before a judge of the court.

(2) Where a question of fact is to be tried by a jury before a judge of the court pursuant to subsection (1):

(a) the question must be reduced into writing; and

(b) at the trial, the jury must be sworn to try the question and give a true verdict on it according to the evidence.

Deposit of wills

"142(1) The local registrar's office shall be a depository for the wills of living persons given to the local registrar for safe keeping, and all persons may deposit their wills there, in accordance with the rules of court and on payment of the fees prescribed in the regulations.

(2) A lawyer retiring from practice, the personal representative of a deceased lawyer, a trust corporation that has ceased to be licensed pursuant to *The Trust and Loan Corporations Act* or the liquidator or receiver of a trust corporation may deposit with the local registrar for safe keeping any will in the custody of the lawyer, personal representative or trust corporation without specific authority from the testator.

(3) The local registrar shall accept for safe keeping any will tendered for that purpose pursuant to subsection (2).

(4) Where a will deposited pursuant to subsection (2) is withdrawn from the custody of the local registrar, the person who withdraws the will shall pay to the local registrar the fee prescribed in the regulations".

R.S.S. 1978, c.S-66 repealed

10 ***The Surrogate Court Act* is repealed.**

Transitional - jurisdiction of court

11 Where, by any law, statute or custom, any jurisdiction, duty, power or authority was conferred or

imposed on the Surrogate Court for Saskatchewan, on the judges of that court or on any one of them, that jurisdiction, duty, power or authority:

- (a) is deemed to be conferred or imposed on the judges of Her Majesty's Court of Queen's Bench for Saskatchewan; and
- (b) shall be exercised or carried out by the judges of Her Majesty's Court of Queen's Bench for Saskatchewan in as full and ample a manner as it was exercised or carried out by the judges of the Surrogate Court for Saskatchewan before the coming into force of this Act.

Transitional - references to Surrogate Court, etc.

12 Unless the context requires otherwise:

- (a) a reference in any other Act, regulation, rule, order, bylaw, agreement or other instrument or document to the Surrogate Court for Saskatchewan or to a judge of that court is deemed to be a reference to Her Majesty's Court of Queen's Bench for Saskatchewan or to a judge of that court, as the case may be; and
- (b) a reference in any other Act, regulation, rule, order, bylaw, agreement or other instrument or document to the Registrar of the Surrogate Court for Saskatchewan or to a local registrar of that court is deemed to be a reference to the registrar or a local registrar, as the case may be, of Her Majesty's Court of Queen's Bench for Saskatchewan.

Transitional - proceedings continued

13(1) Where, on the coming into force of this Act, any cause, action, issue, proceeding or matter is pending in the Surrogate Court for Saskatchewan:

- (a) the cause, action, issue, proceeding or matter is continued before Her Majesty's Court of Queen's Bench for Saskatchewan;
- (b) any judge dealing with the cause, action, issue, proceeding or matter shall, in his or her capacity as a judge of Her Majesty's Court of Queen's Bench for Saskatchewan, continue to deal with it; and
- (c) subject to section 16, all documents subsequently required to be filed in, or in connection with, the cause, action, issue, proceeding or matter shall be styled "In the Queen's Bench".

(2) On the coming into force of this Act, the records and files of the Surrogate Court for Saskatchewan, whether concluded or not, become the records and files of Her Majesty's Court of Queen's Bench for Saskatchewan.

Transitional - cases referred back on appeal

14(1) A matter described in subsection (2) shall be dealt with by Her Majesty's Court of Queen's Bench for Saskatchewan as though the matter had originally been before that court.

(2) Subsection (1) applies to a matter that:

- (a) was before the Surrogate Court for Saskatchewan before the coming into force of this Act; and
- (b) as a result of an appeal:
  - (i) was, before the coming into force of this Act, referred back to the Surrogate Court for Saskatchewan to be dealt with further; or
  - (ii) would, but for this Act, have been referred back to the Surrogate Court for Saskatchewan to be dealt with further.

Transitional - appeals

15(1) Where a right to appeal from a decision or order of the Surrogate Court for Saskatchewan or a judge of that court exists before the coming into force of this Act, the right to appeal and any procedure relating to the appeal continue to exist as they existed on the day before this Act comes into force.

(2) Where a right to appeal continued pursuant to subsection (1) is exercised, the court that hears the appeal has the same jurisdiction, rights, powers, privileges and authority to deal with the matter that it had on the day before this Act comes into force.

Transitional - style of cause

16(1) Where any cause, action, issue, proceeding or matter before the Surrogate Court for Saskatchewan is continued pursuant to section 13:

(a) an affidavit styled "In the Surrogate Court for Saskatchewan" that is sworn before the coming into force of this Act shall be accepted for filing in Her Majesty's Court of Queen's Bench for Saskatchewan after the coming into force of this Act; and

(b) an affidavit styled "In the Surrogate Court for Saskatchewan" that is sworn after the coming into force of this Act may be accepted for filing in Her Majesty's Court of Queen's Bench for Saskatchewan if the local registrar is satisfied that it is impossible, or that it would result in undue delay or hardship, to have a properly styled affidavit sworn.

(2) On the application of any person who is interested in a cause, action, issue, proceeding or matter before the Surrogate Court for Saskatchewan that is continued pursuant to section 13, a judge may give directions:

(a) respecting the filing of documents or matters of procedure in cases for which no provision is made by subsection (1) or sections 13 to 15;

(b) for the purpose of removing or minimizing any procedural difficulty arising after the coming into force of this Act.

Transitional - enforcement of orders

17 A judgment or order made in any cause, action, issue, proceeding or matter by the Surrogate Court for Saskatchewan or a judge of that court is, after the coming into force of this Act, conclusively deemed to be a judgment or order made by Her Majesty's Court of Queen's Bench for Saskatchewan and may be enforced in all respects as though it had been made by Her Majesty's Court of Queen's Bench for Saskatchewan.

Transitional - rules of court

18(1) The rules of court with respect to practice and procedure in the Surrogate Court for Saskatchewan that are in force immediately before the coming into force of this Act are continued until they are amended, repealed or replaced pursuant to *The Queen's Bench Act*.

(2) References in section 12.2 and sections 100 to 142 of *The Queen's Bench Act*, as being enacted by this Act, to the rules of court include the rules of court mentioned in subsection (1).

R.S.S. 1978, c.A-26, section 11 amended

19 **Subsection 11(5) of *The Archives Act* is amended by striking out "or, where the surrogate court is concerned, by a judge thereof".**

R.S.S. 1978, c.C-16, section 5.1 amended

20 **Clauses 5.1(1)(e) and (f) of *The Commissioners for Oaths Act* are repealed.**

S.S. 1983-84-85, c.C-43.1 amended

21(1) ***The Court Officials Act, 1984* is amended in the manner set forth in this section.**

(2) **Subsection 3(1) is amended by striking out ", registrar of the Unified Family Court and Surrogate Registrar" and substituting "and registrar of the Unified Family Court".**

(3) **Clause 3(2)(d) is repealed.**

(4) **Clause 11(a) is amended by striking out ", the Surrogate Court".**

R.S.S. 1978, c.C-49 amended

22(1) ***The Crown Administration of Estates Act* is amended in the manner set forth in this section.**

(2) **Subsection 4(1) is amended by striking out "the surrogate court" and substituting "Her Majesty's Court of Queen's Bench for Saskatchewan".**

(3) **Subsection 15(2) is amended by striking out "The surrogate court" and substituting "Her**

Majesty's Court of Queen's Bench for Saskatchewan".

**(4) The Schedule is amended by striking out "the Surrogate Court" wherever it appears:**

**(a) in Form A; and**

**(b) in Form B;**

**and in each case substituting "Her Majesty's Court of Queen's Bench for Saskatchewan".**

R.S.S. 1978, c.D-25 amended

**23(1) *The Dependants' Relief Act* is amended in the manner set forth in this section.**

**(2) Clause 2(1)(b) is repealed and the following substituted:**

"(b) 'court' means Her Majesty's Court of Queen's Bench for Saskatchewan".

**(3) Subsection 14(3) is amended by striking out "surrogate".**

S.S. 1989-90, c.D-25.1, section 31 amended

**24 Subsection 31(1) of *The Dependent Adults Act* is amended by striking out "surrogate".**

S.S. 1990-91, c.F-22.01, section 2 amended

**25 Clause 2(2)(c) of *The Freedom of Information and Protection of Privacy Act* is amended by striking out ", the Surrogate Court for Saskatchewan".**

R.S.S. 1978, c.L-5 amended

**26(1) *The Land Titles Act* is amended in the manner set forth in this section.**

**(2) Clause 166(1)(b) is amended by adding "or section 137 of *The Queen's Bench Act*" after "*The Surrogate Court Act*".**

**(3) Subsection 166(2) is amended by adding "the court or" after "judge of".**

**(4) Clause 172(1)(a) is amended by striking out "Surrogate Court" and substituting "Court of Queen's Bench".**

**(5) Section 173 is amended:**

**(a) by adding "or section 137 of *The Queen's Bench Act*" after "*The Surrogate Court Act*"; and**

**(b) by striking out "surrogate court of the province" and substituting "court or the surrogate court".**

**(6) Clause 259(a) is amended by adding "or section 137 of *The Queen's Bench Act*" after "*The Surrogate Court Act*".**

S.S. 1983, c.L-9.1 amended

**27(1) *The Legal Aid Act* is amended in the manner set forth in this section.**

**(2) Clause 7(f) is amended by striking out "or surrogate".**

**(3) Section 20 is amended by striking out "or surrogate".**

S.S. 1983, c.P-43.1 amended

**28(1) *The Public Trustee Act* is amended in the manner set forth in this section.**

**(2) Clause 31(1)(c) is amended by striking out "Surrogate Court" and substituting "court".**

**(3) Subsection 41(1) is amended by striking out "Surrogate Court" and substituting "court".**

**(4) Subsection 42(1) is amended by striking out "Surrogate Court" wherever it appears:**

**(a) in the portion that precedes clause (a); and**

**(b) in the portion that follows clause (b);**

**and in each case substituting "court".**

**(5) Subsection 42(2) is amended by striking out "Surrogate Court" and substituting "court".**

R.S.S. 1978, c.R-6, section 2 amended

**29 Clause 2(a) of *The Recording of Evidence by Sound Recording Machine Act* is amended:**

**(a) by striking out "the Surrogate Court for Saskatchewan,"; and**

**(b) by striking out "Queen's Bench, Unified Family Court for Saskatchewan or Surrogate**

Court for Saskatchewan" **and substituting** "Queen's Bench or the Unified Family Court for Saskatchewan".

S.S. 1989-90, R-26.1, section 380 amended

30 **Section 380 of *The Rural Municipality Act, 1989* is amended by striking out "*The Surrogate Court Act*" and substituting "*The Queen's Bench Act*".**

S.S. 1990-91, c.S-66.1, section 9 amended

31 **Subsection 9(1) of *The Survival of Actions Act* is amended by striking out "or the Surrogate Court".**

R.S.S. 1978, c.T-2, section 25 amended

32 **Subsection 25(1) of *The Tax Enforcement Act* is amended by adding "or *The Queen's Bench Act*" after "*The Surrogate Court Act*".**

R.S.S. 1978, c.T-23 amended

33(1) ***The Trustee Act* is amended in the manner set forth in this section.**

(2) **Subsection 53(1) is amended by striking out "the surrogate court" and substituting "Her Majesty's Court of Queen's Bench for Saskatchewan".**

(3) **Section 82 is amended:**

(a) **by striking out "the surrogate court" and substituting "Her Majesty's Court of Queen's Bench for Saskatchewan";**

(b) **by renumbering it as subsection (1); and**

(c) **by adding the following subsection after subsection (1):**

"(2) Where an application is made for an order dispensing with the passing of accounts, the judge may, by the same order, grant an allowance pursuant to subsection (1)".

Coming into force

34(1) **Subject to subsection (2), this Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.**

(2) **Section 4 comes into force on the last day of the month in which this Act is assented to.**