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ESTATE ADMINISTRATION ACT

[RSBC 1996] CHAPTER 122

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Part 1 — General**Definitions****1** In this Act:

"administration" includes all letters of administration of the estates of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes;

"common law spouse" means either

(a) a person who is united to another person by a marriage that, although not a legal marriage, is valid by common law, or

(b) a person who has lived and cohabited with another person in a marriage-like relationship, including a marriage-like relationship between persons of the same gender, for a period of at least 2 years immediately before the other person's death;

"court" means the Supreme Court or a judge of the Supreme Court;

"deceased" means the deceased person;

"estate" means

(a) when applied in relation to a person who died before June 1, 1921, personal estate, and

(b) when applied in relation to a person who died on or after that date, both personal estate and real estate;

"intestate" or **"person dying intestate"** means a person owning property dying without a will;

"matters and causes testamentary" includes all matters and causes relating to the grant and revocation of probate of wills or letters of administration;

"Nisga'a citizen" has the same meaning as in the Nisga'a Final Agreement;

"Nisga'a Final Agreement" has the same meaning as in the *Nisga'a Final Agreement Act*;

"Nisga'a law" has the same meaning as in the Nisga'a Final Agreement;

"Nisga'a Lisims Government" has the same meaning as in the Nisga'a Final Agreement;

"proceedings" means a matter or proceeding had or taken within the meaning of section 110 whether according to its exact or intended form or not;

"spouse" includes a common law spouse;

"testator" means the person making a will, whether the person is male or female;

"will" includes codicil and all testamentary instruments of which probate may be granted.

Application of Act

- 2** This Act extends to all persons entitled or acting under a will, codicil or other testamentary instrument

whenever executed.

Part 2 — Grants of Administration

Will or cultural property of Nisga'a citizen

- 2.1** (1) In any judicial proceeding under this Act in which the validity of a will of a Nisga'a citizen, or the devolution of the cultural property of a Nisga'a citizen, is at issue, the Nisga'a Lisims Government has standing in the proceeding as provided in paragraph 117 of the Nisga'a Government Chapter of the Nisga'a Final Agreement.
- (2) In a proceeding to which subsection (1) applies, the court must consider, among other matters, any evidence or representations in respect of Nisga'a laws and customs dealing with the devolution of cultural property as provided in paragraph 119 of the Nisga'a Government Chapter of the Nisga'a Final Agreement.
- (3) As provided in paragraph 120 of the Nisga'a Government Chapter of the Nisga'a Final Agreement, the participation of the Nisga'a Lisims Government in a proceeding to which subsection (1) applies must be in accordance with the applicable Rules of Court and does not affect the court's ability to control its process.
- (4) In this section, "**cultural property**" has the same meaning as in paragraph 115 of the Nisga'a Government chapter of the Nisga'a Final Agreement.

Will or cultural property of treaty first nation members

- 2.2** (1) If the final agreement of a treaty first nation so provides, in any judicial proceeding under this Act in which
- (a) the validity or variation of a will of a treaty first nation member of the treaty first nation, or
 - (b) the devolution of the cultural property of a treaty first nation member of the treaty first nation
- is at issue, that treaty first nation has standing in the proceeding.
- (2) In a proceeding to which subsection (1) applies, the court must consider, among other matters, any evidence or representations in respect of the applicable treaty first nation's laws or customs dealing with the devolution of cultural property.
- (3) The participation of a treaty first nation in a proceeding to which subsection (1) applies must be in accordance with the applicable Rules of Court and does not affect the court's ability to control its process.
- (4) In this section, "**cultural property**", in relation to a treaty first nation, has the same meaning as in the final agreement of the treaty first nation.

Personal estate of intestate vests in court until grant

- 3** From the death of a person dying intestate until administration is granted in respect of the person's estate and effects, the personal estate and effects of the deceased person are vested in the court, subject only to the power of a court of competent jurisdiction to grant administration in respect of them.

Duty of administrator to pay debts

- 4** After the death of a person dying intestate, the administrator appointed by the court must pay the debts due by the deceased person as far as the goods of the person will extend, in the same way that the executor of the person would have been bound if the person had made a will.

Grant effective back to time of death

- 5 For the purposes of this Act, an administrator of the estate of a deceased person is deemed to be administrator as if there had been no interval of time between the death of the deceased and the grant of administration.

Persons to whom administration may be granted

- 6 (1) If a person dies intestate, or if the executor named in a will refuses to prove the will, the court may grant the administration of the estate of the deceased person
- (a) to the surviving spouse of the deceased person,
 - (b) to one or more of the next of kin, or
 - (c) to the surviving spouse of the deceased person jointly with one or more of the next of kin,
- as to the court seems expedient.
- (2) If a person dies possessed of real estate,
- (a) in granting letters of administration or letters of administration with the will annexed, the court must have regard to the rights and interests of persons interested in the real estate, and
 - (b) the heirs at law and devisees of the real estate, if not of the next of kin, are equally entitled to the grant with the next of kin.
- (3) If the executors named in a will refuse to prove the will, the administration to be granted by the court must be administration with the will annexed, and the will of the deceased expressed in the testament must be performed and observed.
- (4) An administrator appointed under this section
- (a) has the same powers as an executor to demand or to recover by an action or otherwise payment of debts due to the deceased, and to administer the person's estate, and
 - (b) has in respect of them the same responsibilities as an executor, if appointed, would have had.

Discretionary power in appointment of administrator

- 7 (1) This section applies if
- (a) a person dies intestate,
 - (b) a person leaves a will, but without having appointed an executor willing and competent to take probate, or
 - (c) the executor at the time of the death of the person resides out of British Columbia
- and it appears to the court to be necessary or convenient by reason of the insolvency of the estate of the deceased or of other special circumstances to appoint some person to be the administrator of the estate of the deceased, or part of it, other than the person who, but for this section, would have been entitled to a grant of administration.
- (2) In the circumstances referred to in subsection (1), the court may, in its discretion, appoint a person it thinks fit to be the administrator, on the person giving security the court must direct.
- (3) An administration under subsection (2) may be limited or on condition or otherwise, as the court thinks fit.

Administration while legal proceedings pending

- 8 (1) Pending an action touching the validity of a will, or for obtaining, recalling or revoking a probate or a grant of administration, the court may appoint an administrator of the estate of the deceased person.
- (2) An administrator appointed under subsection (1)
- (a) has all the rights and powers of a general administrator, other than the right of

distributing the estate, and

(b) is subject to the control of the court, and must act under its direction.

Representation for deceased person in legal proceedings

9 (1) If, in an action or other proceeding before the court, it appears to the court that a deceased person who was interested in the matters in question has no legal personal representative, the court may either

(a) proceed in the absence of a representative, or

(b) appoint a person to represent the estate for the purposes of the action or proceeding, on the notice to the persons the court thinks fit, either specially or generally, by public advertisement or otherwise.

(2) An order made by the court as referred to in subsection (1) and every order consequent on it, binds the estate of the deceased person in the same manner as if the deceased's legal personal representative had been a party to the action or proceeding and had appeared and submitted the deceased person's interests to the protection of the court.

Remuneration to administrators and receivers appointed pending legal action

10 The court may direct that administrators and receivers appointed pending actions involving matters testamentary must receive out of the personal and real estate of the deceased reasonable remuneration the court thinks fit.

Special administration if executor out of jurisdiction

11 (1) This section applies if

(a) the executor to whom probate of a will has been granted, or

(b) the administrator to whom administration of an estate has been granted,

is residing outside British Columbia at the end of 12 calendar months from the death of the deceased.

(2) A creditor, spouse, next of kin or legatee may apply to the court for an order under subsection (3), on an affidavit setting out

(a) the capacity in and the grounds on which the applicant applies, and

(b) that delay is being caused in the administration of the estate of the testator or intestate, owing to the absence of the executor or administrator from British Columbia.

(3) On application under subsection (2), the court may grant to the applicant special administration of the estate of the deceased person, either general or limited, and on the terms as to notice and security as the court thinks fit.

(4) Subsections (1) to (3) do not abridge the powers of the court as defined in preceding sections.

(5) If an executor capable of acting returns to British Columbia and becomes resident in British Columbia when an application under subsection (2) is pending, the executor must be made a party to the application, and the costs incurred by granting administration under subsection (3) are in the discretion of the court.

(6) A person to whom administration is granted under subsection (3) has the same powers as an administrator appointed pending the minority of the next of kin.

(7) Pending an application for the grant of special administration under subsection (3) the court may appoint a person to collect any debts or effects due to the estate and to give discharges for them.

(8) A person appointed under subsection (7) must give security as the court orders for the proper discharge of the person's duties.

Administration if sole executor is a minor

- 12** (1) If a minor is sole executor under a will,
- (a) administration with the will annexed must be granted to the guardian of the minor or to a person the court thinks fit, until the minor reaches age 19, and
 - (b) when the minor reaches age 19 but not before, probate of the will must be granted to him or her.
- (2) Administration granted under subsection (1) (a) may be
- (a) either general or limited, and
 - (b) on terms the court may direct.

Administration if next of kin are all minors

- 13** (1) If the next of kin of a person dying intestate is or are under age 19, the court may grant administration to a person the court thinks fit during the minority of the next of kin.
- (2) Administration granted under subsection (1) may be
- (a) either general or limited,
 - (b) either solely or jointly with another person, and
 - (c) on the terms as to security and otherwise as the court may direct.

Exclusive authority of administrator

- 14** After a grant of administration until the grant has been revoked, no person other than the person to whom administration is granted may institute an action or otherwise act as executor of the deceased, as to the estate comprised in or affected by the grant.

Subsequent grants of administration

- 15** (1) All second and subsequent grants of probate or administration must be made in the registry where the original will is deposited or the original grant of probate or administration was made.
- (2) For a second or subsequent grant of probate or administration made or to be made in a registry, it need not appear by affidavit that the testator or person dying intestate had a fixed place of abode in the district, county or registry in which the application is made.

Person granted administration must provide security

- 16** (1) A person to whom administration is granted must enter into a bond, together with one or more surety or sureties as the court thinks fit, made in favour of the person and drawn in a form as may be directed by the court or by the Supreme Court Civil Rules, conditioned for
- (a) the making of a true inventory and account, including the disposition of the estate which has come into the hands of the administrator or under the control of the administrator under the grant, and
 - (b) collecting and administering the estate of the deceased.
- (2) Nothing in this section requires an official administrator acting within the limits within which the administrator holds office to give security other than that otherwise required by law.
- (3) Bonds must be in a penalty of double the amount under which the estate of the deceased is sworn, unless the court directs them to be reduced.
- (4) The court may direct that more than one bond must be given, so as to limit the liability of a surety.
- (5) Instead of the bond with one or more surety or sureties, the court may direct that the bond or policy of guarantee of an incorporated company empowered to grant guarantees, bonds, covenants or policies for due and faithful accounting may be accepted as security.
- (6) All the provisions with reference to the bonds referred to in subsections (1) to (5) apply to the

security to be given under subsection (5).

Court may dispense with requirement for bond

17 (1) The court may dispense with a bond

(a) if it is sworn that

(i) there are no debts for which the estate is or may be liable,

(ii) the estate is of small value, or

(iii) the administrator is the beneficiary, or

(b) if all parties, who are or may be beneficially interested in the estate, consent to this in writing.

(2) If an order dispensing with a bond contains a declaration that it has been found to the satisfaction of the court that the estate is of a net value as defined in section 85 of \$65 000 or less,

(a) the declaration is binding on every person, whether or not under legal disability entitled to share in the estate in accordance with Part 10 of this Act, and

(b) an office copy of the order is at all times and on behalf of all persons, and whether for the purposes of this Act or otherwise, admissible as evidence of the order of which it purports to be a copy without any further proof of it.

Court may assign bond

18 (1) On application by summons and on being satisfied that the condition of a bond has been broken, the court may order the registrar or person to whom the bond has been made under the order of the court to assign the bond to a person named in the order.

(2) The person to whom the bond is assigned, the executor or administrator of that person

(a) may then sue on the bond in his or her own name or as the executor or administrator, as the case may be, and

(b) is entitled to recover on the bond as trustee, or for the benefit of all persons interested, the amount recoverable for a breach of the condition of the bond.

Cancellation of bond after final accounting

19 The court may direct that the bond or other security provided by an administrator be delivered up to be cancelled if

(a) the administrator has passed the final account and has paid into court or distributed the whole of the property of the deceased that has come into the administrator's hands, and

(b) notice has been given to all the beneficiaries in a manner the court approves.

Administration of estates not greater than \$25 000 in value

20 (1) This section applies to an estate that has a value not greater than \$25 000.

(2) It is not necessary for the official administrator or another person to be appointed administrator by order of the court.

(3) The official administrator or a person competent to take out administration has the same power and authority to administer the estate as if the person had been appointed by order of a court to administer it, on satisfying the registrar of the court by filed affidavit that

(a) the person is competent to take out administration of the estate, and

(b) the value of the estate is not greater than \$25 000.

(3.1) In an application filed under this section,

(a) section 40 (3) does not apply, and

- (b) the official administrator is not required to satisfy the registrar that the deceased has no relatives who are
 - (i) entitled to share in the distribution of the estate of the deceased, and
 - (ii) ready and competent to take out letters of administration.
- (4) If the official administrator or another person has become empowered to administer an estate under this section,
 - (a) letters of administration or letters of administration with the will annexed must be issued to that person, and
 - (b) so long as the person continues to act as administrator of the estate, this section does not apply to empower another person to administer the same estate.
- (5) The bond which a person to whom administration is granted under this section would otherwise be required to enter into under section 16 (1) may be entered into with the sureties the registrar thinks fit.
- (6) The registrar may dispense with a bond if
 - (a) it is sworn that there are no debts for which the estate is or may be liable or that the administrator is the beneficiary, or
 - (b) all parties who are or may be beneficially interested in the estate consent to this in writing.
- (7) The provisions of section 112 applicable to the court apply to a registrar acting under this section.

Part 3 — Revocation and Renunciation

Revocation of temporary grants

- 21** (1) This section applies if, before the revocation of a temporary administration, proceedings have been commenced by or against an administrator to whom the grant of a temporary administration has been made.
- (2) The court in which the proceedings are pending may, after revocation, order that
- (a) a suggestion be made on the record of the revocation of the administration and of the grant of probate or administration which has been consequently made, and
 - (b) the proceedings 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 terms the court may direct.

Payments made before revocation valid

- 22** (1) If a probate or administration is revoked, all payments made in good faith to an executor or administrator under the probate or administration before revocation are a legal discharge to the person making them.
- (2) The executor or administrator who has acted under a revoked probate or administration may retain and reimburse himself or herself for any payments that
- (a) were made by the executor or administrator, and
 - (b) might have been lawfully made by the person to whom probate or administration is afterwards granted.

Persons making payment protected

- 23** All persons in good faith making or permitting to be made a payment or transfer on a probate or letters of administration granted in respect of the estate of a deceased person must be indemnified and protected in so doing, despite a defect or irregularity affecting the validity of the probate or letters of administration.

Rights of renouncing executor

- 24** (1) If a person renounces probate of the will of which the person is appointed executor, the rights of the person in respect of the executorship wholly cease.
- (2) In the circumstances referred to in subsection (1), the representation to the testator and the administration of the testator's estate must and may, without any further renunciation, devolve as if the person had not been appointed executor.

Forfeiture of executorship by failure to take probate

- 25** (1) If
- (a) an executor appointed in a will survives the testator and dies without having taken probate, or
 - (b) an executor named in a will is cited to take probate and does not appear,
- the right of that person in respect of the executorship wholly ceases.
- (2) In the circumstances referred to in subsection (1), the representation to and the administration of the testator's estate devolves, without formal renunciation, as if that person had not been appointed executor.

Part 4 – Discharge of Personal Representatives**Personal representative to include trustee**

- 26** In sections 27 to 32, "**personal representative**" includes, if a personal representative is also a trustee of the estate or part of the estate under administration, the personal representative and trustee.

Right to apply for discharge

- 27** (1) A personal representative of a deceased person may at any time apply to the court to be discharged from office, whether as personal representative alone or as personal representative and trustee.
- (2) A personal representative may make an application under subsection (1)
- (a) whether the person has been appointed executor under a will or administrator by the court,
 - (b) either alone or jointly with another person,
 - (c) either before or after a grant of letters probate or letters of administration,
 - (d) whether the personal representative is a trustee of the estate or part of it or not, and
 - (e) whether the personal representative has dealt or partially dealt with the estate or a portion of it or not, or has to any extent acted in the exercise of a trust or power conferred on or vested in the personal representative or not.

Procedure on application

- 28** (1) An application under section 27 may be made without notice to other persons, by notice of application supported by an affidavit, setting out the circumstances and showing what parties are interested in the estate under administration or to which the trusts apply.
- (2) On the hearing of the application, if the court thinks it expedient, the court may
- (a) give directions as to the parties to be served with a notice of the further hearing of the application,
 - (b) direct the manner of giving the notice, whether personally or by way of substituted service or by any manner of service, outside British Columbia or otherwise,

- (c) limit of time of the notice, and
- (d) adjourn the hearing of the application.

Order for discharge of personal representative

29 (1) This section applies if

- (a) the accounts of the personal representative applying for discharge have been passed under section 99 of the *Trustee Act*, and the court is satisfied that no further passing of accounts is necessary, or
- (b) all parties agree.

(2) On a person or trust company being appointed under this Part in the place of the personal representative applying for discharge, and on compliance with section 31, the personal representative applying for discharge is, on the order of the court to that effect, discharged as personal representative.

(3) A person discharged under subsection (2) is released from all actions, claims and demands for or concerning his or her office as personal representative, except in respect of undisclosed acts, neglects, defaults or accounts, or dishonest or unlawful conduct, or breach of trust while holding office as the personal representative.

(4) The production of an office copy of the order discharging the personal representative and approving of the passing of the accounts of that personal representative is, except as stated above, an absolute bar to any such action, claim or demand.

Duty to appoint new personal representative

30 (1) On granting the discharge of the personal representative applying for discharge, the court

- (a) must appoint some other person or trust company consenting to act to be administrator or administrator with the will annexed, as the case may be, in the place of the personal representative being discharged, and
- (b) may also appoint that other person or trust company to be a trustee in the place of the personal representative being discharged, if the person or trust company is a trustee in which trusts are vested.

(2) An appointment under subsection (1) is not required if

- (a) the administration of the estate is completed, or
- (b) the court considers for any other reason that a new personal representative is unnecessary.

(3) If a person other than a trust company is appointed by an order under subsection (1), the court must establish the security to be given by the person, and the appointment must not take effect until security is given in accordance with the order.

Vesting of estate in new personal representative

31 (1) The personal representative applying for discharge must execute any assurance or deed or do any thing required for vesting the estate or part of it in a person or trust company appointed under this Part in the place of that personal representative, whether the vesting is in the person or trust company alone, or jointly with a personal representative continuing to act under a former appointment.

(2) For the purpose of an act relating to the registration of title to land, the personal representative applying for discharge is deemed to convey under a power conferred by this Act.

Powers and duties of new personal representative

32 A person or trust company appointed under this Part in the place of a personal representative applying for discharge

- (a) has and may exercise the same powers, authorities and discretions in respect of the estate or trust as were had or exercisable by the personal representative applying for discharge, and
- (b) must perform the same duties and is subject to the same obligations and control as were by law imposed on the personal representative applying for discharge.

Part 5 — Official Administrators

Definition

- 33** In this Part, "**estate**" means real and personal estate of every kind, including messuages, tenements and hereditaments, corporeal and incorporeal, goods, chattels and credits of every kind and description, whatever the estate or interest in it may be, and whether legal or equitable, together with all paths, passages, ways, watercourses, water records, water rights, liberties, privileges, easements, mines, minerals, quarries, trees and timber on it, under it or appertaining to it, and mineral claims for which Crown grants have been issued.

Appointment of official administrator

- 34** (1) The Lieutenant Governor in Council may appoint the Public Guardian and Trustee or another person to act as official administrator for all of British Columbia or for a part of British Columbia specified in the appointment.
- (2) Each official administrator is a corporation sole with an official seal and having the rights, powers, duties and liabilities relating to an official administrator.
- (3) If necessary, the Lieutenant Governor in Council may by order make provision for the substitution of one official administrator for another and for consequent vesting of property and transfer of rights, liabilities, powers and duties.

Deputy official administrators

- 35** (1) An official administrator may appoint one or more deputy official administrators and must specify the powers to be exercised and the duties to be performed by each deputy official administrator.
- (2) In an appointment under subsection (1), the official administrator may limit the area of British Columbia within which a deputy official administrator may exercise powers and perform duties to a smaller area than the area for which the official administrator is appointed.
- (3) In addition to the powers conferred under subsection (1), if there is a vacancy in the office of the official administrator, a deputy official administrator has the power to perform any act of the official administrator.
- (4) The exercise by a deputy official administrator of a power authorized under this section that the deputy purportedly exercises in accordance with this section is deemed in the absence of proof to the contrary to have been properly and validly exercised.

Delegation by official administrator

- 36** An official administrator may delegate to any person a power, duty or function conferred or imposed on the official administrator by an enactment.

Official administrator must provide security

- 37** Before entering on the duties of office, a person appointed as official administrator must provide security, in the amount, manner and form the Lieutenant Governor in Council directs, for
- (a) the due performance of the duties of office, and
 - (b) the due accounting for and payment of all money that comes into the person's possession

or control by virtue of the office and employment.

Transfer of interest to new official administrator

38 (1) If an official administrator dies, resigns or is removed,

(a) the person's successor in office, immediately on appointment and by virtue of it, becomes administrator of the estate of every deceased person that has been left unadministered by the former official administrator,

(b) all the estate vested in the former official administrator vests in the successor immediately on the successor's appointment to the office, and

(c) immediately on appointment and by virtue of it, the successor becomes entitled to the possession of all books, accounts, letters, papers and documents of every description used by or in the possession or under the control of the former official administrator relating to an estate administered by the former official administrator or to the office of official administrator.

(2) If a deputy official administrator dies, resigns or is removed,

(a) the official administrator for which the deputy official administrator acted immediately becomes administrator of the estate of every deceased person that has been left unadministered by the deputy official administrator,

(b) the estate vested in the former deputy official administrator vests in the official administrator immediately on the death, resignation or removal of the deputy official administrator, and

(c) the official administrator immediately becomes entitled to the possession of all books, accounts, letters, papers and documents of every description used by or in the possession or under the control of the deputy official administrator relating to an estate administered by the deputy or to the office of deputy official administrator.

(3) On request in writing of the Attorney General, an executor or administrator of the estate of a deceased official administrator or deputy official administrator and an official administrator or deputy official administrator who resigns or is removed must promptly deliver over to the successor or the official administrator, or to another person the Attorney General may appoint to receive them, all books, accounts, letters, papers and documents of every description in the person's possession or under the person's control that relate to an estate administered by the official administrator or deputy official administrator or to that official's office.

Application to compel performance of official administrator

39 (1) If the official administrator

(a) neglects or refuses to do an act in relation to the estate of a deceased person as administrator of it,

(b) neglects or refuses to do an act that, under this Act, the official administrator ought to do in relation to any estate, or

(c) does or threatens to do an act in breach of the person's duty as administrator,

a person interested as a creditor, spouse, next of kin, legatee, heir at law, devisee or otherwise in the estate may apply to the court out of which the grant of administration issued, on affidavit without notice to any other party, for a summons calling on the official administrator to show cause before the court why the administrator should not do or abstain from doing the act.

(2) An order under subsection (1) may be granted subject to conditions for giving security for costs the court may impose.

(3) On the return of the summons, the court may make an order on it as the court considers necessary or expedient, and may make an order as to the payment of costs by the complainant, or the official

administrator personally or out of the estate, as in the discretion of the court seems just.

Application by official administrator to administer estate

40 (1) This section applies if an official administrator receives information of the death of a person who

- (a) had at the time of death the person's fixed place of residence in the part of British Columbia for which the official administrator is appointed to act, or
- (b) had no fixed place of abode in or resided out of British Columbia, but had at the time of death real or personal estate in the part of British Columbia for which the official administrator is appointed to act.

(2) In the circumstances referred to in subsection (1), the official administrator may make an application to the court for a grant of administration of the estate of the deceased if

- (a) the person died intestate as to the whole or a portion of the person's estate, or leaving a will, but without having appointed an executor willing and competent to take out letters probate, or
- (b) the executor named by the deceased is resident outside British Columbia at the time of the death of the deceased.

(3) A grant of administration must not be made

- (a) except on affidavits of the same nature, as nearly as possible, as those required for a grant of letters of administration in other cases, or
- (b) unless the court is satisfied that
 - (i) no official administrator for another part of British Columbia has received a grant of administration of the estate, and
 - (ii) the deceased has no relatives in British Columbia entitled to share in the distribution of the estate of the deceased and ready and competent to take out letters of administration.

Appointment if next of kin renounce

41 (1) The official administrator may make application for administration of the estate of a deceased person if the surviving spouse, all the heirs and next of kin of the deceased person who are in British Columbia and are competent to take out letters of administration renounce or request that an administrator of the estate be appointed.

(2) Despite subsection (1), on the application of a person who has the consent of every heir who is competent to apply for administration of an estate, the court may appoint the applicant as administrator of the estate instead of the official administrator.

Court must not make order

41.1 If the official administrator does not make an application under section 40 (2) or 41 (1), the court must not make an order appointing the official administrator as administrator of the estate, except with the prior written consent of the official administrator.

Powers of official administrator

42 (1) If administration of an estate is granted to an official administrator, the official administrator

- (a) is the administrator of the estate of the deceased in British Columbia,
- (b) so far as it is not otherwise provided by this Act, has the rights, duties and liabilities of an administrator with regard to the estate of the deceased, not only in the county or counties, or part of a county, for which the official administrator is appointed official administrator, but elsewhere in British Columbia.

(2) In the circumstances referred to in subsection (1), the official administrator

(a) must hold the estate of the deceased on trust to lease or sell, call in and convert the same into money at the times, in the manner, on the terms for cash or credit with power to give options, as the official administrator in his or her discretion believes advisable,

(b) may postpone the conversion of the estate of the deceased or a part of it and may retain a portion of it in the form in which it is at the date of the death of the deceased, whether or not it is in the form of an investment in which a trustee is authorized to invest under the *Trustee Act*, and whether or not there is a liability attached to a portion of the property, for the length of time as the official administrator in his or her discretion believes advisable,

(c) must not be held responsible for a loss that may happen to the property by reason of exercising, in good faith and with due diligence, the powers conferred by this section, and

(d) in exercising the power of sale conferred by this section, may, in his or her discretion, mortgage all or a part of the property of the deceased.

(3) An official administrator may distribute all or part of the estate of a deceased to the heirs of the deceased in specie as the official administrator in his or her discretion may decide.

Payment of duties

43 The estate dealt with by a grant of administration to an official administrator is liable and subject to the payment of whatever duties may be payable in respect of probates of wills and letters of administration granted or issued under the laws in force at the time of the grant.

Repealed

44–46 [Repealed RS1996 (Supp)-122-2.]

Repealed

47 [Repealed 1999-6-7.]

Payments out of estate funds

48 If a person is entitled to receive money out of the fund standing at the credit of an estate administered by an official administrator,

(a) the official administrator appointed to administer the estate must certify to a voucher in favour of the person, and

(b) the Public Guardian and Trustee must promptly satisfy the claim out of the funds standing at the credit of the estate on which the claim is made.

Share of minor in estate

49 (1) The share of a minor in the funds of an estate administered by an official administrator must be paid, on distribution of the estate, to the Public Guardian and Trustee in trust for the minor.

(2) Subsection (1) does not apply if the will of the deceased provides otherwise.

Insolvent estate

50 In administering an insolvent estate within the meaning of section 100, an official administrator must comply with Part 11.

Powers exercisable before grant of administration

51 (1) If an official administrator believes, after investigation as the official administrator considers necessary, that

(a) a person has died, and

(b) the official administrator will be required to bring an application for letters of

administration of the estate of the deceased person under section 40 or 41, the official administrator may arrange the funeral of the deceased person, and make inventory of, take possession of, safeguard and dispose of the real and personal estate of the deceased person as though the official administrator were the administrator of the estate of the deceased person under a grant of letters of administration.

(2) This section does not relieve the official administrator from making application for a grant of letters of administration under section 40 or 41.

Right of official administrator to release

52 On winding up an estate in the official administrator's charge and handing over the property that may be in the official administrator's hands to the person or persons entitled to it, an official administrator has the same right to require a release and discharge as an administrator or another trustee has under the same circumstances.

Probate or administration despite previous order

53 (1) Despite the administration of an estate having been granted to an official administrator, the court that granted the letters of administration may grant probate of the will or letters of administration of the estate of the deceased person to any person entitled to it, in the manner and subject to the limitations or conditions the court thinks proper.

(2) An application for a grant under subsection (1) must not be made until 4 days after notice in writing of the intention to apply for the grant has been left at the office of the official administrator.

(3) Immediately on the grant of probate or letters of administration, all the interests, powers, rights and duties of the official administrator in regard to the estate of the deceased person whose estate is affected by the grant cease, except the rights conferred by subsection (4).

(4) The portion of the estate of the deceased person left unadministered by the official administrator vests in the executor or administrator obtaining the grant of probate or letters of administration, subject to

(a) this subsection and subsection (3), and

(b) the allowance and payment of all money due for the commission of the official administrator and the necessary outlay, disbursements, costs, charges and expenses in relation to the estate, including all costs of appearing on the application for the probate or letters of administration and consequent on them.

Official administrator's remuneration

54 (1) An official administrator is entitled to receive by way of remuneration a commission, according to a scale to be set by the Lieutenant Governor in Council, in addition to any other allowance for expenses actually incurred to which an administrator may by law be entitled.

(2) In addition to the commission to which the official administrator is entitled under subsection (1), an official administrator who is a member in good standing of the Law Society of British Columbia is entitled to receive additional remuneration as may be set by the Lieutenant Governor in Council by way of fees for professional legal services necessary to the administration of the estate and performed by the official administrator.

(3) Unless otherwise provided by order of the Lieutenant Governor in Council, if the person holding the office of official administrator is an employee within the meaning of the *Public Service Act*, the person must not receive a commission by way of remuneration under subsection (1) or (2).

(4) An official administrator referred to in subsection (3) must certify, for each estate administered by the person as official administrator, an amount equivalent to the commission and remuneration to which the person would otherwise be entitled under subsections (1) and (2), and that amount must then be paid from the money at the credit of the estate into the consolidated revenue fund for the use

of the government.

(5) Nothing in this section authorizes an official administrator to deduct a commission or allowance before paying the money to the Public Guardian and Trustee.

Regulations

55 The Lieutenant Governor in Council may make regulations for carrying out this Part.

Part 6 — Proof of Wills in Solemn Form

Effect of proof in solemn form

56 A will, proved in solemn form in contested proceedings before the court, is conclusive evidence of its validity and contents, other than in proceedings on appeal from, or to revoke, the grant of administration.

Part 7 — Powers, Duties and Liabilities of Executors and Administrators

Other executors may act if one executor renounces probate

57 If

- (a) a testator by will devises land to executors named in it on trust for sale, and
- (b) any of the executors renounce probate of the will and the remaining executors prove and obtain probate of the will,

all bargains, sales, grants and conveyances of the land made and executed by the executor or executors obtaining probate of the will are as effectual as if every executor named in the will had joined in it and had executed the same.

Power to bring or defend actions

58 An executor and administrator has the same powers to prosecute and defend an action in the nature of the common law action or writ of account as the testator or the deceased intestate would have if living.

Actions for wrongs done to or by deceased

59 (1) This section and sections 60 and 61 do not apply

- (a) in respect to an action of libel or slander, or
- (b) in respect of loss or damage that occurred before March 29, 1934.

(2) Subject to subsection (3), the executor or administrator of a deceased person may continue or bring and maintain an action for all loss or damage to the person or property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, be entitled to, including an action in the circumstances referred to in subsection (6).

(3) Recovery in an action under subsection (2) must not extend to the following:

- (a) damages in respect of physical disfigurement or pain or suffering caused to the deceased;
- (b) if death results from the injuries, damages for the death, or for the loss of expectation of life, unless the death occurred before February 12, 1942;
- (c) damages in respect of expectancy of earnings after the death of the deceased that might have been sustained if the deceased had not died.

(4) The damages recovered in an action under subsection (2) form part of the personal estate of the deceased, but nothing in this section, section 60 or 61 derogates from any rights conferred by the *Family Compensation Act*.

(5) In an action under subsection (2), in addition to the remedies to which the deceased would if living be entitled, the executor or administrator may be awarded damages in respect of reasonable expenses of the funeral and the disposal of the remains of the deceased person.

(6) If a person alleges that the person has suffered loss or damage by the fault of another and the person alleged to be at fault dies, the person wronged may

(a) continue against the executor or administrator of the deceased any action on that account pending against the deceased at the time of the deceased's death, or

(b) within the time otherwise limited for the action, bring an action for the loss or damage, naming as defendant in it

(i) the executor or administrator of the estate of the deceased, or

(ii) the deceased.

(7) If the deceased is named as defendant, the action is valid despite the fact that the defendant is dead at the time the action is brought.

(8) Damages or costs, or both, recovered in an action under subsection (6) are payable out of the estate of the deceased person at fault.

(9) All proceedings had or taken in accordance with this section, section 60 or 61 bind the estate of the deceased person.

(10) This section, section 60 and section 61 are subject to section 10 of the *Workers Compensation Act*, and nothing in this section, section 60 or 61 prejudices or affects a right of action under section 103 of that Act or the *Family Compensation Act*.

Actions in which deceased named as defendant

60 (1) This section applies to an action commenced under section 59 (6) (b) (ii).

(2) If probate or letters of administration of the estate of the person alleged to be at fault have been granted, the notice of civil claim may be validly served on the executor or administrator, in which case,

(a) on proof of service being filed with the registrar of the court in the registry office in which the action was commenced, the registrar must amend the style of proceeding in the action to substitute the executor or administrator served as the defendant in the place of the named defendant, and

(b) the action must continue against the executor or administrator.

(3) On application of the plaintiff or the executor or administrator of the plaintiff and on the production of a certificate referred to in subsection (4), a court of competent jurisdiction may appoint a representative for the purposes of the action, to represent the estate of the deceased for all purposes of the action and to act as defendant.

(4) The certificate required by subsection (3) is a certificate that

(a) is issued by the district registrar of the Supreme Court at Victoria and dated not more than 30 days before the date on which the court hears the application under subsection (3), and

(b) certifies that no notice has been received that probate or letters of administration have been issued in British Columbia in respect of the estate of the deceased person alleged to be at fault within 90 days after the person's death.

(5) If a representative for the purposes of an action is appointed under subsection (3), the notice of civil claim in the action must be served on that representative.

(6) On being served with the order of appointment under subsection (3) and the notice of civil claim, the person appointed must file a notice with the district registrar of the Supreme Court at Victoria that he or she has been appointed as representative for the purposes of the action.

(7) If an executor or administrator is appointed in British Columbia in respect of the estate of the

deceased person alleged to be at fault, the district registrar of the Supreme Court at Victoria must immediately notify the representative for the purposes of the action of the appointment of the executor or administrator.

(8) If notice is given under subsection (7),

(a) on receipt of the notice, the representative for the purposes of the action must file the notice with the registrar of the court in which the action was commenced,

(b) the registrar of that court must amend the style of proceeding in the action to substitute the executor or administrator as the defendant in the place of the representative for the purposes of the action and must notify the plaintiff and the executor or administrator appointed, and

(c) the appointment of the representative for the purposes of the action is then terminated and the executor or administrator appointed has sole conduct of the defence of the action.

(9) All proceedings had or taken against a representative for the purposes of an action appointed under this section bind the estate of the deceased, despite any previous or subsequent appointment of an executor or administrator of the estate of the deceased person, and all proceedings had or taken in accordance with this section bind the estate of the deceased person.

Recovery in relation to motor vehicle insurance

61 (1) This section applies if

(a) at the time of the loss or damage in relation to which an action is continued or brought under section 59 (6), the person who committed the wrong was insured against liability for loss or damage in respect of it by a vehicle liability policy within the meaning of the *Insurance (Vehicle) Act*, and

(b) the person wronged or the executor or administrator of that person recovers a judgment in the action.

(2) Despite the terms of the vehicle liability policy or the provisions of any law or statute to the contrary,

(a) the liability of the insurer under the policy extends to the wrong, and

(b) the person or the executor or administrator by whom the judgment is recovered has the same rights and remedies, as against the insurer and in respect of the insurance money payable under the policy, as the person wronged would have if both the person wronged and the insured person who committed the wrong were alive and the action had been brought or continued against the insured.

(3) The estate of the insured is liable to pay or reimburse the insurer, on demand, any amount paid by the insurer by reason of this section that the insurer would not otherwise be liable to pay.

Landlord's remedy of distress for unpaid rent

62 (1) An executor or administrator of a lessor or landlord may distrain on the land demised for a term, or at will, for arrears of rent due to the lessor or landlord when living.

(2) The arrears may be distrained for after the determination of the term or lease at will, in the same manner as if the term or lease had not been determined, but the distress must be made

(a) within 6 calendar months after the determination of the term or lease, and

(b) during the continuance of the possession of the tenant from whom the arrears are due.

(3) All the provisions in the statutes relating to distress for rent are applicable to the distress made under subsection (2).

Right of action in cases of trespass

63 An executor or administrator with the will annexed of a testator is entitled to bring and maintain an

action and recover damages and costs for a trespass done to the estate, goods, credits or effects of the testator during the testator's lifetime, in the same manner as the testator could, if living, have brought and maintained the action.

Executors of executors

64 An executor of a testator who was an executor has all the powers, rights, rights of action and liabilities of that immediate testator in regard to the estates and effects of the first testator.

Debts relating to estate

65 (1) An executor may

- (a) pay or allow any debt or claim on any evidence that the executor thinks sufficient,
- (b) accept a composition, or a security, real or personal, for a debt due to the deceased,
- (c) allow any time for payment of a debt due to the deceased as the executor thinks fit, and
- (d) compromise, compound or submit to arbitration all debts, accounts, claims and things relating to the estate of the deceased.

(2) For any of the purposes referred to in subsection (1), an executor may enter into, give and execute agreements, instruments of composition, releases and other things the executor thinks expedient, without being responsible for a loss to be occasioned by them.

Limitation period for disputed claims against estate

66 (1) This section applies if an executor or administrator gives notice in accordance with subsection (2) to

- (a) a creditor or person of whose claim against the estate the executor or administrator has notice, or
- (b) the attorney or agent of the creditor or person.

(2) The notice must

- (a) be in writing,
- (b) give notice that the executor or administrator rejects or disputes the claim, and
- (c) refer to this section and give notice of the intention of the executor or administrator to take advantage of it.

(3) If notice is given in accordance with this section, the claimant must commence the claimant's action in respect of the claim whichever of the following is applicable:

- (a) within 6 months after the notice is given, if the debt or a part of it is due at the time of the notice;
- (b) within 6 months of the time the debt or a part of it falls due, if no part of it is due at the time of the notice.

(4) If the claimant's action is not commenced within the applicable time under subsection (3), the claim is forever barred.

(5) Subsection (4) does not bar a claim by a beneficiary of the estate with respect to a claim by the beneficiary against the estate in the person's capacity as a beneficiary.

Raising money when no express power in will

67 (1) Subsections (2) to (4) apply if, by a will that comes into operation after March 21, 1881, the testator has

- (a) charged the testator's real estate or a specific portion of it with the payment of his debts, or with the payment of a legacy or other specific sum of money, and
- (b) has devised the estate so charged to a trustee or trustees for the whole of the testator's

estate or interest in it, and has not made an express provision for the raising of the debt, legacy or sum of money out of the estate.

(2) Despite a trust actually declared by the testator, the devisee in trust may raise the debts, legacy or money

(a) by a sale and absolute disposition by public auction or private contract of those hereditaments or part of them,

(b) by a mortgage of them, or

(c) partly in one mode and partly in the other.

(3) A deed of mortgage executed under subsection (2) may reserve a rate of interest and set a period of repayment as the person executing it thinks proper.

(4) The power conferred by subsections (1) to (3) extends

(a) to all persons in whom the estate devised is for the time being vested by survivorship, descent or devise, and

(b) to any person who may be appointed under a power in the will, or by a court having jurisdiction, to succeed to the trusteeship vested in the devisee in trust as stated above.

(5) If a testator who has created a charge referred to in subsection (1) (a) has not devised the hereditaments charged as stated above on terms that the testator's whole estate and interest in it must become vested in a trustee,

(a) the executor for the time being named in the will, if any, has the same power of raising the money as is vested in the devisee in trust of those hereditaments, and

(b) the power devolves to and becomes vested in the person, if any, in whom the executorship is for the time being vested.

(6) In the event of a sale or mortgage under this section, the sale or mortgage operates only on the estate and interest, whether legal or equitable, of the testator, and does not make it unnecessary to get in outstanding subsisting legal estate.

(7) Subsections (1) to (5)

(a) do not in any way prejudice or affect a sale or mortgage made under a will coming into operation before March 25, 1881, but the validity of the sale or mortgage must be ascertained and determined in all respects as if this Act had not passed,

(b) do not extend to a devise to a person in fee or in tail or for the testator's whole estate and interest charged with debts or legacies, and

(c) do not affect the power of the devisee to sell or mortgage as the devisee may by law do now.

(8) Purchasers or mortgagees are not bound to inquire whether the powers under subsections (1) to (5) have been duly and correctly exercised by the person acting under them.

Powers when legatee cannot be found or fails to claim specific bequest

67.1 (1) This section applies only if

(a) the deceased died testate leaving a specific bequest of real or personal property to a beneficiary, and

(b) the will does not expressly exclude the operation of this section.

(2) If the personal representative, after making all reasonable efforts, is unable to locate the beneficiary within one year of the date of the grant of letters probate or administration with will annexed, the personal representative may sell the real or personal property, deduct any costs related to the storage, transportation and sale of the property and hold the net proceeds in trust.

(3) Section 27.1 of the *Public Guardian and Trustee Act* applies to net proceeds under subsection (2) that are held in trust by the Public Guardian and Trustee and are not claimed by a beneficiary within the

applicable period prescribed under that Act.

(4) If net proceeds under subsection (2) are held in trust by a personal representative other than the Public Guardian and Trustee, the personal representative must promptly pay the proceeds into court after deducting the costs of doing so.

(5) If a beneficiary under an estate described in subsection (1) has been located and notified of a specific bequest but neglects or refuses to make arrangements to take delivery of the property within 6 months of the notification, the personal representative may sell the real or personal property, deduct any costs related to the storage, transportation and sale of the property and send the net proceeds to the beneficiary.

(6) If a beneficiary described in subsection (5) does not accept the net proceeds, the personal representative must hold the net proceeds in trust and subsection (3) or (4) applies.

(7) This section does not prevent an application by a personal representative to the court under section 39 of the *Trustee Act* or under section 3 of the *Survivorship and Presumption of Death Act*.

Liability for wrong of deceased executor

68 An executor or administrator of a person, who as executor or administrator of the person's own wrong has converted to the person's own use the personal estate of a testator or deceased intestate, is liable to account for, replace, dispose of and distribute, according to law, the personal estate so converted, so far as the estate of the executor or administrator of the person's own wrong extends to it, and comes into the hands or control of the executor or administrator.

Liability of deceased executor for waste

69 The executor or administrator of a person who, as executor under a will or as administrator of an intestate, has wasted or converted to the person's own use a part of the estate of the testator or intestate, is liable and chargeable in the same manner as the testator or intestate should or might have been if living.

Simple contract debt actions

70 An action of debt on simple contract may be brought against an executor or administrator.

Actions of account

71 (1) Actions in the nature of the common law action of account may be brought and maintained against the executor or administrator of a guardian, bailiff or receiver, and also by one joint tenant or tenant in common, the executor or administrator of the joint tenant or tenant in common, against the other as bailiff for receiving more than comes to that person's just share or proportion, and against the executor or administrator of the joint tenant or tenant in common.

(2) The registrar or other person appointed by the court to inquire into the account

(a) may administer an oath and examine the parties touching the matters in question, and

(b) is entitled, for taking the account, to receive the allowance that the court orders from the party that the court may direct.

Liability of executor or administrator in respect of rents

72 (1) If an executor or administrator liable as such to the rents, covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered has

(a) satisfied all the liabilities under the lease or agreement for a lease as have accrued due and been claimed up to the time of the assignment mentioned in this section,

(b) set apart a sufficient fund to answer a future claim that may be made in respect of a fixed or ascertained sum covenanted or agreed by the lessee to be laid out on the property

demised or agreed to be demised, although the period for laying out the same may not have arrived, and

(c) assigned the lease or agreement for a lease to a purchaser of it,

the executor or administrator may distribute the residuary personal estate of the deceased to and among the parties entitled to it respectively, without appropriating any part or any further part, as the case may be, of the personal estate of the deceased to meet any future liability under the lease or agreement for a lease.

(2) After having assigned the lease or agreement for a lease and having, if necessary, set apart a sufficient fund, the executor or administrator distributing the residuary estate is not personally liable in respect of a subsequent claim under the lease or agreement for a lease.

(3) Nothing in this section prejudices the right of the lessor or those claiming under the lessor to follow the assets of the deceased into the hands of the person to whom the assets may have been distributed.

Fraudulent administration of intestate's goods

73 (1) A person who obtains, receives and has goods or debts of a person dying intestate, or a release or discharge of any debt or duty that belonged to the intestate,

(a) by wrongfully or fraudulently procuring the grant of administration to a person of mean estate or a person not of kin to the intestate, or

(b) without valuable consideration amounting to or close to the value of those goods or debts, except if it is in or towards satisfaction of a just and principal debt of the value of the goods or debts owing to the person by the intestate at the time of the intestate's decease,

is chargeable as executor of the person's own wrong.

(2) A person is chargeable as referred to in subsection (1) only so far as all those goods and debts

(a) coming to the person's hands, or

(b) of which release or discharge is made by an administrator to whom the grant is wrongfully or fraudulently procured as stated above,

will satisfy, deducting nevertheless for the person's self allowance of

(c) all just debts due and principal debts on good consideration without fraud owing to the person by the intestate at the time of the intestate's decease, and

(d) of all other payments made by the person, which lawful executors or administrators may and ought by law to have and pay.

Time of distribution of intestate estate

74 (1) Except as permitted by subsection (2) or (3), the distribution of the surplus of the personal estate of an intestate must not be made until one year has elapsed since the death of the intestate.

(2) If, at any time after the death of an intestate, it is shown to the satisfaction of the court that

(a) the intestate has left a person who was wholly or in part dependent on the intestate at the time of the intestate's death, and

(b) the dependant is entitled to share in the distribution of the surplus of the intestate's estate,

the court may make an order directing that the whole or a part of the prospective share of the dependant in the surplus of the personal estate may be promptly paid out to the dependant on the terms and conditions that the court considers proper.

(3) If

(a) the estate of an intestate is being administered by the Public Guardian and Trustee, and

(b) the Public Guardian and Trustee is satisfied that part or the whole of the estate can be

distributed without prejudicially affecting the rights of the creditors,
the Public Guardian and Trustee may, at any time at his or her discretion, make a distribution of the whole or part of the prospective share of a person entitled to share in the distribution.

Payment of minor's interest

75 (1) If

- (a) a minor is entitled to a share of the assets of an estate consisting of money, and
- (b) there is no trustee for the minor's interest in the estate,

on distribution of the assets, the executor or administrator of the estate must pay the minor's share to the Public Guardian and Trustee in trust for the minor.

(2) Subsection (1) does not apply if the will, if any, of the deceased provides otherwise.

Part 8

Repealed

76 [Repealed 1999-29-9.]

Part 9 — Devolution of Real Estate

Devolution of real estate to personal representatives

77 (1) Despite a testamentary disposition, if real estate is vested in a person without a right in any other person to take by survivorship, on the person's death it devolves to and becomes vested in the person's personal representatives as if it were a chattel real vesting in them.

(2) This section applies to real estate over which a person executes by will a general power of appointment as if it were real estate vested in the person.

(3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4) This section applies to all cases of death on or after June 1, 1921.

(5) Subsections (1), (2) and (3) apply if the death occurred before June 1, 1921 and administration has not been granted.

(6) If

(a) administration of the personal estate of a person who died before June 1, 1921 has been granted, and

(b) real estate of the deceased is registered or vested in the deceased without a right in any other person to take by survivorship, or in the deceased's predecessor in title,

the real estate is deemed to have vested in the personal representative of the deceased under subsection (1) or (2), and no further order or grant is necessary.

(7) Sections 78 to 80 apply to all real estate vested or to be vested by the operation of this section.

Administration of real estate

78 (1) Subject to the powers, rights, duties and liabilities mentioned in this Part, the personal representatives of a deceased person must hold the real estate as trustee for the persons by law beneficially entitled to it.

(2) The persons beneficially entitled to the real estate have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of the personal estate.

(3) The powers, rights, duties and liabilities of personal representatives in respect of personal estate and all enactments and rules of law relating to

- (a) the effect of probate or letters of administration as respects chattels real,
- (b) dealings with chattels real before probate or administration, and
- (c) the payment of costs of administration and other matters in relation to the administration of personal estate,

apply to real estate, so far as they are applicable, as if that real estate were a chattel real vesting in the personal representatives.

(4) As an exception to subsection (3), it is not lawful for some or one only of several joint personal representatives to sell or transfer real estate without the authority of the court.

(5) Despite subsection (4), if probate is granted to one or some of several persons named as executor, power being reserved to the others or other to prove, the sale, transfer or disposition of real estate may be made by the proving executor or executors without the authority of the court, and is as effectual as if all persons named as executors had concurred in it.

(6) In the administration of the assets of a person dying on or after June 1, 1921, the person's real estate must be administered in the same manner, subject to the same liabilities for debt, costs and expenses, and with the same incidents as if it were personal estate.

(7) Nothing in this section alters or affects the order in which real and personal assets respectively were immediately before that date applicable in or toward the payment of funeral and testamentary expenses, debts or legacies, or the liability of real estate to be charged with the payment of legacies.

Transfer by personal representative to beneficiary

79 (1) At any time after the death of the owner of real estate, the person's personal representatives may

- (a) by instrument attested and proved as provided in the *Land Title Act*, assent to a devise contained in the person's will, or
- (b) convey the real estate to any person entitled to it as heir, devisee or otherwise.

(2) The personal representative may make the assent or conveyance under subsection (1), either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without the charge.

(3) On the assent or conveyance under subsection (1), subject to a charge for all the money, if any, which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land cease, except as to acts done or contracts entered into by them before the assent or conveyance.

(4) At any time after the end of one year from the death of the owner of any real estate, if the person's personal representatives have failed on the request of the person entitled to the real estate to convey the real estate to that person, on the application of that person and after notice to the personal representatives, the court may order that the conveyance be made.

(5) The production of an attested and proved assent by the personal representatives of a deceased owner of registered real estate authorizes the registrar of land titles to register the person named in the assent as owner of the real estate.

Liability of real estate to duty

80 Nothing in this Part affects any duty payable in respect of real estate, or imposes on real estate any other duty than was payable in respect of it immediately before June 1, 1921.

Part 10 — Distribution of Intestate Estate

Definitions

81 In this Part:

"**estate**" includes both real and personal property;

"**issue**" includes all lineal descendants of the ancestor.

Application of Part and amendments to Part

82 (1) This Part, except sections 85, 83 and 95, applies only in cases of death on and after May 1, 1926.

(2) Section 83 applies only in cases of death on or after April 1, 1958.

(3) Section 85 applies only in cases of death on or after April 1, 1955.

(4) Section 85, as amended by the *Administration Act Amendment Act, 1963*, applies only in cases of death on or after April 1, 1963.

(5) Section 85, as amended by the *Administration Act Amendment Act, 1966*, applies only to the estates of persons who die on or after April 1, 1966.

(6) Section 85 as amended by the *Estate Administration Amendment Act, 1983* applies only to the estates of persons who die on or after October 1, 1983.

(7) Section 95 is deemed for all purposes to be and to declare the law as in force on and from December 19, 1925, except as to property of an estate set off or assigned as dower to a widow before March 29, 1934.

Intestate leaving spouse but no issue

83 If an intestate dies leaving a spouse but no issue, the person's estate goes to the spouse.

Intestate leaving issue

84 If an intestate dies leaving issue, subject to the rights of the spouse, if any, the person's estate must be distributed per stirpes among the issue.

Intestate leaving spouse and issue

85 (1) In this section, "**net value**" means the value of an estate wherever located, both in and out of British Columbia, after payment of the charges on it and the debts, funeral expenses, expenses of administration and probate fees.

(2) This section applies if an intestate dies leaving a spouse and issue.

(3) If the net value of the person's estate is not greater than \$65 000, the estate goes to the spouse.

(4) If the net value of the person's estate is greater than \$65 000, the spouse is entitled to \$65 000, and has a charge on the estate for that sum.

(5) After payment of the sum of \$65 000, the residue of the estate goes as follows:

(a) if the intestate dies leaving a spouse and one child, 1/2 goes to the spouse;

(b) if the intestate dies leaving a spouse and children, 1/3 goes to the spouse.

(6) If a child has died leaving issue and the issue is alive at the date of the intestate's death, the spouse takes the same share of the estate as if the child had been living at the date.

Spousal share if 2 or more persons are entitled as spouse

85.1 For the purposes of section 85, if 2 or more persons are entitled as a spouse they share the spousal share in the estate in the portions determined by the court as the court considers just.

Estate going to parents

86 (1) If an intestate dies leaving no spouse or issue, the person's estate goes to the person's father and mother in equal shares if both are living.

(2) If either of the person's mother or father is dead, the estate goes to the survivor.

Estate going to brothers and sisters

87 (1) If an intestate dies leaving no spouse, issue, father or mother, the person's estate goes to the person's brothers and sisters in equal shares.

(2) If a brother or sister is dead, the children of the deceased brother or sister take the share their parent would have taken if living, but further representation must not be admitted.

Estate going to nieces and nephews

88 If an intestate dies leaving no spouse, issue, father, mother, brother or sister, the person's estate goes to the person's nephews and nieces in equal shares, and representation must not be admitted in any case.

Estate going to next of kin

89 If an intestate dies leaving no spouse, issue, father, mother, brother, sister, nephew or niece, the person's estate must be distributed equally among the next of kin of equal degree of consanguinity to the intestate, and representation must not be admitted in any case.

Kindred and half blood

90 (1) For the purpose of this Part, degrees of kindred are to be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative.

(2) The kindred of the half blood inherit equally with those of the whole blood in the same degree.

Posthumous births

91 Descendants and relatives of the intestate, conceived before the person's death but born afterwards, inherit as if they had been born in the lifetime of the intestate and had survived the intestate.

Advances to children

92 (1) If any child of a person who has died wholly intestate has been advanced by the intestate by portion, the portion must be reckoned, for the purposes of this section only, as part of the estate of the intestate distributable according to law.

(2) If the advancement is equal to or greater than the share of the estate that the child would be entitled to receive as above reckoned, the child and the child's descendants must be excluded from any share in the estate.

(3) If the advancement is not equal to the share, the child and the child's descendants 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.

(4) The value of any portion advanced is 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.

(5) The onus of proving that a child has been maintained or educated, or has been given money, with a view to a portion is on the person so asserting, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing.

Land to be distributed as if intestate was Canadian citizen

93 The land in British Columbia of a person who is not a Canadian citizen and who dies intestate must be distributed as if the person had been a Canadian citizen.

Estate undisposed of by will

94 All the estate not disposed of by will must be distributed as if the testator had died intestate and had

left no other estate.

Abolition of dower and curtesy

95 (1) No widow is entitled to dower out of land of which her deceased husband died wholly or partially intestate, or in land which was absolutely disposed of by her husband in his lifetime or by his will.

(2) No husband is entitled to an estate by the curtesy in the land of his deceased wife dying intestate.

Spousal home and household furnishings to spouse

96 (1) In this section and section 97:

"charter" has the same meaning as in section 1 (1) of the *Business Corporations Act*;

"household furnishings" means chattels usually associated with the enjoyment by the spouses of the spousal home;

"spousal home" means

(a) a parcel of land that is

(i) shown as a separate taxable parcel on a taxation roll for the current year prepared under the *Taxation (Rural Area) Act* or on an assessment roll used for the levying of taxes in a municipality, and

(ii) has as improvements situated on it a building assessed and taxed in the current year as an improvement, in which the deceased and his or her spouse were ordinarily resident, owned or jointly owned by the deceased, and not leased to another person, or

(b) a share owned or jointly owned by the deceased in a corporation the charter of which provides that a building owned or operated by the corporation must be owned and operated exclusively for the benefit of shareholders in the corporation who are occupants of the building, if the value of the share is equivalent to the capital value of a suite owned by the corporation, in which suite the deceased and his or her spouse were ordinarily resident, and which was not leased to any other person.

(2) Despite section 95, and in addition to any other provision in this Part, but subject to section 98, in an intestacy,

(a) except where it would otherwise go under this Part to a surviving spouse, the spousal home devolves to and becomes vested in those persons by law beneficially entitled to it and, subject to the liability of the land comprising the spousal home for foreclosure or the payments of debts, those persons must hold the spousal home in trust for an estate for the life of the surviving spouse, or so long as the surviving spouse wishes to retain the estate for life, and

(b) the household furnishings go to the surviving spouse.

(3) This section applies to the estate of a person who dies on or after April 1, 1972.

Contiguous land not incidental to spousal home

97 On application by any person who is entitled, but for section 96, to a share in the distribution of the spousal home, if it is shown that any land contiguous to the spousal home could not reasonably be regarded as contributing to the use and enjoyment of the spousal home as a residence, the court may decrease the size of the parcel of land that devolves to and becomes vested in those persons by law beneficially entitled to it under section 96.

Separation of spouses as a bar

98 (1) In an intestacy, unless the court on application orders otherwise, the surviving spouse takes no part of the deceased spouse's estate if the spouses

(a) had, immediately before the death of one spouse, separated for not less than one year

with the intention of living separate and apart, and

(b) had not during that period lived together with the intention of resuming cohabitation.

(2) On the application of the surviving spouse, the executor or administrator or any person interested in the estate of the deceased spouse, and on evidence the court considers relevant, the court may

(a) determine the matter, and

(b) in its discretion, direct the costs to be paid out of the estate of the deceased spouse.

(3) An application to the court under this section must not be made unless it is commenced not later than 6 months after the date of the issue of letters of administration of the deceased spouse's estate.

Uniform construction with laws of other provinces

99 This Part must be so interpreted and constructed as to effect the general purpose of making uniform the law of those provinces that enact identical or substantially the same provisions.

Part 11 — Insolvent Estates

Definition

100 In this Part, "**insolvent estate**" means the real and personal estate of a deceased person that is not sufficient for the payment in full of the debts and liabilities of the deceased person.

Insolvent estates

101 (1) Subject to the rights of secured creditors, the proceeds realized from an insolvent estate must be applied by the executor or administrator in priority of payment as follows:

(a) the reasonable funeral and testamentary expenses incurred by the legal personal representative of the deceased;

(b) the costs of administration, in the following order:

(i) the expenses and fees of the legal personal representative;

(ii) legal costs;

(c) wages, salaries, commissions or compensation of any clerk, employee travelling salesperson, labourer or worker for services provided during the 3 months immediately preceding the death of the deceased, to the extent of \$500 in each case, and, in the case of a travelling salesperson, disbursements properly incurred by the salesperson in and about the deceased's business during the same period, to the extent of an additional \$300 in each case;

(d) municipal taxes assessed or levied against the deceased not exceeding the value of the interest of the deceased in the property in respect of which the taxes were imposed as declared by the legal personal representative;

(e) the landlord for arrears of rent for a period of 3 months next preceding, provided that the total amount so payable must not exceed the realization from the property on the premises under lease;

(f) all indebtedness of the deceased under any *Workers Compensation Act*, under any *Unemployment Insurance Act*, under any *Income Tax Act*, or under a provision of the *Income War Tax Act* creating an obligation to pay to the Crown amounts that have been deducted or withheld, rateably and without preference;

(g) claims resulting from injuries to employees of the deceased to which the provisions of any *Workers Compensation Act* do not apply, but only to the extent of money received from persons or companies guaranteeing the deceased against damages resulting from the injuries;

(h) claims, not previously mentioned in this section, of the Crown in right of Canada or of any

province, rateably and without preference despite a statutory preference to the contrary;
(i) all other claims accepted by the legal personal representative of the deceased, rateably and without preference.

(2) Subject to retention of sums necessary for the costs of administration or otherwise, payment in accordance with subsection (1) must be made as soon as funds are available for the purpose.

(3) A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for any balance of claim due the creditor.

(4) For the purposes of subsection (1) (c), commissions payable when goods are shipped, delivered or paid for, if shipped, delivered or paid for within the 3 months referred to in that paragraph, are deemed to have been earned in those months.

Ranking of debts and rights of sureties

102 (1) In the administration of an insolvent estate, all debts due and payable by the deceased at the time of death, and all debts due but not then actually payable, subject to rebate of interest, have the right to rank on the insolvent estate.

(2) A person who is then liable, as surety or otherwise, for a debt of the deceased and who subsequently pays the debt,

(a) if the creditor has proved the creditor's claim on the debt, stands in the place of the original creditor, or

(b) if the creditor has not proved the creditor's claim on the debt, is entitled to prove against the rank on the insolvent estate for the debt to the same extent and with the same effect as the original creditor might have done.

Claims dependent on conditions or contingency

103 (1) If a creditor of the deceased claims on a contract dependent on a condition or contingency that does not happen before the declaration of the first dividend or distribution of or out of the insolvent estate, a dividend must be reserved on the amount of the conditional or contingent claim, until the condition or contingency is determined.

(2) As an exception to subsection (1), if it appears to the court by which the administration of the insolvent estate is decreed or ordered that the administration may then be kept open for an undue length of time, the court may direct that the value of the contingent or conditional claim be ascertained before a special referee or arbitrator, to be appointed by the court.

(3) A referee or arbitrator appointed under subsection (2) has, for the purposes of the appointment, all the rights, powers and authorities given under the *Commercial Arbitration Act*, and must make an award.

(4) After hearing all interested parties, the court may reject or confirm the award under subsection (3).

(5) If the award is rejected, another special referee or arbitrator must be appointed as provided in subsection (2), to establish the value of the claims, subject to the control of the court, and must make an award.

(6) If the award is confirmed, the amount mentioned in it must be that for which the creditor ranks on the insolvent estate as for a debt payable absolutely.

Legal priority and rights of secured creditors

104 (1) In the preparation of a dividend sheet or distribution of or out of an insolvent estate, regard must be had to the rank and privilege of every creditor.

(2) The rank and privilege of every creditor, on whatever they may be legally founded, must not be disturbed by this Act.

(3) If a creditor holds security for the creditor's claim from the insolvent estate or the deceased, a

dividend must not be allotted or paid to the creditor until the amount for which the creditor ranks as a creditor on the insolvent estate as to dividends from it is established as later provided in this Act.

(4) In computing the proportion of creditors when the proportion is required to be determined, the amount referred to in subsection (3) is the amount that the creditor is to be held to represent.

Execution not executed in lifetime of deceased

105 (1) A lien or privilege on an insolvent estate, or any part or portion of it, must not be created for the amount of a judgment debt, or of the interest on it, by the issue or delivery of a writ or process of execution of any kind or nature to any sheriff or other officer lawfully entrusted with it in the lifetime of the deceased, if the due execution of the writ or process took place after the death of the deceased.

(2) Subsection (2) does not affect any lien or privilege for costs.

Creditor holding security

106 (1) If a creditor holds security of any kind or nature for the amount of the creditor's debt or claim, or a part of it, from the insolvent estate or the deceased, the creditor must, in the creditor's claim,

(a) specify the nature and amount of the security in the creditor's claim, and

(b) on the creditor's oath, put a specified value on the debt or claim.

(2) Despite Part 5 of the *Personal Property Security Act*, the court in which the administration of the insolvent estate has been decreed or ordered may, after hearing all parties, either

(a) authorize the retention of the property or effects constituting the security, or on which it attaches, by the creditor at the specified value, or

(b) require from the creditor an assignment and delivery of the security, property or effects at an advance of 10% on the specified value, to be paid out of the insolvent estate as soon as the security can with ordinary diligence be realized on.

(3) In either of the cases, the difference between the value at which the security is retained or assumed and the amount of the claim of the creditor is the amount for which the creditor ranks, and which the creditor is to be held to represent as stated above.

(4) If a creditor holds a claim based on negotiable instruments

(a) on which the deceased was, and the insolvent estate is, only indirectly or secondarily liable, and

(b) which is not mature or exigible,

the creditor must be considered to hold security under this section, and must put a value on the liability of the party primarily liable as being the creditor's security for payment.

(5) If a claim referred to in subsection (4) (a)

(a) is mature or exigible at the date of the death of the deceased, and

(b) remains unpaid after that date, whether before or after proof,

the creditor is entitled for ranking to treat the claim as unsecured.

(6) For all other purposes except ranking, a creditor to whom subsection (5) applies

(a) must still be considered to hold security within the meaning of this section, and

(b) for all those purposes, must put a value on the liability of the party primarily liable as being the creditor's security for payment.

(7) If the deceased was liable as a member of a firm or partnership and the creditor holds security from another member or members of the firm or partnership as security for the creditor's debt or claim, the creditor must be considered to hold security within the meaning of this section.

Mortgages to be assigned to creditor, subject to encumbrances

- 107** (1) If the security consists of a mortgage on real estate, or on ships or shipping, the property mortgaged must only be assured, assigned and delivered to the creditor subject to all previous mortgages and liens on it holding rank and priority before the creditor's claim, on the creditor
- (a) assuming and binding himself or herself to pay all the previous mortgages and liens, and
 - (b) securing the previous charges on the property mortgaged, in the same manner and to the same extent as they were previously secured on it.
- (2) After the requirements of subsection (1) are met, the holders of the previous mortgages and liens have no further recourse or claim on the insolvent estate.
- (3) If there are mortgages or liens on the property subsequent to those of the creditor, the creditor must only obtain the property if one or more of the following requirements are met:
- (a) the subsequently secured creditors consent;
 - (b) the subsequently secured creditors file their claims specifying their security as of no value;
 - (c) the creditor pays the subsequently secured creditors the value placed by them on their security;
 - (d) the creditor gives security to the satisfaction of the court ordering the administration that the insolvent estate will not be troubled by the claims of subsequently secured creditors.

Debts contracted in respect of different estates

- 108** If the deceased whose estate is insolvent owes debts both individually and as a member of a partnership or as a member of 2 or more different partnerships, the claims against the deceased rank first on the estate by which the debts they represent were contracted, and only rank on the other estate or estates after all the creditors of the other estate or estates have been paid in full.

Part 12 — Procedure and Evidence

Caveats against granting of probate or administration

- 109** (1) A caveat against the granting of probate or administration may be filed in any registry of the court.
- (2) The registrar in whose registry a caveat has been filed must promptly notify the registrar of the Supreme Court at Victoria, who must promptly notify all other registrars in British Columbia.

Supreme Court Civil Rules apply to proceedings

- 110** All proceedings in court in respect of a matter dealt with by this Act must be governed by the Supreme Court Civil Rules and the practice of the court in respect of pleading, amendment, evidence, discovery, trial, appeals and procedure generally, except where otherwise provided by the rules or by this Act.

Disclosure on application for probate or administration

- 111** (1) An applicant for a grant of or to reseal probate or letters of administration must, at the time of the application to the court,
- (a) declare that the applicant has made a diligent search and inquiry to ascertain the assets and liabilities of the deceased, and
 - (b) disclose the assets and liabilities of the deceased, irrespective of their nature, location or value, which pass to the deceased's personal representative on the deceased's death.
- (2) If the applicant or personal representative learns of an asset or liability of the deceased that was not disclosed or properly disclosed under subsection (1), the applicant or personal representative must disclose forthwith to the court that further or supplementary information.
- (3) The content and form of the declaration and disclosure document under this section must be as

required in the Supreme Court Civil Rules.

Notice of application for probate or administration

112 (1) A court must not grant or reseal probate or letters of administration unless the applicant or the applicant's solicitor certifies that he or she has

(a) mailed or delivered a notice to each person other than the applicant who, to the best of his or her knowledge, is

- (i) a beneficiary under the will,
- (ii) entitled on an intestacy or partial intestacy,
- (iii) entitled to apply under the *Wills Variation Act* with respect to the will,
- (iv) a common law spouse, or
- (v) a surviving spouse who has been separated from a deceased spouse for not less than one year immediately before the death of the deceased, and

(b) if there is a will, attached a copy of it to the notice.

(1.1) A court must not grant or reseal probate or letters of administration in respect of the property of a Nisga'a citizen, unless the applicant or the applicant's solicitor, in addition to satisfying the requirements under subsection (1), certifies that he or she has

(a) mailed or delivered a notice to the Nisga'a Lisims Government, and

(b) if there is a will and the Nisga'a Lisims Government has requested a copy of it within 30 days of receiving the notice under paragraph (a), mailed or delivered a copy of the will to the Nisga'a Lisims Government.

(1.2) If a treaty first nation has standing under section 2.2 in a judicial proceeding, a court must not grant or reseal probate or letters of administration in respect of the property of a treaty first nation member of the treaty first nation unless the applicant or the applicant's solicitor, in addition to satisfying the requirements under subsection (1), certifies that he or she has

(a) mailed or delivered a notice to that treaty first nation, and

(b) if there is a will and that treaty first nation has requested a copy of it within 30 days of receiving the notice under paragraph (a), mailed or delivered the copy to that treaty first nation.

(2) For the purpose of determining the persons to whom a notice must be mailed or delivered under subsection (1) (a) (ii), the net value of the estate is deemed to exceed the amount referred to in section 85.

(3) If a person referred to in subsection (1) (a) is dead or the person's whereabouts is unknown, on a summary application, the registrar of the court may make

(a) an order dispensing in whole or in part with the requirements of subsection (1), or

(b) another order the registrar considers advisable.

(4) If a person referred to in subsection (1) (a) is or may be a minor, the notice under subsection (1) must be mailed or delivered to

(a) the minor's parent or guardian if there is one, unless the parent or guardian is the applicant, and

(b) the Public Guardian and Trustee.

(5) If a person referred to in subsection (1) (a) is or may be a mentally disordered person or has a representative or a committee, the notice under subsection (1) must be mailed or delivered

(a) to the representative or committee if there is one, unless that person is the applicant, and

(b) to the Public Guardian and Trustee.

(5.1) If subsection (4) or (5) applies, a court must not grant or reseal letters of administration unless

the applicant or the applicant's solicitor provides to the court the written comments of the Public Guardian and Trustee in respect of the matter.

(5.2) If, on application to the court, the court is satisfied that it is necessary or advisable to grant or reseal letters of administration before the Public Guardian and Trustee provides the written comments referred to in subsection (5.1), the court may make any order that the court considers advisable in the circumstances.

(5.3) The applicant under subsection (5.2) must give reasonable notice of the application to the Public Guardian and Trustee.

(6) The notice under subsection (1), (1.1) or (1.2) must state

- (a) the name, address, occupation and date of death of the deceased,
- (b) the name and address of the applicant, and
- (c) the court to which application is to be made.

(7) The notice under subsection (1), (1.1) or (1.2) may be in the following form, with the necessary changes:

In the Estate of A.B., of the City of Victoria, in the Province of British Columbia, labourer, who died on the first day of April, 1972.

Take notice that the undersigned is applying for probate [*or* letters of administration] of the above estate in the Supreme Court of British Columbia at,
British Columbia.

C.D.

.....

Applicant,

1234 Blank Street,

Victoria, British Columbia.

Address of Registrar:

Victoria, British Columbia.

(8) A notice mailed or delivered to the Public Guardian and Trustee under this section must

- (a) contain a list of the names and last known addresses of the beneficiaries or persons entitled, and
- (b) be accompanied by copies of all documents to be filed with the court in respect of the application for the grant or resealing.

(8.1) If

- (a) the court grants or reseals probate or letters of administration under this section, and
- (b) a person referred to in subsection (1) (a) is or may be a minor, a person with a mental disorder or a person who has a committee or representative,

the executor or administrator of the estate must, within 45 days of the grant or resealing, mail or deliver to the Public Guardian and Trustee a copy of that grant or resealed grant.

(9) This section does not apply to an application by a creditor under section 11 (2) or by the Public Guardian and Trustee.

Power of court to order production of testamentary document

113 (1) On an originating or interlocutory application or by citation, the court may order a person to produce and bring into a registry any writing of a testamentary character which may be shown to be in the person's control or possession.

(2) If it is not shown that any such writing is in the person's possession or control, that there are

reasonable grounds for believing that the person has a knowledge of such writing, the court may direct the person to attend for the purpose of being examined in open court, in chambers, before an examiner or on interrogatories respecting it.

(3) A person subject to an order

(a) is bound to answer all lawful questions or interrogatories, and if so ordered, to produce the writing, and

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

Registrar may order production of document or assets

114 (1) The registrar of any court may issue a subpoena requiring a person to produce and bring into the registry, or other place the subpoena may direct, any will or other document or asset relating or belonging to an estate that is shown to be in the possession or under the control of the person.

(2) A subpoena may be issued under subsection (1) whether or not a proceeding is pending in the court.

(3) A person who is served with a subpoena under subsection (1) must bring in the will, document or asset, and in default is in contempt of court.

Deposit of original will in Victoria

115 (1) The district registrar of the court where the application is filed must forward to the district registrar of the Supreme Court at Victoria particulars required by that district registrar of every probate or letters of administration granted or resealed by the court.

(2) [Repealed 1998-42-6.]

Evidence of will in actions concerning real estate

116 (1) This section applies to an action in which, according to law, it would be necessary to produce and prove an original will in order to establish a testamentary disposition affecting real estate.

(2) The party intending to prove the testamentary disposition may give notice to the opposite party, at least 10 days before the trial or other proceeding in which the proof is intended to be given, that the notifying party intends to give in evidence as proof of the testamentary disposition

(a) the probate of the will,

(b) the letters of administration with the will annexed, or

(c) an office copy of it or them certified by the registrar of the court.

(3) In all cases, the probate or letters of administration or the office copy is sufficient evidence of the will and of its validity and contents, despite the fact that the will may not have been proven in solemn form or have been otherwise declared valid in a contentious action or matter, unless the party receiving the notice, within 4 days after the receipt, gives notice that that receiving party disputes the validity of the testamentary disposition.

(4) In such action, if the original will is produced and proved, the costs incidental to the action are in the discretion of the court.

Copy of will may be obtained from registry

117 On payment of the fees set by the Supreme Court Civil Rules,

(a) an office copy of the whole or part of a will, or

(b) a certificate of the grant of any letters of administration,

may be obtained from the registry where the will has been proved or the registry to which the will may have been transmitted, or the administration granted.

Opening of safety deposit boxes

118 (1) If a safety deposit box was leased or held in the name of a deceased person, solely or jointly with another person, a person in control of the premises where the box is situated must not permit the removal of the box or its contents from the premises until a representative of the deceased or a person in whose name the safety deposit box was jointly leased or held with the deceased

(a) prepares an inventory in accordance with subsection (2), and

(b) leaves a copy of the inventory in the box and with the person in control of the premises.

(2) An inventory under subsection (1) must be prepared in the presence of the person in control of the premises or that person's agent and must be dated and signed by the persons present.

(3) [Repealed 1998-42-6.]

(4) The original will of the deceased, and any copies of it, may be removed from the safety deposit box by a representative of the deceased after an inventory is prepared under subsection (1).

(5) Subject to subsection (6),

(a) the copy of the inventory left in the safety deposit box must be kept in it for one year, and

(b) the copy of the inventory left with the person in control of the premises where the safety deposit box is leased or rented must be kept by that person for one year.

(6) The copy of the inventory left in the safety deposit box may be removed when, during the one year period referred to in subsection (5) (a), the lease or rental of the safety deposit box held in the name of

(a) the deceased or the personal representative of the deceased, or

(b) the deceased or the personal representative of the deceased jointly with another person, is terminated.

Rules of Court and tariff of fees

119 The Lieutenant Governor in Council may by order, make, amend or annul Rules of Court for the purpose of carrying out this Act, and for prescribing fees to be payable to the government in respect of all matters connected with it.

Part 13 — Deceased Worker's Wages

Definition

120 In this Part, "**worker**" means a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, in an industry within the scope of Part 1 of the *Workers Compensation Act*, whether by way of manual labour or otherwise.

Wages payable to surviving spouse

121 The wages

(a) earned by a worker during the period of 3 months before the worker's death, and

(b) owing or accrued to the worker at the time of the worker's death

are, subject to this Part, payable to the surviving spouse, if any, of the deceased worker, free from debts of the deceased.

Wages not subject to administration

122 The wages of a deceased worker that are made payable to the surviving spouse by this Part are not

subject to the provisions of the laws relating to

- (a) the administration of the estates of deceased persons dying intestate, or
- (b) in case of the testacy of the deceased, to obtaining probate or to the provisions of the deceased's will.

Evidence of entitlement

- 123** The surviving spouse is entitled to those wages referred to in section 121 on production of an affidavit, sworn before a person authorized under the *Evidence Act* to administer an oath, stating that the person claiming to be the surviving spouse of the deceased worker is in fact the only person entitled to claim as a surviving spouse.

Repealed

- 124** [Repealed 1999-29-13.]

Discharge of employer

- 125** An employer who, in good faith and relying on an affidavit made under section 123, pays the wages of a deceased worker to a person purporting to be the surviving spouse of the deceased is discharged from liability toward the deceased worker or the estate of the deceased worker to the extent of that payment.

Application to court to determine competing claims

- 126** If 2 or more persons claim to be the surviving spouse entitled to the wages of a deceased worker, the court may order that the wages be paid to one or more of them in the amounts the court considers just.