UPDATE - PROBATE ACT REFORM

Continuing Legal Education Society of Nova Scotia

WILLS, ESTATES & PROBATE 2000

September 15, 2000

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BACKGROUND TO THE PROBATE REFORM PROJECT

- ► More than 50 attempts to reform the Probate Act.
- ► No substanial reform to date
- ► 1998 presentation by Elizabeth Butt, Law Reform Commission to CLE.
- ▶ 1999 Law Reform Commission Final Report on Probate Reform - 22 recommendations.
- ► January 2000, Department of Justice establishes Probate Reform Project



PROJECT ORGANIZATION

- Fall 2000 Target date for introduction of new Probate Act.
- Spring 2001 Introduction of probate Regulations (Rules and Forms)
- Project Team: Anna Paton, Shauna Wilson, Director of Probate, Province of Nova Scotia; Sharron Atton, Registrar of Probate, Halifax County
- Advisory Committee and 9 sub-committees



PROJECT ORGANIZATION SUB-COMMITTEES

- Advisory Sub-Committee: Justice Linda L. Oland, Estelle Theriault, Q.C., John K. MacDonald, John A. Arnold, Q.C., A. Lawrence Graham, Q.C., Marian Tyson, Q.C.
- Legislation Sub-Committee: Roberta Clarke, Q.C., Richard Coughlan, Q.C., Neil McMahon
- Regulations Sub-Committee: Gregg Knudsen
- ADR/Mediation Sub-Committee: Suki Starnes, Lawyer/Mediator, Cheryl Hebert, ADR/Mediation Consultant

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PARAMOUNT OBJECTIVES

- Modern and plain language of the Act, Regulations, Forms
- Streamlining probate processes, accessibility.
- Administrative rights to flow from inheritance rights.
- Protection of public, supervisory role of Probate Court and Registrars.
- Balancing privacy concerns.



PROBATE REFORM PROJECT GOALS

- A new Probate Act.
- New Regulations (to include Rules & Forms)
- Updating Practice Manual.
- Electronic Technology for Probate Courts.
- Self Help Kits for executors/administrators.



SIMPLIFIED PROBATE SYSTEM

- ■Non-contentious or common form Probate.
- **■**Contentious matters.
- Consistency throughout province.
- Data management and electronic linking -intranet and internet.

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NON-CONTENTIOUS PROBATE

- Grant made in probate district of "usual residence" of deceased person.
- ■Notice sent to persons known to be interested in the estate after grant, and posted in Royal Gazette.
- Three months to file Inventory possibility of dispensing with Inventory -sworn form and signed waivers.
- Appraisals- optional.
- Some time after advertising period expires, file formal or informal closing settlement.



NON-CONTENTIOUS PROBATE CONTINUED

- Final order releasing executor and administrator from liability.
- ■Person interested in an estate may require inventory, appraisal, bond, formal closing, solemn form, removal of executor/administrator.
- With consent of Registrar, persons interested in estate may waive requirement for filing inventory, bond, closing.



CONTENTIOUS PROBATE

- Matters requiring Registrar hearing to include:

 - ► Removal of Executor ► Proof of Will in Solemn Form
 - Requiring an Executor to give Security for performance of his/her duties.
 - Application for order declaring estate to be insolvent or stay. Application to require executor to apply for grant of Probate.
- ■Endorsement of ADR methods to resolve disputes.



PROBATE TAXES (AKA PROBATE FEES)

- New schedule of taxes effective June 8, 2000.
- ■One tax at opening.
- Decrease for estates under \$100,000.
- ■No change for estates at \$100,000.
- ■Increase for estates over \$100,001.



PROBATE TAXES (AKA PROBATE FEES)2

Comparison of Old Rates to New Rates

Estate Value	Opening	Closing	Total	Current	\$Increase(Decrease)
10000	75	50	125	70	-55
25000	150	125	225	150	-75
50000	250	125	375	250	-125
100,000	500	200	700	700	0
150,000	600	250	850	1,300	450
200,000	800	350	1,150	1,900	· 750
448,510	2,043	1,098	3,138	4,882	1,744



DEVOLUTION OF LAND

- Upon death.
- To Executor as trustee for beneficiary in Will.
- To Administrator as trustee for heirs at law.
- Direct Devises in Will conveyance recording probated Will at Registry of Deeds?
- Major change retroactive or proactive application?



 	
	
	
	
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ADMINISTRATOR PRIORITIES

- First priority to spouse and children of deceased followed by adult residuary beneficiaries or those entitled to inherit under the ISA.
- ■Non-resident Administrators?
- ■Nominee of heirs as Administrators?
- ■Public Trustee role.



BONDS

- ■All Administrators
- ■Non-resident Administrators and Executors
- Registrar discretion to dispense with bond.
- Public Trustee and corporate trustee exempt from bond.
- ■Flexibility type of bond.



ANCILLARY PROBATE AND ADMINISTRATION AND RESEALING A GRANT

- Combine these two procedures into one, called extra-provincial grants.
- Require translation into English of all documents required for the grant.
- ■Registrar discretion to deny a grant.
- ■Probate tax to be levied.



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ROLE OF REGISTRAR

- ■Supervisory, guidance, decision maker.
- ■Front line assistance.
- Consistent training and procedures throughout province.
- To hear routine and some contentious applications.
- Discretion to send contentious applications to Probate Judge (Supreme Court).



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