

1960 Bill 25

Second Session, 16th Legislature, 18th Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 25

**An Act respecting Probate, Administration
and Guardianship**

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

Printed by L. S. Wall, Queen's Printer, Edmonton

BILL 25

1969

An Act respecting Probate, Administration
and Guardianship

(Assented to _____, 1969)

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

1. This Act may be cited as *The Administration of
Estates Act*.

2. In this Act,

- (a) “administration” means letters of administration of the property of deceased persons, whether with or without the will annexed and whether granted for general, special or limited purposes;
- (b) “clerk” means the clerk of the court in and for a judicial district and includes a deputy clerk;
- (c) “contentious business” means
 - (i) the proving of a will in solemn form,
 - (ii) proceedings in which the right to obtain or retain a grant is in dispute, and
 - (iii) proceedings to discharge a caveat;
- (d) “court” means a surrogate court or the Supreme Court, as the case requires;
- (e) “grant” means
 - (i) a grant of probate, or
 - (ii) a resealed grant of probate or administration, or
 - (iii) a grant of administration, or
 - (iv) a grant of letters of guardianship of the person or estate, or both, of an infant, issued by a district court before July 12, 1967 or by a surrogate court or the Supreme Court;
- (f) “judge” means a judge of a surrogate court or a judge of the Supreme Court, as the case requires;

Explanatory Notes

General. This Bill deals with the whole field of the administration of estates of deceased persons and infants and matters pertaining to probate, administration and guardianship. It will replace much of what is presently contained in Part 62 of the Alberta Rules of Court and will be supplemented by a new set of Surrogate Court rules, which will come into force at the same time as this Bill. The Bill was prepared in accordance with the report to the Attorney General of the Committee on Probate and Administration of Estates.

The equivalent statutes and rules in Ontario and western Canada were studied and many of the provisions of the Bill are derived from them.

In the explanatory notes, "Rule" refers to a Rule in the Alberta Rules of Court and indicates that the provision in the Bill is either the same or substantially the same as the Rule from which it is derived or is the equivalent Rule to the provision in the Bill dealing with much the same subject.

The Property Charges Act and certain provisions of The Trustee Act and The Public Trustee Act are also incorporated into this Bill.

TABLE OF CONTENTS

PART 1

APPLICATIONS TO THE COURT

	Section
Generally	3- 6
Notices to the Public Trustee and Others	7, 8
Procedure to Avoid Duplication of Grants	9-11
Caveats	12-19
Deceased Persons Estates under \$1,000	20, 21
Executors Excluded from Applying	22-24
Applications for Administration	25-30
Resealing of Foreign Grants	31

PART 2

ADMINISTRATION OF ESTATES

Generally	32-38
Distribution of Estates of Deceased Persons	39-46
Accounting	47-50

PART 3

GENERAL

Rights and Liabilities of Executors and Administrators...	50-66
Application to Court for Advice	67
Remuneration and Fees	68-70

PART 4

TRANSITIONAL AND CONSEQUENTIAL

Property Charges Act Repealed	71
Domestic Relations Act Amended	72
Family Relief Act Amended	73
Infants Act Amended	74
Public Trustee Act Amended	75
Surrogate Courts Act Amended	76
Trustee Act Amended	77
Commencement of Act	78

2. Definitions.

- (g) "legal representative" means an executor, an administrator, a judicial trustee of the estate of a deceased person or a guardian of the person or estate, or both, of an infant;
- (h) "non-contentious business" means any proceeding or matter pertaining to probate, administration or guardianship, but does not include contentious business;
- (i) "Rules" means the surrogate court rules;
- (j) "Supreme Court" means the Supreme Court of Alberta;
- (k) "testamentary matters and causes" includes all matters and causes relating to a grant of or revocation of probate or administration;
- (l) "will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in the exercise of a power, and any other testamentary disposition.

PART 1

APPLICATIONS TO THE COURT

Generally

3. (1) An affidavit made in support of an application to a surrogate court for a grant and deposing that the place of residence or some property of the deceased person or infant is within the territorial limits of the court is conclusive for the purpose of giving that court jurisdiction.

(2) Where the application is pending and it is shown to the court

- (a) that the deceased at the time of his death was not resident or did not have property within the territorial limits of the court, or
- (b) that the infant does not reside or have property within the territorial limits of the court,

the court may stay the proceedings and make such order as to the costs of the proceedings as it thinks fit.

4. Unless the court otherwise orders,

- (a) no grant of probate or of administration with the will annexed shall be issued until a lapse of seven days after the date of death of the deceased, and
- (b) no other grant of administration shall be issued until a lapse of 14 days after the date of death of the deceased.

3. Use of affidavits to establish jurisdiction.

4. Lapse of time after death before grant. Rule 865.

5. A notarial will made in the Province of Quebec may be admitted to probate without the production of the original will, upon filing a copy certified as a true copy by the notary who attested it or by any other person who is the legal depository thereof, without further proof of its execution.

6. (1) Except where otherwise provided by this or any other Act, or by the Rules, no grant shall issue unless the applicant has given a bond in accordance with the Rules with at least two sureties in double the aggregate value of the estate.

(2) A bond is not required to be given on an application for probate

(a) where the applicant is the executor under the will and is resident in Alberta, or

(b) where at least one of the executors applying is resident in Alberta.

(3) Before the issue of a grant a judge may, subject to the Rules, dispense with a bond, reduce the amount of the bond, permit a bond to be given with one surety or accept other security in lieu of a bond.

(4) No clerk and no solicitor for an applicant shall become a surety of a bond given under this Act.

Notice to the Public Trustee and Others

7. (1) Where an application is made for a grant, the applicant shall send a copy of the application to

(a) the Public Trustee, where an infant, a person who was an infant at the date of death, a missing person or a convict is interested in the estate to which the application pertains or where the Public Trustee is the committee of the estate of a person who is interested in the estate to which the application pertains, and

(b) the committee of the estate of a person who is interested in the estate to which the application pertains, where the committee is a person other than the Public Trustee.

(2) An application to which this section applies shall not be proceeded with until the Public Trustee or the committee, as the case may be, is represented on the application or has expressed his intention of not being represented.

(3) In this section, "missing person" and "convict" have the meanings given them in *The Public Trustee Act*.

8. (1) Where an application is made for a grant of probate or administration, the applicant shall send a copy of the application and a notice pertaining to the rights of dependants under *The Family Relief Act* to

5. Quebec notarial wills.

6. Requirements as to bonds to be given by applicant. Rules 998 and 999.

7. Service of application where legally incapacitated persons are interested in the estate. This section is derived from section 6 of The Public Trustee Act but adds reference to cases of mentally incompetent persons, etc. whose estates are administered by the Public Trustee or a committee. This section applies to all applications. Section 8 applies only to applications for probate and administration.

8. Notices to persons who are “dependants” under The Family Relief Act and therefore entitled to apply to have the will or the shares under The Intestate Succession Act varied for their benefit. Rule 870. See also the new definition of “dependant” in the Bill to amend The Family Relief Act.

- (a) the spouse of the deceased, if the spouse is not the sole beneficiary under the will of the deceased or under *The Intestate Succession Act* and if the spouse resided in Canada at the date of death of the deceased, and
 - (b) each child of the deceased who is 21 years of age or over at the time of the deceased's death and unable by reason of physical disability to earn a livelihood and who resided in Canada at the date of death of the deceased.
- (2) Where an application is made for a grant of probate or administration, the applicant shall send a copy of the application to
- (a) the Public Trustee, where the deceased is survived by a child who was under the age of 21 at the time of the deceased's death, and
 - (b) the committee of the estate of a child of the deceased who was 21 years of age or over at the time of the deceased's death and is unable by reason of mental disability to earn a livelihood.
- (3) Where the deceased is survived by a child who was 21 years of age or over at the time of the deceased's death, is unable by reason of mental disability to earn a livelihood but for whose estate there is no committee, the judge may, having regard to the value of the estate, the circumstances of the child and the likelihood of success of an application made on the child's behalf under *The Family Relief Act*,
- (a) direct that a grant for probate or administration in the deceased's estate not be issued until a committee has been appointed of the child's estate, and
 - (b) direct that the applicant or some other person apply to have a committee of the child's estate appointed under *The Mentally Incapacitated Persons Act*.
- (4) A grant of probate or administration shall not be issued unless the judge is satisfied that the requirements of this section have been complied with except that the judge may waive the requirement to send a copy of the application or a notice to any person where it is shown to his satisfaction that the person could not be found after reasonable enquiry.

Procedure to Avoid Duplication of Grants

9. (1) Where application is made for a grant, the clerk shall forthwith send to the office of the Deputy Attorney General notice of the application showing

- (a) in the case of probate or administration, the name and description or occupation of the deceased, the date of his death and the place of residence at the time of his death, all as stated in the affidavits made in support of the application,

9. Notice of application to Deputy Attorney General. Rule 863
in part.

- (b) in the case of guardianship, the name, description or occupation and place of residence of the infant,
- (c) the name, address and description or occupation of the applicant, and
- (d) any other information prescribed by the Rules.

(2) As soon as possible after receiving a notice under subsection (1), the Deputy Attorney General or any person authorized by him to do so shall send to the clerk a certificate stating whether or not, according to the records of the Department,

- (a) notice has been received of any other application or of a grant in respect of the same estate or infant,
- (b) there is on file in his office a caveat or a copy of a caveat in respect of the same estate or infant and that has not expired and has not been discharged or withdrawn, and
- (c) notice has been received in his office in respect of any will of the same deceased that was deposited during his lifetime with a clerk of the court or with a clerk of the district court before July 12, 1967.

(3) Where the certificate under subsection (2) shows that there is on file in the office of the Deputy Attorney General a caveat or copy thereof that has not expired and has not been discharged or withdrawn, a copy of the caveat shall accompany the certificate sent to the clerk.

(4) The certificate may be given by the Deputy Attorney General or by any person authorized by him to do so and shall be accepted by the court without proof of the signature or authority of the person making it.

(5) Where a grant is issued, the clerk shall forthwith send a notice of that fact to the office of the Deputy Attorney General.

(6) Records shall be kept in the Department of the Attorney General of all notices sent under subsections (1) and (4).

10. Except upon special order or judgment of the court, no grant shall be issued until the clerk has received a certificate under section 9, subsection (2) which shows that no notice or caveat or copy thereof referred to in that section has been received in the office of the Deputy Attorney General.

11. (1) Where it appears by the certificate under section 9, subsection (2) that two or more applications for a grant have been made in respect of the same estate or infant, the Deputy Attorney General or a person authorized by him for the purpose, shall send notices to that effect to each of the clerks concerned.

10. No grant to issue without a proper certificate. Rule 863 (3).

11. Where two or more applications are made, the Supreme Court will determine which is to be proceeded with.

(2) The notices under subsection (1) upon being received operate to stay the proceedings under the respective applications, and each clerk concerned shall notify accordingly the applicants whose applications are filed in his office.

(3) Any of the applicants may apply by originating notice of motion to the Supreme Court for directions and that Court shall inquire into the matter in a summary way and give directions as to which court is to have jurisdiction in the matter and which application is to be proceeded with.

(4) The Supreme Court may order costs to be paid by any of the applicants or out of the estate and a copy of the order certified by the clerk of the Supreme Court may be filed with the clerk of the surrogate court having jurisdiction, whereupon it becomes enforceable as a judgment of that surrogate court.

(5) The order of the Supreme Court is final and conclusive and the clerk of the Supreme Court shall transmit a certified copy of the order to each clerk in whose office the applications for grants were filed.

Caveats

12. (1) Caveats against the issue of any grant may be filed with a clerk or in the office of the Deputy Attorney General.

(2) Where a caveat or withdrawal of a caveat is filed with a clerk, the clerk shall forthwith send a copy of it to the office of the Deputy Attorney General.

(3) Where a caveat or withdrawal of a caveat is filed in the office of the Deputy Attorney General subsequent to the sending of the certificate under section 9, subsection (2), the Deputy Attorney General or a person authorized by him for the purpose shall forthwith send a copy of the caveat or withdrawal to the clerk in whose office the application was filed.

13. A caveat

- (a) shall be signed by the caveator or by his solicitor,
- (b) shall set out the name, residence and occupation of the caveator, his address for service or that of his solicitor, and full particulars of his interest in the person or estate, and
- (c) shall be accompanied by an affidavit or statutory declaration verifying the statements in the caveat and showing that it is not entered for the purpose of delaying or embarrassing any person interested in the person or estate in respect of which it is made.

12. Caveats against issue of grant. Rules 879 and 880 (2) and (3).

13. Particulars of caveat. Rule 880 (1).

14. No further steps shall be taken in respect of an application for a grant after the receipt by the clerk in whose office the application is filed of a caveat or copy thereof, until the caveat has expired or has been discharged or withdrawn.

15. Notwithstanding the filing of a caveat, an application for a grant may be made by any person but no further proceedings shall be taken upon the application until the caveat has expired or has been discharged or withdrawn.

16. (1) Unless it is sooner withdrawn or discharged, a caveat remains in force for three months from the date it is filed or such shorter or longer period as may be ordered by a judge.

(2) Where a caveat has expired or has been withdrawn or discharged, no further caveat in respect of the same estate or infant shall be filed by or on behalf of the same caveator without the leave of a judge.

17. Any person whose application for a grant is affected by a caveat may serve notice of motion returnable not less than five days after service, calling upon the caveator to show cause why it should not be discharged.

18. Service of any notice or proceeding may be made upon a caveator by mailing it to him by registered mail at the address for service given in the caveat.

19. Where a caveat is withdrawn or expires and the proceedings in respect of the application thereby become non-contentious business, the application may be proceeded with without the necessity for a special order or judgment of the court under section 10.

Deceased Persons Estates Under \$1,000

20. Where a grant of probate or administration is sought and the whole property of the deceased is of an aggregate value not exceeding \$1,000 so far as can be ascertained after reasonable inquiry, the clerk or the Public Trustee may

- (a) prepare the application and any other papers necessary to lead to the grant, including the bond, if any, and
- (b) give on behalf of the applicant any notice required to be given by this or any other Act in connection with the application,

14. Receipt of caveat operates to stay application. Rule 881, varied.

15. Application subsequent to caveat. Rule 882.

16. Expiry of caveat. Rule 883, varied.

17. Proceedings to discharge caveat. Rule 884.

18. Service on caveator. Rule 885.

19. Procedure where caveat is withdrawn or expires. Rule 863 (3) in part.

20. Preparation of applications in small estates. Alberta Rule 904 in part, varied. The \$500 maximum is raised to \$1000.

and the fee payable by the applicant under the Rules shall not exceed \$10.

21. (1) Where it appears to the court that the estate of the deceased consists only of personal property of an aggregate value not exceeding \$1,000 so far as can be ascertained after reasonable inquiry, the court may, without a grant, by fiat authorize the clerk to issue to the applicant a certificate under this section upon payment of a fee of \$5.

(2) The certificate shall be in the form prescribed by the Rules and shall

- (a) authorize the person to whom it is issued to make a demand of payment or possession and to receive and give a valid receipt for the money or other personal property so received as effectively as if he had been issued a grant, and
- (b) order the person to whom it is issued to dispose of the estate by paying the reasonable funeral expenses and the debts of the deceased and by distributing the remainder, if any, of the estate,
 - (i) in the case of property of which the deceased died testate, to the beneficiaries entitled thereto, or if none can conveniently be found, to the Provincial Treasurer to be paid into the General Revenue Fund, and
 - (ii) in the case of property of which the deceased died intestate, but subject to *The Ultimate Heir Act*, to the persons entitled thereto.

(3) Where a balance is paid over to the Provincial Treasurer under subsection (2), clause (b), subclause (i) and any claim thereto is subsequently proved to the satisfaction of the court, the Provincial Treasurer, upon order of the court, shall pay the claim out of the General Revenue Fund.

(4) The provisions of this Act or the Rules with respect to the grant of probate or administration, inventories and bonds on administration do not apply in cases coming within this section.

Executors Excluded from Applying

22. Where a person renounces probate of a will of which he is named as an executor or the sole executor, his rights in respect of the executorship and trusteeship under the will wholly cease except in so far as the renunciation expressly reserves the trusteeship and thereupon any application for a grant shall be made and dealt with as if the person renouncing had not been named as executor or trustee.

21. Certificate in lieu of grant in small estates. Rule 868.
The maximum amount is raised from \$500 to \$1,000.

22. Executor renouncing probate.

23. Where an executor

- (a) survives the testator but dies without obtaining a grant of probate, or
- (b) is ordered to prove a will and fails to do so within the time limited by the order,

his rights in respect of the executorship and any trusteeship under the will wholly cease and any application for a grant shall be made and dealt with as if the person so dying, refusing or not appearing had not been named as an executor or trustee.

24. Where an infant is sole executor, administration with the will annexed shall be granted to such person as the court thinks fit and upon the infant becoming 21 years of age the infant may be granted probate as sole executor.

Applications for Administration

25. (1) Subject to section 26, where a person dies intestate or the executor named in his will is incompetent or unwilling to act, administration of the property of the deceased shall be granted in accordance with the Rules pertaining to priorities among applicants but

- (a) where more than one person claims the administration as being next of kin equal in degree of kindred to the deceased, or
- (b) where only one desires the administration as next of kin and there are more persons than one of equal kindred,

administration may be granted to such one or more of the next of kin as the court thinks fit.

(2) Subject to section 26, where a person

- (a) dies wholly intestate, or
- (b) dies leaving a will affecting property but without having appointed an executor thereof or an executor willing and competent to act,

and the persons entitled to administration nominate another person to be appointed as administrator of the property of the deceased, or any part of it, the right of the persons nominating to have administration granted to them passes to their nominee.

26. Where it appears to the court by reason of special circumstances that

- (a) it is necessary that the property of a deceased person be forthwith administered, or

23. Applications where executor is dead or refuses to act.

24. Grant of administration during infancy of executor.

25. Who can apply for administration.

26. Grant of administration in special case to someone other than executor or next of kin. Rule 888.

- (b) that someone other than the executor or next of kin be appointed to administer the property of a deceased person,

the court may upon application and upon such notice, if any, as it may direct issue a grant of administration to the Public Trustee or such other person as it thinks fit and may impose such limitations and restrictions in the grant as it sees fit.

27. (1) When a person dies whether testate or intestate and his real or personal property or both have not been taken possession of by his executors or next of kin, the Public Trustee

- (a) may take possession of the property forthwith, and
- (b) may safely keep, preserve and protect the property.

(2) The Public Trustee before the grant of probate to an executor or the issue of letters of administration, as the case may be, has the powers of an executor or administrator, except that he shall not sell property unless in his opinion the estate might suffer a loss if a sale is not effected.

28. Before or after the commencement of an action involving the validity of the will of a deceased person, or for obtaining, recalling or revoking any probate or grant of administration, the court may appoint an administrator of the property of the deceased person, and the administrator so appointed

- (a) has all the rights and powers of a general administrator, other than the right of distributing the residue of the property, and
- (b) is subject to the immediate control and direction of the court,

and the court may direct that the administrator shall receive out of the property of the deceased such reasonable remuneration as the court considers proper.

29. (1) Where the next of kin, usually residing in Alberta and entitled to administration, is absent from Alberta, the court having jurisdiction may grant temporary administration to such other person as the court thinks fit for a specified time or subject to revocation upon the return of the next of kin to Alberta.

(2) The administrator so appointed shall give such security as the court directs and has all the rights and duties of a general administrator, but is subject to the immediate control of the court.

27. Interim administration by the Public Trustee without a grant. Section 24 of The Public Trustee Act.

28. Grant of administration pending outcome of litigation.

29. Temporary administration.

30. (1) Subject to the Rules, the court may make a special or limited grant of administration of any kind permitted under the practice of courts in England having jurisdiction in testamentary matters and causes upon any condition the court thinks fit.

(2) A grant of administration may be limited to the personal property of the deceased or a part thereof or the real property of the deceased or part thereof or otherwise as the court thinks fit.

(3) An application for a grant of limited administration shall show that every person entitled to share in the distribution of the property to be administered has consented to the application, has renounced or has been cited and has failed to appear unless the court otherwise directs.

(4) Where limited administration is applied for, the limitation and any condition shall clearly appear in the oath of the administrator and the grant.

Resealing of Foreign Grants

31. (1) In this section,

(a) "foreign grant" means any grant of probate or administration or other document purporting to be of the same nature granted by a court in

(i) any province or territory of Canada, or

(ii) the United Kingdom or any British possession, colony or dependency, or

(iii) a member nation of the British Commonwealth,
and

(b) "probate" includes letters of verification issued in the Province of Quebec.

(2) A foreign grant may be resealed at the direction of the court and under the seal of the court upon application made in accordance with the Rules and thereupon the foreign grant

(a) is of the same force and effect in Alberta as if it were issued by the court,

(b) is, as regards property in Alberta, subject to any order of the court to which any grant of the court is subject, and

(c) is, as regards property in Alberta, subject to appeal in the same manner as any other grant of the court.

(3) For the purposes of this section and the Rules, a duplicate or exemplification of a foreign grant sealed with the seal of the court that granted it or a copy of a foreign grant certified by or under the direction of the court that granted it is as effective as the original.

30. Special and limited grants of administration. Rules 872 and 873.

31. Resealing of foreign grants. Rule 886.

(4) A foreign grant shall not be resealed under this section until

- (a) a certificate has been issued by the registrar, clerk or other officer of the court that issued the foreign grant that security has been given to that court in a sum sufficient to cover the property of the deceased in Alberta, and
- (b) security has been given to the court in Alberta to cover the property of the deceased in Alberta as in the case of an application for an original grant, unless the court dispenses with such security.

PART 2

ADMINISTRATION OF ESTATES

Generally

32. (1) At any time before the issue of a grant any person may apply to the court by originating notice of motion and upon such notice as the judge may direct, for an order restraining any person from dealing or intermeddling with the property of a deceased person.

(2) If the court is satisfied that the application was made in good faith for the preservation of the property, costs shall be in the discretion of the court and shall be paid by the estate or the intermeddler or both as the court thinks fit.

33. After the issue of a grant, no person other than the legal representative to whom it is issued has power to act in the estate comprised in or affected by the grant until the grant has been recalled or revoked or the legal representative discharged.

34. After the issue of a grant, a judge may, subject to the Rules, permit a bond to be given in a reduced amount or with one surety, accept other security in lieu of the bond given, require the furnishing of other or additional security, cancel a bond and discharge sureties or order the return of any security.

35. (1) Any person interested in the estate of a deceased person or an infant may with leave of the court institute proceedings in his own name on a bond without an assignment thereof to him.

32. Order to restrain intermeddling in estate. Rule 889.

33. Only the legal representative of the estate is entitled to act in the estate.

34. Powers of court as to security after the issue of the grant.

35. Proceedings on bond. Rule 878.

(2) The proceedings on the bond shall be made by originating notice of motion and if the judge hearing the motion is satisfied that the condition of the bond has been broken, the person who instituted the proceedings shall recover thereon as trustee for all persons interested in the full amount recoverable in respect of any breach of the condition of the bond.

36. Where a grant is revoked while legal proceedings by or against the legal representative named therein are pending, the court in which the proceedings are pending may order that a notation be made upon the record of the revocation, and the proceedings shall be continued in the name of the new legal representative when appointed in like manner as if they had originally been commenced by or against him, but subject to such conditions and variations, if any, as the court directs.

37. (1) Where a grant is revoked, a payment made in good faith to a legal representative under the grant before its revocation is a legal discharge to the extent of the payment to the persons making it.

(2) A person relying upon a grant and making or permitting to be made any payment or transfer in good faith shall be indemnified and protected in so doing notwithstanding any defect or circumstances affecting the validity of the grant.

(3) A conveyance of any estate or interest in property made by a legal representative in good faith and for an adequate consideration to a *bona fide* purchaser is valid notwithstanding any subsequent revocation or variation of the grant to the legal representative.

38. A grant made by a court not having jurisdiction to make it has, until revoked, the same force and effect as if it had been made by a court having jurisdiction.

Distribution of Estates of Deceased Persons

39. (1) Upon complying with the provisions of the Rules regarding advertising for creditors and claimants, the legal representative is entitled to distribute the property of the deceased person having regard only to the claims of which he has then notice and he is not liable to any person of whose claim he does not have notice at the time of the distribution of the property or part thereof in respect of any such property so distributed.

(2) Nothing in subsection (1) prejudices the right of a creditor or claimant to follow the property or any part thereof into the hands of a person who has received it.

36. Continuation of legal proceedings after grant revoked.

37. Validity of things done under a revoked grant.

38. Effect of grant made without jurisdiction.

39. Distribution of estate to claimants giving notice. Rule 891.

40. *The Limitation of Actions Act* does not affect the claim of a person against the property of a deceased person where notice of the claim is given in accordance with this Act and the Rules to the legal representative at any time prior to the date upon which the claim would be barred by *The Limitation of Actions Act*.

41. (1) Where a person

- (a) dies possessed of, or
- (b) dies entitled to, or
- (c) acting under a general power of appointment purports by his will to dispose of,

an interest in property that at the time of his death is charged with the payment of money by way of mortgage, and the deceased person has not by will, deed or other document signified a contrary intention, the interest so charged is, as between the different persons claiming through the deceased, liable primarily for the payment of the charge.

(2) Each part of the interest referred to in subsection (1) shall according to its value bear a proportionate part of the charge on the whole thereof.

(3) A contrary intention shall not be deemed to be signified

- (a) by a general direction for the payment of some or all debts of the testator out of his personal property or his residuary real and personal property, or his residuary real property, or

- (b) by a charge of debts upon such property,

unless the contrary intention is further signified by words expressly or by necessary implication referring to all or some part of the charge mentioned in subsection (1).

(4) Nothing in this section affects the right of a person entitled to the charge referred to in subsection (1) to obtain payment or satisfaction thereof, either out of the other assets of the deceased or otherwise.

(5) In this section, "mortgage" includes

- (a) any charge, whether equitable, statutory or of any other nature, and
- (b) a lien for unpaid purchase money.

42. (1) Every creditor or other person filing a claim against the estate of a deceased person shall, if required to do so by the legal representative, verify his claim by statutory declaration showing

- (a) full particulars of his claim,

40. Limitations of actions.

41. Where estate property is mortgaged, the property itself is primarily liable for payment of the charge. This is the whole of The Property Charges Act, R.S.A. 1955, c. 245, which will be repealed by this Bill.

42. Verification of claims against the estate and the security held by claimants. Rule 892.

- (b) full particulars of any security he holds for his claim, and
- (c) a specified value on his security, and whether it is on the property of the deceased or on the property of a third party for whom the deceased is only secondarily liable.

(2) In the case of a secured claim, the legal representative of the estate may either

- (a) consent to the right of the creditor or other person filing the claim to rank for the claim after deducting the value of the security specified in the declaration, or
- (b) require from the creditor or other person an assignment of the security at the value specified in the declaration,

and where an assignment is made, the difference between the value at which the security is retained by the legal representative and the just amount of the gross claim is the amount for which the creditor or other person ranks for his claim.

(3) Where an assignment of security is required pursuant to subsection (2), the creditor or other person shall, upon payment to him of the value of the security specified in the declaration, together with interest to the date of payment where the indebtedness bears interest, assign the security to the legal representative.

(4) Nothing in this section curtails, abridges or otherwise prejudicially affects any of the rights or remedies of a secured creditor until the legal representative of the estate has given notice that an assignment of the security is required and payment therefor is tendered.

(5) Where the claim of a creditor or other person is based on a negotiable instrument upon which the deceased is only indirectly or secondarily liable and which is not mature or exigible

- (a) the claim shall be deemed to be secured for the purposes of this Act, and
- (b) the creditor or other person shall put a value on the liability of the party primarily liable on the instrument as being his security for repayment thereof,

but after the maturity of the liability and its non-payment, the creditor or other person may amend and revalue his claim.

(6) Where a creditor or other person files with the legal representative of an estate a claim that is wholly or partly secured but fails to value the security,

- (a) a judge may, on summary application by the legal representative or any other person interested in the estate, (of which three days' notice shall be given to the claimant) order that unless a statutory declaration specifying the value of the security is filed with the legal representative within the time limited by the order, the claimant will be wholly barred of any right against the estate in respect of the claim or the part thereof that is secured, and
- (b) if the order is not complied with, that claimant is wholly barred of any right against the estate in respect of the claim or the part thereof that is secured.

43. (1) Where a claim is made against the estate of a deceased person or where the legal representative of an estate has notice of a claim, he may serve the claimant with a notice in writing referring to this section and stating that he contests the claim in whole or in part and, if in part, stating what part.

(2) Within 60 days after the receipt of a notice of contestation under subsection (1) or within three months thereafter if the judge on application on motion so allows, the claimant may, upon filing with the clerk a statement of his claim verified by affidavit and a copy of the notice of contestation, apply to a judge on motion for an order allowing his claim and determining the amount of it and the judge, after hearing the parties and their witnesses, shall make such order upon the application as he considers just.

(3) Not less than 10 days' notice of the application shall be given to the legal representative.

(4) If the claimant does not make an application under subsection (2) within the time limited by that subsection, his claim is forever barred.

(5) Instead of proceeding as provided by this section, the judge may on the application of the legal representative or the claimant direct an issue to be tried on such terms and conditions as the judge considers just.

(6) This section applies also to claims not presently payable and for which, for that reason, an action for the recovery of it could not be brought, but where such a claim is established under this section, no proceedings shall be taken to enforce payment of it without the permission of a judge.

44. (1) If on the administration of the estate of a deceased person there is a deficiency of assets,

- (a) debts due to the Crown and to the legal representative of the deceased person, and

43. Deciding contested claims. This will replace the present procedure under section 47 of The Trustee Act.

44. Distribution where estate is not sufficient to pay all claims. Section 46 of The Trustee Act.

- (b) debts to others, including therein respectively debts by judgment or order, and other debts of record, debts by specialty, simple contract debts and any claims for damages that by statute are payable in like order of administration as simple contract debts,

shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another.

(2) Nothing in this section prejudices any lien existing during the lifetime of the debtor on any of his real or personal estate.

(3) Where the legal representative pays more to a creditor or claimant than the amount to which he is entitled under this section, the overpayment does not entitle any other creditor or claimant to recover more than the amount to which he would be entitled if the overpayment had not been made.

45. (1) Where a legal representative liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the deceased person whose estate is being administered

- (a) has satisfied all liabilities under the lease or agreement for a lease that have accrued due and been claimed up to the time of the assignment mentioned in clause (c),
- (b) has set apart a sufficient fund to answer any future claim that might be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property leased, or agreed to be leased, although the period for laying out the same might not have arrived, and
- (c) has assigned the lease or agreement for the lease to a purchaser thereof,

the legal representative may distribute the residuary estate of the deceased to and among the parties entitled thereto without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the lease or agreement for a lease.

(2) The legal representative so distributing the residuary estate is not, after having assigned the lease or agreement for a lease and having where necessary set apart the fund pursuant to subsection (1), clause (b), personally liable in respect of any 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 him to follow the assets of the deceased into the hands of the person or persons to or among whom they might have been distributed.

45. Assignment of lease after providing for future obligations under it. Section 48 of The Trustee Act.

46. (1) Where a legal representative liable as such to the rent, covenants or agreements contained in any conveyance of rent charge, or agreement for such conveyance, granted or assigned to or made and entered into with the deceased person whose estate is being administered

- (a) has satisfied all liabilities under the conveyance or agreement for a conveyance that have accrued due and been claimed up to the time of the conveyance mentioned in clause (c),
- (b) has set apart a sufficient fund to answer any future claim that might be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same might not have arrived, and
- (c) has conveyed the property, or assigned the agreement for the conveyance, to a purchaser thereof,

the legal representative may distribute the residuary estate of the deceased to and among the parties entitled thereto without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the conveyance or agreement for conveyance.

(2) The legal representative so distributing the residuary estate is not, after having made or executed the conveyance or assignment and having where necessary set apart the sufficient fund pursuant to subsection (1), clause (b), personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

(3) Nothing in this section prejudices the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom they might have been distributed.

Accounting

47. (1) The legal representative shall make an accounting before the court of his administration of the estate whenever he is ordered to do so by the court, either at the instance of the court or on the application of a person interested in the estate, a creditor or a surety for the due administration of the estate.

(2) A legal representative may at any time apply to the court to make an accounting of his administration of the estate before the court.

48. An executor, who is also a trustee under the will, may be required to account for his trusteeship in the same manner as he is required to account in respect of his executorship.

46. Sale of conveyance of rent charge after providing for future obligations under it. Section 49 of The Trustee Act.

47. When legal representative is to pass his accounts. See Rule 893 (1).

48. Separate accounting by trustee under a will.

49. (1) The court, on passing the accounts of the legal representative of an estate, may

- (a) enter into and make full inquiry and accounting of and concerning the whole property that the deceased or infant was or is possessed of or entitled to, and the administration and disbursement thereof, including the calling in of creditors and adjudicating upon their claims, and for that purpose may take evidence and decide all disputed matters arising in the accounting, and
- (b) inquire into and adjudicate upon a complaint or claim by a person interested in the taking of the accounts, of misconduct, neglect or default on the part of the legal representative, and the court, on proof of the claim, may order that the legal representative be charged with such sum by way of damages or otherwise as it considers just, in the same manner as if he had received the sum.

(2) The court may order the trial of an issue of any complaint or claim under subsection (1), clause (b), and may make all necessary directions therefor.

(3) Where accounts submitted to the court are intricate or complicated and, in the opinion of the court, require expert investigation, the court may appoint an accountant or other skilled person to investigate and to assist it in auditing the accounts, and the costs thereof shall be borne by the estate or by such person as the court directs.

50. Upon the final passing of accounts, the court may order any bond to be cancelled and the sureties discharged or order the return of any security, and may

- (a) order that an administrator or guardian be discharged, or
- (b) declare that an executor has fully and satisfactorily accounted down to the date shown in the order.

PART 3

GENERAL

Rights and Liabilities of Executors and Administrators

51. (1) The legal representative of the estate of a deceased person may maintain an action for any tort or injury to the person or to the real or personal estate of the deceased except in cases of libel and slander, in the same manner and with the same rights and remedies as the deceased would if living have been entitled to do.

49. Powers of the court on passing of accounts. Rules 895 and 896.

50. Powers of court in final passing of accounts. Rule 898 (3).

51. Action by legal representative for tort. Trustee Act, section 32. For limitation of action see Part IX of The Limitation of Actions Act.

(2) The damages when recovered form part of the personal estate of the deceased.

52. Where the death of the deceased person was caused by the act or omission that gave rise to the cause of action maintainable under section 51 there may be included in the damages awarded an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased (not exceeding \$500 in all) if those expenses were or liability therefor was incurred by the estate.

53. Where any deceased person committed a wrong to another in respect of his person or of his real or personal property, except in cases of libel and slander, the person so wronged may maintain an action against the legal representative of the estate of the deceased person who committed the wrong.

54. (1) Where a person wronged is unable to maintain an action under section 53 because there is no legal representative of the estate of the deceased wrong-doer then holding office in Alberta, the court may, on the application of the person wronged and on such terms and on such notice as it considers proper, appoint an administrator *ad litem* of the estate of the deceased person, whereupon

- (a) the administrator *ad litem* is an administrator against whom and by whom an action may be brought under section 53, and
- (b) a judgment in favour of or against the administrator *ad litem* in any such action has the same effect as a judgment in favour of or against, as the case may be, the deceased person, but it has no effect for or against the administrator *ad litem* in his personal capacity.

(2) This section applies whether the wrong was committed or the deceased person died before or after the commencement of this Act.

55. (1) In estimating the damages in any action under section 51 or 53 any benefit, gain, profit or advantage that in consequence of or resulting from the wrong committed has accrued to the estate of the person who committed the wrong shall be taken into consideration and forms part of, or constitutes the whole of, the damages to be recovered.

(2) Subsection (1) applies whether or not any property or the proceeds or value of any property belonging to the person bringing the action or to his estate has or have been appropriated by the person who committed the wrong or added to his estate or moneys.

52. Funeral expenses included in damages. Trustee Act, section 32a as enacted by 1967, chapter 22.

53. Action in tort against legal representative. Trustee Act, section 33. For limitation of action see Part IX of The Limitation of Actions Act.

54. Appointment of administrator ad litem where there is no legal representative to sue. Trustee Act, section 33a.

55. Damages in actions. Trustee Act, section 34.

56. (1) The legal representative of a deceased lessor or landlord may distrain for the arrears of rent due to the lessor or landlord in his lifetime in like manner as the lessor or landlord might have done if living.

(2) The arrears may be distrained for at any time within six months after the determination of the term or lease and during the continuance of the possession of the tenant from whom the arrears became due, and the law relating to distress for rent is applicable to the distress so made.

57. (1) Where any one or more joint contractors, obligors or partners die, the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may by action proceed against the legal representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several, notwithstanding that there may be another person liable under the contract, obligation or promise still living, and that an action is pending against that person.

(2) The property and effects of shareholders of chartered banks and of the shareholders or members of other corporations are not liable to a greater extent than they would have been if this section had not been passed.

58. Where by any will coming into operation before or after the commencement of this Act a testator

- (a) charges his real property or any specific part thereof with the payment of his debts or with the payment of any legacy or other specific sum of money and devises the property so charged to a trustee, and
- (b) does not make any express provisions for the raising of the debts, legacy or sum of money out of the property,

the trustee, notwithstanding any trusts actually declared by the testator, may raise the debts, legacy or money by a sale and absolute disposition by public auction or private contract of that real property or any part thereof, or by a mortgage thereof, or partly in one mode and partly in the other.

59. The powers conferred by section 58 extend

- (a) to any person in whom the estate devised is for the time being vested by survivorship, descent or devise, or
- (b) to any person appointed under any power in the will or by the Supreme Court to succeed to the trusteeship.

56. Legal representative exercising rights of distress of deceased landlord. Trustee Act, section 35.

57. Action against legal representative of joint contractors, etc. Trustee Act, section 36.

58. Sale of real property to satisfy debts, legacy, etc. Trustee Act, section 37.

59. Extension of powers to persons in whom property vested. Trustee Act, section 38.

60. Purchasers or mortgagees are not bound to inquire whether the powers conferred by sections 58 and 59 or any of them have been properly exercised by the person acting by virtue thereof.

61. Where

- (a) there is in a will of a deceased person a direction whether express or implied to sell, dispose of, appoint, mortgage, encumber or lease any real property, and
- (b) no person is by the will or otherwise appointed by the testator to execute and carry the direction into effect,

the executor, if any, named in the will has power to and shall execute and carry into effect every such direction to sell, dispose of, appoint, encumber or lease that real property, and any estate or interest therein, in as full, large and ample a manner and with the same legal effect as if the executor were appointed by the testator to execute and carry the direction into effect.

62. Where

- (a) there is in any will of any deceased person any power to any executor in the will to sell, dispose of, appoint, mortgage, encumber, or lease any real property, or any estate or interest therein, whether the power is express, or arises by implication, and
- (b) from any cause letters of administration with the will annexed have been granted to any person and that person has given any required security,

that person has power to and shall exercise every such power and sell, dispose of, appoint, mortgage, encumber or lease that real property, or estate or interest therein, in as full, large and ample a manner and with the same legal effect for all purposes as the executor might have done.

63. Where

- (a) there is in any will of any deceased person any power to sell, dispose of, appoint, mortgage, encumber or lease any real property or any estate or interest therein, whether the power is express, or arises by implication, and
- (b) no person is by the will or otherwise appointed by the testator to execute the power, and letters of administration with the will annexed have been granted to any person and that person has given any required security,

that person has power to and shall exercise every power to sell, dispose of, appoint, mortgage, encumber or lease

60. Purchasers' or mortgagees' position as to seller's powers. Trustee Act, section 39.

61. Power of executor to carry out a direction to sell, mortgage, etc. where no one else is appointed to do so. Trustee Act, section 40.

62. Power of administrator with the will annexed to carry out direction to executor to sell, mortgage, etc. Trustee Act, section 41.

63. Power of administrator with the will annexed to carry out a direction to sell, mortgage, etc. where no one is appointed by the will to do so. Trustee Act, section 42.

the real property, or estate or interest therein, in as full, large and ample a manner and with the same legal effect as if that person had been appointed by the testator to execute such power.

64. (1) Where any person

- (a) has entered into a contract for the sale and conveyance of real property, or any estate or interest therein, and
- (b) has died intestate, or without providing by will for the conveyance of the real property, or estate or interest therein, to the person entitled or to become entitled to the conveyance under the contract,

then, if the deceased would be liable to execute a conveyance if he were alive, the legal representative of the estate of the deceased person shall make and give to the person entitled to it a conveyance of the property, or estate or interest therein, and of such nature as the deceased if living would be liable to give.

(2) A conveyance made by a legal representative under subsection (1) is as valid and effectual as if the deceased were alive at the time of the making thereof and had executed it, but does not have any further validity.

65. Every legal representative of the estate of a deceased person is, in respect of the additional powers vested in him by this Act and *The Trustee Act* and any property received by him in consequence of the exercise of those powers, subject to all the liabilities and compellable to discharge all the duties of whatever kind that, as respects the acts to be done by him under those powers,

- (a) would have been imposed upon an executor or other person appointed by the testator to execute those acts, or
- (b) if there is no such executor or other person, would have been imposed by law or by the court or a judge thereof.

66. Where there are two or more legal representatives of the estate of a deceased person and one or more of them die, their powers vest in the survivor or survivors of them.

Application to Court for Advice

67. (1) Any legal representative of an estate may apply by originating notice of motion for the opinion, advice or direction of a judge of the Supreme Court or a surrogate court on any question respecting the management or administration of the estate.

64. Conveyance of real property by legal representative in place of deceased. Trustee Act, section 43.

65. Duties and liabilities of legal representative as to the exercise of statutory powers. Trustee Act, section 44.

66. Powers of legal representatives vest in survivors when one dies. Trustee Act, section 45.

67. Application to court for opinion, advice or direction. Section 50, of The Trustee Act.

(2) The legal representative acting upon the opinion, advice or direction given by the judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as legal representative in respect of the subject matter of the opinion, advice or direction.

(3) Subsection (2) does not extend to indemnify a legal representative in respect of any act done in accordance with the opinion, advice or direction if the legal representative has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

Remuneration and Fees

68. (1) A judge may at any time by an order fix and give directions respecting the remuneration and compensation to be granted to a legal representative.

(2) This section does not apply where the remuneration or compensation of a legal representative is fixed by the will.

69. (1) The bill of a barrister and solicitor for any fees, charges and disbursements in respect of

(a) business transacted in the court, whether contentious or not or any matter connected therewith, or

(b) business transacted or work done with respect to the estate, whether contentious or not,

is, between solicitor and client and between party and party, subject to taxation by the clerk.

(2) The taxation of a bill by the clerk is subject to appeal to a judge.

70. (1) No person other than the applicant or a barrister and solicitor acting for him shall directly or indirectly prepare an application for a grant or any documents to be used in the application.

(2) Subsection (1) does not apply in the case of an application prepared by the clerk or the Public Trustee under section 20.

PART 4

TRANSITIONAL AND CONSEQUENTIAL

71. *The Property Charges Act* is repealed.

72. *The Domestic Relations Act* is amended as to section 40 by striking out the words "district court" and by substituting the words "surrogate court".

68. Remuneration to legal representative. Rule 898 (1) in part.

69. Determination of legal costs by clerk. Rule 929.

70. Persons prohibited from preparing applications. Rule 904 in part.

71. Chapter 245 of the Revised Statutes is repealed. This Act is replaced by section 41 of this Bill.

72. Chapter 89 of the Revised Statutes is amended. Section 40 defines "Court" for the purposes of Part VIII dealing with "Guardianship". The change is made as a consequence of The Surrogate Courts Act which gives jurisdiction in guardianship to the surrogate courts instead of the district courts.

73. *The Infants Act* is amended by striking out the words “district court” where they occur in sections 8, 15 and section 16, subsection (1a) and by substituting the words “surrogate court”.

74. *The Public Trustee Act* is amended by striking out sections 6 and 24.

75. *The Surrogate Courts Act* is amended as to section 2 by striking out clauses (c) and (g).

76. (1) *The Trustee Act* is amended

- (a) by striking out the words “district court” wherever they occur in section 10, subsection (2), section 11, subsection (1), section 12, subsection (1), section 17, subsection (1) and section 55, subsection (1) and by substituting the words “surrogate court”,
- (b) by striking out sections 32 to 49,
- (c) by striking out section 50 and by substituting the following:

50. (1) Any trustee may apply in court or in chambers in the manner prescribed by rules of court for the opinion, advice or direction of a judge of the Supreme Court or a district court on any question respecting the management or administration of the trust property.

(2) The trustee acting upon the opinion, advice or direction given by the judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in respect of the subject matter of the opinion, advice or direction.

(3) Subsection (2) does not extend to indemnify a trustee in respect of any act done in accordance with the opinion, advice or direction aforesaid if the trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

- (d) as to section 51, by striking out subsection (1) and by substituting the following:

51. (1) A trustee under any trust, however created, is entitled to such fair and reasonable allowance for his care, pains and trouble and his time expended in and about the trust estate as may be allowed by a surrogate court or a judge thereof, in the case of a trust under a will, or district court or a judge thereof, in any other case or by any clerk thereof to whom the matter is referred.

73. Chapter 158 of the Revised Statutes is amended to change references for the same reasons indicated in the note to clause 72.

74. The Public Trustee Act, being chapter 266 of the Revised Statutes, is amended. As to the repeal of section 6, see section 7 of this Bill. As to the repeal of section 24, see section 27 of this Bill.

75. Chapter 79 of the Statutes of Alberta, 1967, is amended. Clauses (c) and (g) define “contentious business” and “non-contentious business” but neither term is used in the Act.

76. The Trustee Act, being chapter 346 of the revised statutes, is amended. Almost all of the provisions repealed or amended here are replaced by equivalent provisions in this Bill.

- (e) by striking out section 52,
- (f) as to section 53, by striking out the words “sections 51 and 52” and by substituting the words “section 51”.

(2) Where a legal representative has given a notice under section 47, subsection (1) of *The Trustee Act* prior to the commencement of this Act, section 47 of *The Trustee Act* continues to apply in respect of the notice and the claim to which it relates as though that section had not been repealed.

Commencement of Act

77. This Act comes into force on a day to be fixed by Proclamation.

