

# **Succession Law Reform Project**

## **Small Estates Subcommittee**

# **Interim Report on Summary Administration of Small Estates**

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The British Columbia Law Institute was created in 1997 by incorporation under the Provincial *Society Act*. Its mission is to:

- (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
- (b) promote improvement of the administration of justice and respect for the rule of law, and
- (c) promote and carry out scholarly legal research.

The Institute is the effective successor to the Law Reform Commission of British Columbia, which ceased operations in 1997.

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## **INTRODUCTORY NOTE**

The British Columbia Law Institute has the honour to present:

### **Interim Report on Summary Administration of Small Estates**

This Interim Report has been produced in the context of a larger Succession Law Reform Project. This is a three year comprehensive review of the law of succession to property on death in British Columbia that has been undertaken with the encouragement of, and financial support from, the Ministry of Attorney General.

At the outset of the Project the Ministry of Attorney General identified small estate administration as an area in which recommendations for reform would be especially welcome. Developments described in the Report have created an acute need for an inexpensive procedure adapted specifically to the administration of smaller estates. In light of the importance the Ministry attached to the matter, work on this aspect was accelerated with a view to producing recommendations in advance of the main Project Report and setting the stage for an early legislative response.

The summary procedure recommended has been framed so as to be compatible with both the existing law and with reforms that may emerge as a result of the Project. Thus the procedure could be implemented through the addition of a new part to the existing *Estate Administration Act* and later incorporated into comprehensive succession law reform legislation.

While this is styled an “interim” report, the recommendations set out in it are final with respect to the small estates aspect of the Project.

Ann McLean  
Chair, British Columbia Law Institute

December, 2005



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## **Interim Report on Summary Administration of Small Estates**

### **I. Introduction**

In 2003 the British Columbia Law Institute began work on the Succession Law Reform Project, a three year comprehensive review of the law of succession to property on death in British Columbia. The Project was undertaken with the encouragement of, and financial support from, the Ministry of Attorney General. The objectives of the Project are:

- to consolidate the numerous provincial statutes bearing principally on succession; and
- to modernize and simplify the law of succession wherever appropriate, building on a substantial body of work carried out by the former Law Reform Commission of British Columbia during the 1980's.

The Project is being carried out through a Project Committee and five topical Subcommittees composed of wills and estates practitioners and legal academics volunteering their time and expertise.

At the outset of the Project the Ministry of Attorney General identified small estate administration as an area in which recommendations for reform would be especially welcome. The public and members of the Bar had raised concerns that the value limits in the few provisions creating expedited procedures for small estates were too low, particularly the ceiling for transferring the registration of motor vehicles without probate or letters of administration. While those ceilings were raised in 2004, other recent legislative and regulatory changes affecting the role of the Official Administrator have created an acute need for an inexpensive procedure adapted specifically to the administration of smaller estates. It is also clear that the concept of what amounts to a “small estate” has changed drastically as a result of the decline in the value of money over several decades.

In light of the importance the Ministry attached to the matter, one of the five topical Subcommittees in the Succession Law Reform Project was devoted exclusively to small estates. The Small Estates Subcommittee is chaired by a wills and estates practitioner and former Deputy Official Administrator. Its other members are drawn from the wills and estates Bar, the financial sector, and the Office of the Public Guardian and Trustee (which now acts as the Official Administrator for all of British Columbia).

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The Subcommittee examined legislation relating to small estate administration in the rest of Canada, other major Commonwealth jurisdictions, and the United States before formulating the procedure for summary<sup>1</sup> administration of estates under a prescribed value that is described in this Report.

A decision was also made to provide an interim report embodying the conclusions of the Small Estates Subcommittee in advance of the final report for the Project as a whole, which will be submitted in 2006. The solutions recommended here are intended to operate against the background of existing law as well as to be compatible with reforms that may emerge as a result of the Project. They could be implemented through enactment of a new part of the existing *Estate Administration Act* pending incorporation into comprehensive succession law reform legislation.

While this is styled an “interim” report, its recommendations for a new and separate regime applicable to estates below a prescribed value are final ones. They enjoy the support of the Project Committee and the Board of Directors of the British Columbia Law Institute.

### II. Why Orderly Administration of a Smaller Estate is Important

A framework for the orderly disposition of the property of a deceased person is a feature of every legal system recognizing the concept of private property. It serves social and economic purposes extending beyond the individual interests of the deceased’s spouse and relatives. Recognizing rights of succession helps to preserve peace in the community. If property rights were treated as having lapsed on the owner’s death, an uncertain situation would exist at best. At worst, there could be a potentially violent race to seize the ownerless property and fend off other would-be takers. In order to prevent conditions like these, someone must be authorized by law to collect and preserve the deceased’s property.

Efficiency in commerce requires that debts not be cancelled once the debtor or the creditor has died. There must be a way of collecting the debts. This means that someone must be authorized to pay debts out of the assets of a deceased debtor, and to collect debts owed to the deceased.

Responsibility for distributing the deceased’s property among those entitled to receive obviously must be assigned as well. Legal regulation of the distribution of an estate also serves a useful social purpose. For example, it discourages misappropriation and may keep the deceased’s dependants from becoming public charges.

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1. “Summary” in this context means without the full legal formality of probate or a grant of administration, but is not synonymous with complete informality in the sense of avoidance of all procedural requirements.

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The importance of orderly disposition of a deceased person's property does not diminish with the size of the estate. Suppose someone dies intestate, leaving \$20,000 in a bank account. One poverty-stricken relative is the deceased's only surviving next of kin and therefore inherits the funds. The \$20,000 undoubtedly represents a very significant sum to that relative. It will make a great deal of difference to the relative whether or not there is a way of gaining access to the \$20,000 without having to incur expenses that may wipe out the benefit of that relatively small inheritance. No assistance will be forthcoming from an executor, because the deceased had no will appointing one.

The bank, however, has a legitimate interest in protecting itself against liability. It has no relationship with its deceased customer's relative and no proof that the relative is entitled to the deposit by right of inheritance. The bank will understandably refuse to allow any dealings with the account until someone provides legal documentation establishing a right to take control of it. As the relative is not a spouse of the deceased customer, he or she does not have an obvious or likely right and the bank is unwilling to take a risk. As the relative is clearly impecunious, the bank has little confidence that it would be worthwhile to obtain an indemnity agreement that the relative may be willing to sign.

This is not an outlandish or particularly rare scenario. If there is no simple and inexpensive means by which those entitled to inherit a modest estate can recover and divide its assets, they could be excused for considering the legal system to be deficient.

### III. Normal Probate Procedure

#### A. Role of the Personal Representative

In British Columbia, as in other jurisdictions with a legal system derived from the English common law, an estate is administered by a *personal representative* who has legal title to the assets of the estate until the administration is complete. There are two principal kinds of personal representatives: an executor (named in a will) and an administrator (appointed by the court where there is no executor named, or none willing and capable of acting).<sup>2</sup> Normally an administrator will be the deceased's spouse or another person who is entitled to inherit from the deceased, although an unpaid creditor of the deceased or the Public Guardian and Trustee in the capacity of Official Administrator could also apply to be appointed.

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2. Within each of these categories there are certain subcategories, *e.g.* executor *de son tort*, administrator with will annexed, administrator *de bonis non*, administrator *ad litem*. The distinctions between these subcategories of personal representatives are not relevant for the purposes of this report and therefore are not discussed.

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In jurisdictions with civil law systems derived from Roman law, such as Quebec, a different basis for succession prevails. The title to assets of the estate passes directly to the successors of the deceased on death, subject to the obligations to discharge the deceased's liabilities. The successors are liable to contribute towards those liabilities in proportion to their shares in the estate.<sup>3</sup>

Regardless of the theoretical framework, developed legal systems recognize a need for authority to be vested in someone to pay the debts of a deceased person and distribute the balance of the deceased's property, and for a way of securing recognition of that authority by others.

### B. Grants of Probate and Administration

What is loosely called "probate" refers to the court-based procedure whereby a will, if any, is publicly confirmed or "proved" as the last will of a deceased person and a grant of probate or administration is issued to one or more personal representatives.

Grants of probate (also called "letters probate") and grants of administration (also termed "letters of administration") are documents issued by the Supreme Court of British Columbia under the court seal on the application of an executor or a person seeking to be appointed as an administrator.<sup>4</sup> Probate is issued to executors, and letters of administration are issued to administrators. If the deceased left a will but did not name an executor in it, or if no named executor is capable and willing to act, the court may appoint an administrator instead and grant administration "with will annexed."

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3. Castel, *The Civil Law System of the Province of Quebec* (1962) at 96. The difference in this respect between common and civil law jurisdictions may be more theoretical than practical. Some civil law systems provide for an intermediary who fulfils many of the same functions as the common law personal representative, although without having exclusive title to the assets for the purpose of the administration. For example, art. 777 of the Civil Code of Quebec provides for the "liquidation" (administration) of an estate by a "liquidator" who has the "seisin" of the deceased's successors for the period of time necessary to carry out the liquidation and may claim possession of assets against the successors. A testator may designate a liquidator by will: art. 785. If there is no liquidator designated by will, art. 785 specifies the office devolves to the heirs, but they can designate a liquidator by majority vote. French law provides for an *exécuteur testamentaire*: Miller, *The Machinery of Succession* (1971) at 71-72. German law permits administration by an intermediary called the *Testamentsvollstrecker*, appointed by the testator, and for a kind of court-appointed administrator (*Nachlassverwalter*): *ibid.*
  4. There are numerous subcategories of each kind of grant, just as there are subcategories of personal representatives, but they are not relevant for the purposes of this Interim Report.

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A grant of probate confirms that a will is considered valid and that the original will has been filed with the court. A second purpose of the grant is to serve as official confirmation and evidence of the executor's authority.

A grant of administration contains the administrator's appointment and is thus the source of the administrator's authority to act in relation to the estate. It is also evidence to the world in general of that authority. A grant of administration "with will annexed" serves these purposes and in addition functions like a grant of probate in confirming the validity of a will.

Grants are issued on the strength of affidavit and documentary evidence submitted by the executor or person applying for appointment as the administrator. This evidence refers to the fact of death, the existence of a will if the deceased has left one, or states that a diligent search has been made for a will and none has been found. The original will is filed in the court and remains there on public record. The affidavit evidence is accompanied by a "disclosure document" in prescribed form setting out the assets and liabilities of the estate, their estimated value, and identifying the persons to whom the balance of the estate that is left after payment of debts and expenses is to be distributed under the will or the law of intestate inheritance, as the case may be.

The court registry carefully examines the sworn material filed for compliance with the requirements of the *Estate Administration Act* and the *Rules of Court*. This will include checking whether notices of the application have been sent to all persons entitled to receive them under s. 112 of the Act. In the case of applications for appointment of an administrator, the registry checks to see if all persons with an equal or greater right to be appointed have been "cleared off," *i.e.* whether their written consents to the applicant being appointed administrator, with or without bond, have been filed. The registry also checks whether consents of creditors of the estate are filed as well.

If the registry finds the material to be in order, the application is put before a judge or master to rule on it. The order is usually made without any oral hearing, unless for some reason an aspect of it must be spoken to. The order may be made informally. In the Vancouver, New Westminster and Victoria registries a judge will simply sign a list of applications the registrar has approved. In other Supreme Court registries a judge will sign an informal document known as a *fiat* with respect to each application. If the order is for the grant to issue, the registry prepares the grant and affixes the court seal.

This procedure is known as "common form probate" if a will is involved. There is a second form of probate in which the validity and contents of a will are proven in open court. This is called "solemn form" probate. It is much more rarely used, and is chiefly employed when there is a dispute over the validity of a will.

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A grant is necessary to accomplish certain tasks that personal representatives may have to carry out. For example, in order to transfer land to a beneficiary, a personal representative must first have it registered in his or her own name. To do this, the personal representative must file a court-certified copy of the grant and a copy of the disclosure document in the Land Title Office.<sup>5</sup>

In other contexts, grants provide assurance to third parties that they are dealing with the correct person when asked to pay money owed to the estate, release assets belonging to the estate, or accept a receipt issued on behalf of the estate.

Financial institutions will require probate or letters of administration to be obtained before allowing dealings with deposit accounts, contents of safety deposit boxes, and other assets belonging to the estate whenever their aggregate value is above a limit which varies between institutions. Sources in the financial sector whom the Subcommittee has consulted advise that the average limit for allowing dealings without grant among the chartered banks is about \$30,000, although a few banks have higher limits. If the aggregate value of the deceased customer's funds and other assets is below the limit, an executor or a spouse of the deceased who is solely entitled to them may be permitted to take control of them without a grant on providing the deceased's will and proof of death. The executor or spouse will also be required to sign an agreement to indemnify the institution against any loss that may result from release of control of the assets.<sup>6</sup>

This practice is discretionary, however, and each case is assessed individually. A spouse or executor wishing to gain access to the deceased's assets without first obtaining a grant generally must be known to the financial institution, for example through a customer relationship. Banks are always in a position to insist on court-authenticated proof of the applicant's title to deal with the assets.<sup>7</sup>

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5. *Land Title Act*, R.S.B.C. 1996, c. 250, s. 266(1)(a), (5).

6. In some cases a financial institution will allow a child or other beneficiary of the deceased to take control of the deceased's account without a grant after obtaining an indemnity from that person.

7. Section 40(1)(b)(i) of the *Bank Act*, S.C. 1991, c. 46 provides that a bank may rely on an authenticated copy of a will, grant of probate, letters of administration, or a certificate thereof under a court's seal as "sufficient justification and authority for giving effect" to a transmission (transfer of title by operation of law) by reason of a death. This applies to deposits, property held by the bank as security or for safekeeping, and rights to a safety deposit box and its contents. The only means by which a court-authenticated copy of a will would be obtained in British Columbia is through taking out a grant of probate or administration with will annexed. The bank is also authorized by s. 460(1)(b)(ii) to rely on an authenticated copy of a notarial will, but this variety of testamentary instrument, which does not need to be probated, is only used in Quebec.

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The practice among credit unions is similar, with each institution having its own internal guidelines regarding the maximum value of assets that should be released or transferred without a probate or letters of administration first having being obtained.<sup>8</sup>

### IV. Impracticality of Normal Probate Procedure in Smaller Estates

The formality of the documentation required for obtaining a grant of probate or letters of administration creates difficulties for anyone applying without professional legal assistance. Legal expenses can be significant, particularly if relatives of the deceased need to be traced in order to give the required notices. A court filing fee is charged if the value of the estate has a value of more than \$25,000.<sup>9</sup> If a minor or a mentally incapable person is interested in the estate, a further fee is payable when the required notice and copies of the application documents are given to the Public Guardian and Trustee.<sup>10</sup> In addition, a person applying to be appointed as administrator must provide a bond unless all persons having an equal or higher right to be appointed consent to the administrator acting without bond, or the court dispenses with bonding. (Executors do not have to provide a bond.) Where a bond is necessary, its cost is paid out of the estate. While the court may dispense with a bond on the basis that its cost would deplete the estate to an unreasonable extent, this relief is not automatic.<sup>11</sup>

The expense of obtaining a grant under the regular procedure with legal assistance makes the exercise impractical in smaller estates. It is especially impractical if there is no real property in the estate that would require the personal representative to obtain a grant in order that a transfer or other dealing with the real property could be registered in the Land

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8. A recent amendment to the *Financial Institutions Act*, R.S.B.C. 1996, c. 141 has facilitated transfer of credit union deposits on death without probate or letters of administration. Section 84(1) permits a credit union depositor or holder of non-equity shares to nominate a person in writing to receive deposits and non-equity shares on the depositor's death. Until December 31, 2004, s. 84(1) imposed a \$10,000 limit on the value of deposits and non-equity shares which could be automatically transferred on death in this manner. An amendment by the *Financial Institutions Statutes Amendment Act, 2004*, S.B.C. 2004, c. 48, s. 53 that removed the limit came into force on that date. As a result, a credit union deposit in any amount and non-equity shares in the credit union can now be transferred on death without probate or grant of administration to a nominee.
  9. Currently the fee for filing an application for probate or administration is set at \$208. This is the same as the standard fee charged for commencing a proceeding in the Supreme Court: *Rules of Court*, App. C, Sch. 1, item 7.
  10. Currently this fee is \$300: *Public Guardian and Trustee Fees Regulation*, B.C. Reg. 475/2003, Fee Schedule, item 4.
  11. See the heading "1. Section 17(b) of the *Estate Administration Act*" below.

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Title Office.<sup>12</sup> In intestacies, there is no will that needs to be proved. Intestacy and absence of real property are typical of small estates.

Many estates, large and small, are administered without obtaining grants of probate or administration. As probate fees apply to estates with a value of more than \$25,000, there is an incentive to avoid the procedure wherever possible.<sup>13</sup> Joint ownership is used increasingly widely in more substantial estates as well as small ones to avoid probate fees and to simplify the transfer of property after death to spouses and other successors. Property that is jointly held generally passes directly to the surviving joint owner or owners, outside the estate of the joint owner who dies first.<sup>14</sup>

Designations of beneficiaries of life insurance, RRSPs and RRIFs are used as estate planning vehicles, in part for similar reasons. The proceeds of a life insurance policy or an RRSP pass outside the estate of the insured or plan member if a beneficiary has been designated to receive them.<sup>15</sup> Trusts are also used in more complex estate planning to bypass probate.

Those administering an estate, especially a small one, will try to avoid the probate process by gathering the assets to the greatest extent possible simply by providing proof of death and a will, if any, and by signing indemnity agreements. These alternatives are not available in all situations, however. In 2004/05 approximately 44% of all applications for grants of probate and administration in British Columbia related to estates under \$100,000 in value.<sup>16</sup> Processing these applications takes up one-third of probate registry staff time.<sup>17</sup> It is ironic

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12. The term “real property” refers to land or interests in land. Sections 265 and 266 of the *Land Title Act*, R.S.B.C. 1996, c. 250 require a certified copy of a grant of probate or letters of administration to accompany an application for registration of land in the name of the personal representative, which under s. 260(3) is a necessary step before a transfer from the personal representative to a beneficiary or purchaser may be registered.

13. Probate fees amount to 0.6% of the value of the estate between 25,000 and \$50,000 plus 1.4% of the excess over \$50,000: *Probate Fee Act*, S.B.C. 1999, c. 4, s. 2(3).

14. The deceased joint owner’s interest will not pass beneficially to the surviving joint owner if the survivor was a trustee of the deceased’s interest in the jointly owned property.

15. *Insurance Act*, R.S.B.C. 1996, c. 226, s. 54(1); *Law and Equity Act*, R.S.B.C. 1996, c. 253, ss. 49(2)(c), 51(2)(c).

16. According to data provided by the Court Services Branch of the Ministry of Attorney General, out of a total of 8,723 applications for probate and administration made in British Columbia in fiscal 2004/05, 3,810 concerned estates under \$100,000.

17. Information provided in October 2004 by the Court Services Branch, Ministry of Attorney General.

that in larger estates probate is avoided through sophisticated estate planning, while estates of the less prosperous are drawn into the regular probate stream, where the associated expenses and probate fees erode modest inheritances.

### **V. Current Legislative and Regulatory Framework Applicable to Small Estates in British Columbia**

#### **A. Existing Legislative Provisions Relating to Small Estates**

Certain legislative provisions now in force in British Columbia are aimed at relaxing some requirements of regular probate procedure in estates below a certain size or described as “small” without reference to a value ceiling. These provisions are discussed below.

##### **1. PROVISIONS GIVING RELIEF FROM BONDING REQUIREMENTS**

###### *(a) Section 17(1) of the Estate Administration Act*

One of the grounds on which section 17(1) of the *Estate Administration Act*<sup>18</sup> permits the court to dispense with the requirement for an administration bond is that there is sworn evidence that “the estate is of small value.” “Small value” is not defined for the purposes of this provision, and there appear to be no reported decisions setting out guidelines for its interpretation.

###### *(b) Section 3(4) of the Probate Recognition Act*

Section 3(4) of the *Probate Recognition Act*<sup>19</sup> allows the court to dispense with a bond when it is sought to have letters of administration resealed in British Columbia and the estate is “of small value.” Resealing is a procedure whereby a grant of probate or administration issued in another Canadian province or territory, or a Commonwealth jurisdiction prescribed by regulation, is confirmed in British Columbia to enable the personal representative named in it to administer assets located here. The *Probate Recognition Act* does not define “small value” for the purposes of this provision.

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18. R.S.B.C. 1996, c. 122.

19. R.S.B.C. 1996, c. 376.

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### 2. SECTION 20 OF THE *ESTATE ADMINISTRATION ACT*

Section 20 of the *Estate Administration Act* allows someone to be appointed as the administrator of an estate less than \$25,000 in value without a court order. This limit was raised from \$10,000 in 2004.<sup>20</sup>

The person seeking appointment as administrator must satisfy the registrar by affidavit that he or she is competent to take out administration and that the value of the estate is no greater than \$25,000.<sup>21</sup> If the registrar is satisfied of this, letters of administration with or without will annexed must be issued to the applicant.<sup>22</sup>

The registrar has the power to dispense with an administration bond on the same grounds as the court may dispense with bonding in a regular application for grant of administration, namely if there is sworn evidence that there are no debts, the applicant is the beneficiary, or that all parties beneficially interested in the estate consent to the applicant acting without bond.<sup>23</sup> Requirements as to the form of the bond are relaxed somewhat.<sup>24</sup>

An applicant must comply with all the requirements under section 112 of the *Estate Administration Act* for giving notice of an application for appointment as administrator and a copy of the will, if any, to persons with interests in the estate.<sup>25</sup> Under another 2004 amendment to section 20, the Official Administrator is not required to satisfy the registrar when applying for administration under the section that the deceased has no relatives entitled to share in the distribution of the estate who are ready and competent to act as administrators.<sup>26</sup>

Except for the absence of probate and filing fees and the fact that the grant of administration is issued by the registrar without a desk order by a judge, there is no difference between the

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20. *Attorney General Statutes Amendment Act, 2004*, S.B.C. 2004, c. 57, s. 11(a).

21. Section 20(3).

22. Section 20(4).

23. Section 20(6).

24. A bond may be accepted with whatever sureties the registrar thinks fit: s. 20(5). The normal requirement under Rule 61(27) of the *Rules of Court* is for two sureties whenever a surety bond is offered instead of an insurance or bonding company's guarantee.

25. Section 20(7). The Public Guardian and Trustee, when applying for administration in the capacity of Official Administrator, is exempted from this requirement by s. 112(9).

26. Section 20(3.1), added by S.B.C. 2004, c. 57, s. 11(b).

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procedure under s. 20 of the *Estate Administration Act* and a regular application for a grant of administration. The same documentation is required, the same examination of the documents takes place within the registry, and the person applying for administration must follow the same procedures before filing.

### 3. SECTIONS 120 TO 126 OF THE *ESTATE ADMINISTRATION ACT*

Sections 120 to 126 of the *Estate Administration Act* do not apply only to small estates, but would be of some benefit to the family of a deceased wage-earner who did not leave behind substantial wealth. They provide for payment of up to three months' wages earned by a deceased "worker" directly to the worker's surviving spouse, without deduction for debts and without the need for probate or letters of administration.<sup>27</sup> These provisions apply if the deceased was employed in an industry covered by Part 1 of the *Workers Compensation Act*.<sup>28</sup> Part 1 covers all employers and workers in British Columbia except those exempted by the Workers Compensation Board.<sup>29</sup>

### 4. SECTION 18 OF THE *MOTOR VEHICLE ACT*

Section 18 of the *Motor Vehicle Act*<sup>30</sup> allows a motor vehicle licence to be transferred into the name of another person when a licence holder dies, without a grant of probate or administration. The section applies only if certain conditions are met. The person seeking the transfer must satisfy the Insurance Corporation of British Columbia that the "total estate" of the deceased licence holder does not exceed \$25,000. The will, if any, must be produced and proof of the consent of a person entitled under the will must be provided. In an intestacy, the consent of all persons entitled to share in the estate is needed. The limit in section 18, like that in section 20 of the *Estate Administration Act*, was raised from \$10,000 to \$25,000 in 2004.<sup>31</sup>

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27. Sections 121, 122.

28. Section 120.

29. *Workers Compensation Act*, R.S.B.C. 1996, c. 492, s. 2(1). "Employer" and "worker" are terms broadly defined in s. 1 of the Act.

30. R.S.B.C. 1996, c. 318.

31. See S.B.C. 2004, c. 57, s. 18.

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### 5. SECTION 268 OF THE *LAND TITLE ACT*

Section 268 of the *Land Title Act*<sup>32</sup> gives the land titles registrar discretion to dispense with resealing of a grant of probate or letters of administration issued in another province in cases of “hardship, economic or otherwise” if the net value of the estate is less than \$50,000. Section 268 would enable the registrar to accept the extraprovincially issued grant as proof of the title and authority of a personal representative to be registered as owner of, and to deal with, land in British Columbia.

The \$50,000 limit applies to the net value of the entire estate, not merely the value of assets located in British Columbia. What would amount to hardship for the purpose of section 268 is not defined, although the reference to economic hardship presumably indicates that the expense of an application for resealing in relation to the size of the estate is a factor for the registrar to consider, along with the other circumstances of each case. It may be noted that section 268 gives no power to the registrar to waive the need for a grant of probate or administration altogether.

### 6. SECTION 2(b) OF THE *PROBATE FEE ACT*

Section 2(b) of the *Probate Fee Act*<sup>33</sup> states that no fee is payable under the Act if the value of the estate does not exceed \$25,000. For this purpose, “value of the estate” means the gross value of the real and personal property of the deceased situated in British Columbia that passes to the personal representative at the date of death, as set out in the disclosure document filed as part of an application for a grant.<sup>34</sup>

### 7. SECTION 7 OF THE *MANUFACTURED HOME REGULATION*

Currently the *Manufactured Home Regulation* requires that a certified copy of a grant of probate or letters of administration must be provided in order to transfer a manufactured (mobile) home of a deceased owner to a beneficiary or purchaser.<sup>35</sup> The regulation provides an exception if the fair market value of the estate is under \$25,000. In that case a transfer may be recorded on the strength of a copy of a will and an affidavit by each executor that the

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32. *Supra*, note 5.

33. *Supra*, note 13.

34. *Probate Fee Act*, *supra*, note 13, s. 1. “Gross value” is not defined in the *Probate Fee Act*, but the term is normally used to refer to the total value of assets that pass to a personal representative before the deduction of debts and expenses of administration.

35. B.C. Reg. 441/2003.

estate is worth less than \$25,000. The affidavit must also affirm the executor's belief that the will is genuine and unrevoked, to the best of the executor's knowledge.<sup>36</sup> The exception does not apply to intestacies.

### 8. EFFECT OF CURRENT BRITISH COLUMBIA SMALL ESTATE LEGISLATION

Except in connection with the transfer of a motor vehicle licence or a manufactured home, British Columbia does not have a mechanism for the orderly administration of small estates that is easier to use and substantially less costly in practice than normal probate procedure. Section 20 of the *Estate Administration Act* differs only nominally from the procedure applicable in normal applications for administration with or without will annexed by allowing the grant to be issued by the registrar without referral to a judge. Availability of the procedure under section 20 makes no practical difference to the applicant in terms of the complexity of the steps required at the pre-filing stage and the documentation that must be submitted.

#### **B. Recent Changes Regarding the Role of the Official Administrator**

##### 1. AMENDMENTS GIVING OFFICIAL ADMINISTRATOR DISCRETION NOT TO ACT

Until 2003 section 41(1) of the *Estate Administration Act* required the Public Guardian and Trustee, in the capacity of Official Administrator, to apply for a grant of administration if the spouse, heirs, or next of kin of a deceased person in British Columbia who would be competent to take out administration renounced their right to do so, or requested that an administrator be appointed. Section 40(2) of the Act also required the Official Administrator to apply if a resident of British Columbia, or a non-resident with assets in the province, died intestate or had named a non-resident executor, and there were no relatives in the province entitled to share in the distribution of the estate who were ready and competent to apply for a grant of administration. This duty to act as "administrator of last resort" arose irrespective of the value of the estate or whether the estate was insolvent. The Official Administrator was obliged to obtain a grant even if the expenses of administration exceeded the value of the estate.

In May 2003, amendments were made to sections 40(2) and 41(1) of the *Estate Administration Act*, giving the Official Administrator a discretion to act or not as administrator in any given case. The amendments also added section 41.1 to the *Estate Administration Act*,

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36. *Ibid.*, s. 7(2).

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which prevents a court from appointing the Official Administrator as the administrator of an estate without the Official Administrator's prior consent.<sup>37</sup>

### 2. NEW FEE STRUCTURE FOR ESTATE SERVICES

A new fee structure for the Office of the Public Guardian and Trustee was introduced in April 2003. The new fee structure includes a minimum fee of \$3,500 for the administration of an estate of a deceased person, and a \$75.00 per hour charge for staff time spent in identifying and locating heirs.<sup>38</sup>

### 3. TERMINATION OF INFORMAL "NO-GRANT NOTICE" ARRANGEMENT

Until 2004 the Official Administrator was able to make use of an informal arrangement with the registries of the Supreme Court when acting as administrator of last resort in estates below \$10,000. This was the limit under section 20 of the *Estate Administration Act* as it then stood. Under this arrangement, the Official Administrator's office forwarded a memorandum to the registry called a "no-grant notice," indicating that it proposed to administer the estate without a grant. This arrangement allowed the Official Administrator to collect and distribute very small estates among the relatives of deceased persons while minimizing depletion of the estate through probate expenses.

This arrangement, although practical, had no legislative basis. At approximately the same time as the limit on the size of estates qualifying for administration under section 20 was raised from \$10,000 to \$25,000 in 2004, the arrangement was terminated.<sup>39</sup>

### 4. A REDUCED ROLE FOR THE OFFICIAL ADMINISTRATOR IN SMALL ESTATES

Following the introduction of the changes to sections 40(2) and 41(1) of the *Estate Administration Act*, the Office of the Public Guardian and Trustee published a policy statement containing the following paragraph:

The PGT [Public Guardian and Trustee] intends to use its discretion to decline to administer estates where there is no financial benefit to the heirs, or public interest to be served, in applying for letters of administration. Such situations may include: estates

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37. *Miscellaneous Statutes Amendment Act (No. 2), 2003*, S.B.C. 2003, c. 37

38. *Public Guardian and Trustee Fees Regulation*, B.C. Reg. 312/2000, as am. by B.C. Reg. 83/2000, B.C. Reg. 475/2003.

39. See, *supra*, under the heading "Section 20 of the *Estate Administration Act*" and note 20.

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where the total value of the assets are less than the cost of administration; insolvent estates; and estates where there are family members available to take responsibility.

The Public Guardian and Trustee will decline to act in the capacity of Official Administrator in estates with a gross value of less than \$5,000, as it has been found that funeral and estate administration expenses will practically exhaust that amount, leaving no property to be administered.<sup>40</sup>

As the extract from the policy statement suggests, the conferral on the Official Administrator of a discretion to decline to act, increases in fees fixed by regulation that the Official Administrator is obliged to charge for estate administration services, and termination of the *de facto* ability to administer estates under \$10,000 informally without grant, will likely reduce significantly the degree to which the Official Administrator will be involved with small estates in the future.

Decreasing involvement of the Official Administrator heightens the need for a procedure that would make private as well as public administration of a small estate less complex, onerous, and costly.

## VI. Overview of Small Estate Legislation in Canadian and Selected Foreign Jurisdictions

### A. Canada

#### 1. PRINCIPAL CANADIAN MODELS

Legislation concerning small estates in other Canadian provinces and territories follows three principal models.

##### *(a) Summary Administration Without Grant*

The first model is found in Alberta, Manitoba, Saskatchewan, the Northwest Territories, and Nunavut. It allows for a “summary” (informal) administration without probate or letters of administration if the value of the estate is below a specified figure. In Alberta<sup>41</sup> and

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40. Conversation with the Director of Estate Administration, Office of the Public Guardian and Trustee, 4 February 2004. The Official Administrator does not arrange the burial of indigents. This is done by the Ministry of Employment and Income Assistance.

41. *Public Trustee Act*, S.A. 2004, c. P-44.1, s. 13(1). The dollar amount of the limit is currently fixed by Alta. Reg. 241/2004, s. 2(1).

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Saskatchewan<sup>42</sup> the limit is \$5,000 and the estate must consist solely of personal property. In Manitoba the limit is \$10,000 and the estate may include real property, although the procedure only applies to personal property unless the court also vests real property in whomever is named in the order to dispose of the assets.<sup>43</sup> In the Northwest Territories<sup>44</sup> and Nunavut<sup>45</sup> the procedure applies to estates with a net value of not more than \$10,000.

In Manitoba and Saskatchewan an order of a court having jurisdiction in probate matters is required. The court may appoint any person to administer the estate according to the terms of the order.<sup>46</sup> In Alberta, the Northwest Territories and Nunavut the procedure is only available to the Public Trustee, but no prior court authorization is required. In Alberta and the territories the provisions call for immediate distribution of certain personal effects that would be expected to have little or no market value, sale of the remainder of the property, application of the proceeds to debts of the estate, and the doing of “all things necessary to complete the administration of the estate.”<sup>47</sup> The Manitoba and Saskatchewan legislation requires disposition of the assets as directed by the court in relation to the payment of funeral expenses, debts of the deceased, and payment of the balance to the beneficiaries or next of kin.<sup>48</sup>

The territorial legislation provides that a letter from the Public Trustee, addressed to a manager of a bank or person in possession of property of the deceased and advising that the Public Trustee is acting under the legislation, is conclusive evidence that the Public Trustee

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42. *Administration of Estates Act*, S.S. 1998, c. A-4.1, s. 9(1).

43. *Court of Queen’s Bench Surrogate Practice Act*, C.C.S.M. c. C290, s. 47(1). The office of the Public Trustee of Manitoba informed the Subcommittee that the power to vest real property in connection with a summary administration under s. 47(1) has not been in recent use.

44. *Public Trustee Act*, R.S.N.W.T. 1988, c. P-19, s. 26(1).

45. *Public Trustee Act*, R.S.N.W.T. 1988, c. P-19, s. 26(1), as duplicated for Nunavut by s. 29 of the *Nunavut Act*, S.C. 1993, c. 28.

46. *Supra*, notes 42 (Sask.) and 43 (Man.).

47. *Supra*, notes 44 and 45 (N.W.T. and Nunavut, respectively) and 41 (Alberta). With respect to the distribution of personal effects, the Alberta statute directs that “articles of personal use” be distributed “in any manner the Public Trustee considers appropriate.” The territorial statutes call for “wearing apparel and articles of personal use or ornaments” to be distributed in the Public Trustee’s discretion to one or more of the family and relatives of the deceased.

48. *Supra*, notes 42 (Sask.), s. 9(2) and 43 (Man.).

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is the administrator.<sup>49</sup> Alberta's provision calls for use by the Public Trustee of a prescribed form for this purpose.<sup>50</sup>

### *(b) Election By Public Trustee To Administer Without Grant*

A second model, found in Alberta and Nova Scotia, with a variant in New Brunswick, allows the Public Trustee to elect to administer an estate without taking out a grant in the normal manner. The election is made in writing and filed with the registry of the court. On filing, the Public Trustee thereupon acquires the same authority as if a grant had been issued in the normal manner. Following completion of the administration, accounts are filed with the court. In Alberta the value ceiling for availability of the election procedure was recently raised to \$50,000.<sup>51</sup> In Nova Scotia the ceiling is \$10,000.<sup>52</sup> In New Brunswick the limit is \$3,000, and the Public Administrator (equivalent of the Public Trustee) must file an affidavit establishing that the probate value of the estate is not below \$3,000, rather than merely a written election.<sup>53</sup>

The Alberta and Nova Scotia legislation specifies that a certified copy of the filed election is equivalent to letters of administration for all purposes.<sup>54</sup> In New Brunswick, letters of administration are issued to the Public Administrator.<sup>55</sup>

The Alberta *Public Trustee Act* requires that if the value of the estate is found after an election is filed to be in excess of the statutory ceiling for the election procedure by more than twenty per cent, the Public Trustee must file a memorandum stating the fact in the court registry and may then apply for a grant of administration in the normal way.<sup>56</sup>

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49. *Supra*, notes 44 (N.W.T.) and 45 (Nu.), s. 26(2).

50. *Supra*, note 41, s. 13(2).

51. *Supra*, note 41, ss. 16(1)-(5); Alta. Reg. 241/2005, s. 3(1).

52. *Public Trustee Act*, R.S.N.S. 1989, c. 379, s. 16(1).

53. *Probate Court Act*, S.N.B. 1982, c. P-17.1, s. 20(2).

54. *Supra*, note 41, s. 16(5) (Alta.) and note 52, s. 16(5) (N.S.).

55. *Supra*, note 53, s. 20(3).

56. *Supra*, note 41, s. 16(6).

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### *(c) Issuance of Letters of Administration by the Registrar*

This model is represented by section 20 of British Columbia's *Estate Administration Act*, discussed above. The Yukon Territory has an identical provision allowing letters probate or letters of administration with or without will annexed to be issued by the probate registrar instead of the court if the gross value of an estate is below \$25,000.<sup>57</sup> The registrar is given the authority to dispense with an administration bond and also has discretion regarding sureties. The procedure is available to both private applicants as well as to the Public Guardian and Trustee in British Columbia and the equivalent Yukon official.

## 2. COURT ASSISTANCE TO APPLICANTS FOR GRANT

Two provinces require an application for probate or administration to be prepared by court registry officials in estates below a certain size at the option of the applicant. The apparent purpose is to allow the applicant representative to obtain a grant without legal assistance.

Alberta's provision states that if an estate consists only of personal property with an aggregate value of \$3,000 or less, an application for probate or administration may be prepared on behalf of the applicant by the court clerk, who also issues any required notices on the applicant's behalf.<sup>58</sup>

Saskatchewan has a similar provision applicable to estates up to \$10,000 in value, not necessarily restricted to personal property. The applicant for the grant must be a resident of Saskatchewan. Creditors applying for administration are not eligible to take advantage of this service.<sup>59</sup>

## B. United Kingdom

In England the Public Trustee is empowered to administer "estates of small value."<sup>60</sup> "Small value" is not defined for this purpose. The Public Trustee is also under a duty to administer an estate with a gross capital value of less than £1000 in some circumstances.<sup>61</sup>

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57. *Estate Administration Act*, R.S.Y. 2002, c. 77, s. 20.

58. *Administration of Estates Act*, R.S.A. 2000, c. A-2, s. 19.

59. *Supra*, note 42, s. 7(1).

60. *Public Trustee Act 1906*, 6 Edw. 7, c. 55, s. 2(1)(a).

61. *Ibid.*, s. 3(1). If someone who would be entitled to apply for an order for administration by the court requests the Public Trustee to act, and if the persons beneficially entitled to the estate are "of small

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A number of enactments allow payment by public authorities and specified institutions of small amounts of money owed to deceased persons directly to their dependents without a need for probate or a grant of administration.<sup>62</sup> These typically relate to such debts as arrears of wages, pension entitlements, benefits under various insurance schemes, and payments to holders of government securities. By the *Administration of Estates (Small Payments) Act 1965*,<sup>63</sup> the amount payable under the statutes of this kind listed in the schedules to that Act is fixed from time to time by a statutory instrument. Currently the amount is fixed at £5000 by the *Administration of Estates (Small Payments) (Increase of Limit) Order 1984*.<sup>64</sup> The Act also extends the ability to make payments up to this amount to cases in which the deceased had a will.

Some enactments also authorize the disposition of personal effects of public employees and armed services personnel to their dependents or relatives without a need for intervention by a personal representative.

In Scotland the sheriff's clerk may be required to prepare the documentation leading to confirmation, the Scottish equivalent to probate or letters of administration, if the estate is below a specified size. If a will was left, the applicant for the confirmation provides the will, the death certificate, the personal details of the deceased and his or her family, and a inventory of the estate and its value as of the date of death. The sheriff's clerk takes the applicant's oath, prepares the necessary court forms and issues the confirmation.<sup>65</sup> In an intestacy, the procedure is similar except that a "bond of caution" may also be required, similar to

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means," the Public Trustee must administer the estate unless there is "good reason" to (continued) refuse. A court in which a proceeding for administration has been commenced may also transfer the administration of the estate to the Public Trustee if it appears that the estate can be more economically administered by the Public Trustee than by the court, or if the transfer is expedient for any other reason: *ibid.*, s. 3(5). In either case, there must be a personal representative appointed before the request is made to the Public Trustee, as this is necessary before an action for administration can be instituted: Halsbury, 4<sup>th</sup> ed., vol. 17(2), p. 390, para. 709.

62. See the heading "Sections 120-126 of the *Estate Administration Act*," *supra*, where similar British Columbia legislation is discussed.

63. 1965, c. 32.

64. S.I. 1984/539.

65. *Small Testate Estates (Scotland) Act 1876*, 39 & 40 Vict., c. 22, s. 3; see Scottish Executive internet website: <http://www.scotland.gov.uk/library5/social/waad-02.asp>, "What to do after a death in Scotland," subheading "12. Small Estates."

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an administration bond.<sup>66</sup> The limit on estate value for these procedures has recently been increased to £30,000.<sup>67</sup>

### C. New Zealand

The New Zealand *Public Trust Act 2001*<sup>68</sup> establishes the Public Trust as a public corporation with a role similar to that of the Public Trustee in Canadian jurisdictions. It contains an “election” procedure similar to that in Alberta and Nova Scotia legislation. The Public Trust is given power to elect to administer without grant where a person dies leaving property in New Zealand having a gross value not exceeding NZ\$120,000 and no one else has obtained a grant in New Zealand to administer the estate.<sup>69</sup>

### D. Australia

For the most part, Australian state legislation concerning the administration of small estates closely resembles the legislation in effect in various Canadian provinces. New South Wales, Victoria, Western Australia, and the Northern Territory allow applications for grant in estates below a specified size (ranging from A \$10,000 to A \$25,000) to be issued by the registrar rather than the court.<sup>70</sup>

In Victoria, the district registrar is required to prepare the application for grant in an estate under A \$25,000 (or A\$50,000 if the sole beneficiaries or heirs are the spouse and children of the deceased.)<sup>71</sup>

Several Australian states empower the Public Trustee, “trustee companies” (i.e. private trust companies) or “state trustees” (similar to official administrators in B.C.) to file an election to administer an estate below a gross value ceiling without the need for grant. The ceiling

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66. *Intestate Widows and Children (Scotland) Act, 1875*, 38 & 39 Vict., c. 41, s. 3; see also Scottish Executive internet website, *supra*, n. 65.

67. *Confirmation to Small Estates (Scotland) Order 2005*, No. 251, SSI 251, effective 1 June 2005.

68. 2001, No. 100.

69. *Ibid.*, s. 93.

70. *Wills, Probate and Administration Act 1898* (N.S.W.), s. 101; *Administration and Probate Act 1958* (Vic.), s. 71; *Administration Act 1903* (W.A.), s. 55; *Administration and Probate Act*, ss. 106-108 and *Administration and Probate Regulations*, s. 2A (N.T.).

71. *Administration and Probate Act 1958* (Vic.), s. 71.

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on the size of estate where this is permitted is A\$50,000 in New South Wales<sup>72</sup> and Western Australia<sup>73</sup> and A \$100,000 in Queensland.<sup>74</sup>

In addition to making the election procedure available to its Public Trustee and to “trustee companies” administering estates below A\$50,000, New South Wales has an additional summary administration procedure available to the Public Trustee. After advertising to the extent the Public Trustee deems appropriate, that official may liquidate an estate, pay its liabilities, and distribute the residue without either grant or written election if it is below A\$10,000 in value and if the Public Trustee has no knowledge of any application for grant having been made.<sup>75</sup> Under the non-grant, non-election procedure the only document that needs to be filed with the court is the will, if there is one. The same fees are chargeable as if probate or administration had issued to the Public Trustee, however.<sup>76</sup>

Queensland allows its Public Trustee to administer personal property belonging to an estate without grant or election if the value of the estate less the value of any realty is less than A\$75,000.<sup>77</sup> In Victoria, where “State Trustees,” a corporate equivalent of a Public Trustee, is authorized to administer an estate, State Trustees may simply publish a notice of intention to administer in a daily newspaper. It is then deemed to have been granted probate or administration fourteen days after the notice appears.<sup>78</sup>

### E. United States

There are three principal kinds of U.S. state legislation dealing with small estate administration, although great variations are found among the states. The first allows direct administration of the estate by the intestate heirs or beneficiaries under a will, without the involvement of the personal representative, if any. The second is a means of collecting tangible and intangible assets of the estate by the dependents or heirs of the deceased on the strength of

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72. *Public Trustee Act 1913* (N.S.W.), s. 18A; *Public Trustee Regulation 2001*, s. 34(1).

73. *Trustee Companies Act 1987* (W.A.), s. 10; *Trustee Companies Regulations 1988*, s. 4.

74. *Trustee Companies Act 1968* (Qld.), s. 12.

75. *Public Trustee Act 1913* (N.S.W.), s. 34A(1); *Public Trustee Regulation 2001* (N.S.W.), s. 34(3).

76. *Public Trustee Act 1913*, s. 34A(2).

77. *Public Trustee Act 1978* (Qld.), s. 35.

78. *Administration and Probate Act 1958* (Vic.), s. 79.

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an affidavit evidencing entitlement. Some states have enacted both regimes. Both regimes are reflected in the *Uniform Probate Code* promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). A third procedure is available if the estate does not exceed the total amount of certain statutory allowances and privileged claims that have a super-priority in the order of payment under state law. These procedures are briefly described below, as well as the New York “voluntary administrator” procedure.

### 1. SUCCESSION WITHOUT ADMINISTRATION

This regime allows a certain class of those eligible to inherit to assume direct administration of an estate without the intervention of a personal representative, if the estate is below a certain size. Usually this procedure must be authorized by an order of a court having probate jurisdiction. The eligible class varies from state to state, but typically includes the spouse and children of the deceased, other heirs eligible to take on intestacy, beneficiaries under a will if there is one, and sometimes creditors. Those assuming administration in this manner take their respective shares of the estate immediately and assume the same liabilities toward creditors that the personal representative would have, to the extent of the value of the property they actually receive.

This mechanism is similar to the manner in which property of a deceased person passes in civil law systems. In fact, the *Uniform Probate Code* states that the concept is “drawn from the civil law and is a variation of the method which is followed largely on the Continent in Europe, in Louisiana and in Quebec.”<sup>79</sup>

The size of an estate in which this procedure may be used varies considerably between states. In California the surviving spouse and minor children of a decedent may petition to have the estate assigned to them directly if the net value over and above liens and encumbrances and any “probate homestead interest” is not more than U.S.\$20,000.<sup>80</sup> In Florida a similar procedure is available if the value net of exempt property is not more than U.S.\$75,000.<sup>81</sup>

Usually there must be sworn evidence that probate or administration has not been previously granted in the estate and that no application for it is pending at the time the petition for direct vesting is presented.

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79. *Uniform Probate Code*, Art. III, part 12, General Comment preceding §§ 3-312 to 3-322.

80. *Probate Code* (Cal.), § 6602.

81. *Statutes* (Florida.), Title XLII, § 735.201(2).

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### 2. COLLECTION OF ESTATE BY AFFIDAVIT

The majority of U.S. states have enacted another procedure whereby a successor may obtain a transfer of property belonging to a small estate and payment of debts owing to the deceased, without the authority of a probate court or the appointment of a personal representative. In some states the consent of the personal representative, if any, is required. Some states also require the affidavit to be filed in the registry of the court with jurisdiction in probate matters. A model for this procedure is found in sections 3-1201 and 3-1202 of the *Uniform Probate Code*.

Under the affidavit collection procedure, personal property of a deceased person and debts owed to the estate must be transferred or paid to a person claiming to be a successor of the decedent on production by that person of an affidavit containing certain statements. The usual requirements for the contents of the affidavit are that the total value of the estate is not more than a specified amount fixed by the statute, that a specified amount of time has passed since the death of the deceased (usually 30 days), that no application for probate or appointment of a personal representative has been granted or is pending, and that the claimant is entitled to payment or delivery as a successor of the deceased.

An important feature of this procedure is that a person paying or transferring property in good faith on the strength of such an affidavit is released from liability to creditors of the estate and other will beneficiaries or successors in intestacy. A person receiving payment or transfer of property on the basis of the affidavit must account to the personal representative, if any, or to other successors having superior rights with respect to the assets collected. Significant criminal penalties are provided for fraudulent use of the procedure.

The size of estates in which the affidavit collection procedure may be used varies considerably. In Texas the procedure is available if the estate is worth not more than U.S.\$50,000, exclusive of homestead and exempt property.<sup>82</sup> In California it is available where the value of the estate property located in California is not more than U.S.\$100,000.<sup>83</sup> Title to real property cannot be transferred through this affidavit procedure, although both personalty

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82. *Probate Code* (Tex.), § 137.

83. *Probate Code* (Cal.), § 13100. Illinois also increased the limit for its affidavit collection procedure in 2004 from U.S.\$50,000 to U.S.\$100,000: Public Act 93-877, amending the *Probate Act* (Ill.), 755 ILCS 5/25-1. The higher limit has been criticized as exposing a well-intentioned deponent to significant liability and increased potential for litigation, particularly in regard to distribution because of the need to decide questions that are often resolved by adjudication in regular proceedings. It may be noted that Illinois requires the deponent to swear that he or she is unaware of any dispute or potential conflict concerning a will or entitlement to inherit: *see* Gunnarsson, Helen W, "A new, higher limit for small-estate affidavits" (2004), 92 Illinois Bar Review 508.

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and realty are considered in determining the value of the estate. California law also requires that the affidavit state no person has a superior right to the interest of the deceased in the property which the affidavit describes, thus apparently restricting the procedure to situations in which the deponent or deponents are the only persons beneficially entitled to receive the deceased's interest.<sup>84</sup>

California makes provision for a separate but similar affidavit procedure to obtain direct transfer to a successor of real property having a value less than U.S.\$20,000, if at least six months have elapsed since the death of the owner.<sup>85</sup> The personal representative must consent to this procedure if an estate administration has been opened in the state.

There is a further procedure allowing for a court order vesting both realty and personalty in an estate with an aggregate value of not more than U.S.\$100,000 in the petitioning successors, who assume direct liability for the unsecured debts of the deceased up to the value of the property they receive.<sup>86</sup> The personal representative, if any, must consent before such an order may be granted.

Washington allows the affidavit collection procedure where the value for probate purposes, (i.e., excluding the community property interest of a surviving spouse) is not more than U.S.\$60,000. Washington also has more requirements for the contents of the affidavit than many other states. In particular, the affidavit must state that all other successors have been notified by the deponent and that the deponent is either personally entitled to full payment or delivery, or that all other successors have consented.<sup>87</sup>

### 3. SUMMARY ADMINISTRATION WHERE ESTATE DOES NOT EXCEED STATUTORY ALLOWANCES

Another type of summary administration found in numerous U.S. states, also reflected in the *Uniform Probate Code*,<sup>88</sup> allows direct distribution of the estate to the persons entitled to share in it if the unencumbered value of the estate does not exceed the total of certain

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84. *Probate Code* (Cal.), § 13101(a)(9).

85. *Ibid.*, §§ 13200-13210.

86. *Ibid.*, §§ 13150-13158.

87. R.C.W. 11.62.010.

88. §§ 3-1203, 3-1204. Among the U.S. states that have enacted variants of this procedure are: Arizona, A.R.S., § 14-3973; Kansas, Statutes Annotated 59-1507; New Mexico, NMSA 1978, § 45-3-1203; Texas, *Probate Code*, § 143.

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privileged claims (such as funeral expenses) and statutory allowances to the spouse and dependent children of the deceased. These claims and allowances rank ahead of the debts of unsecured creditors in a regular estate administration. In cases of this kind the personal representative may immediately distribute the estate to the persons entitled to receive it and file a closing statement with the probate court verifying that the value was not in excess of the privileged claims, that it was fully administered by distribution to the persons entitled, and that copies of the closing statement have been provided to all “distributees” (persons entitled to a share of the estate), creditors and other claimants.<sup>89</sup>

### 4. SETTLEMENT OF SMALL ESTATES WITHOUT COURT ADMINISTRATION IN NEW YORK

Article 13 of the *Surrogate’s Court Procedure Act* applies to “small estates,” which are defined as those in which there is personal property having a gross value of U.S. \$20,000 or less, exclusive of certain statutory allowances for the deceased’s surviving spouse and children.<sup>90</sup> A surviving spouse or relative of the deceased may become a “voluntary administrator” by filing an affidavit in the Surrogate’s Court where the deceased was domiciled or in the county where the personal property is located if the deceased was not domiciled in New York.<sup>91</sup> A surviving spouse has the first right to do so, followed by children and collateral relatives in a ranked list.<sup>92</sup>

The fee to file the affidavit is fixed at U.S.\$1.00 by the Act.<sup>93</sup> After the affidavit is filed, the court clerk must mail a notice of the proceeding under Article 13 to each distributee of the estate who has not renounced a right to act and to each beneficiary other than the voluntary administrator.<sup>94</sup> A certificate of the court confirming the filing of the affidavit is sufficient evidence of authority for the voluntary administrator to collect the estate.<sup>95</sup> Third parties

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89. *Uniform Probate Code*, § 3-1204.

90. *Surrogate’s Court Procedure Act* (N.Y.), § 1301, para. 1.

91. *Ibid.*, § 1304, para. (3).

92. *Ibid.*, § 1303(a).

93. *Ibid.*, § 1304, para. 4.

94. *Ibid.*

95. *Ibid.*, § 1304(5).

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having custody, possession or control of any personal property of the deceased are released from liability for any delivery of property or payment made pursuant to the certificate.<sup>96</sup>

A voluntary administrator has the same liabilities towards creditors and others interested in the estate as a “fiduciary,” defined under the Act to include an executor or administrator.<sup>97</sup> The voluntary administrator is required to maintain an estate bank account and, at the end of the administration, to file a statement of assets collected and payments and distributions made, together with receipts or cancelled cheques.<sup>98</sup>

### **VII. Reform: A New Procedure for Summary Administration of Small Estates in British Columbia**

#### **A. General**

The Small Estates Subcommittee’s review of existing legislative mechanisms for summary administration of small estates revealed that those in common law Canada, New Zealand and Australia focus heavily on intervention by the Public Trustee or an equivalent official. The U.S. legislation makes summary administration procedures available more widely to private persons. As the role delineated for the Public Guardian and Trustee of British Columbia for the foreseeable future likely contemplates less involvement with small estates, it would be counter-productive to merely adopt existing Canadian and Commonwealth models.

The Subcommittee did not consider the civil law model of collective administration by the body of successors to be readily transferable to British Columbia’s legal environment, even though some American jurisdictions have created a version of it for use in small and intermediately sized estates. The Subcommittee considered it overly complex to allow two distinct legal theories of succession to apply, depending on the size of an estate. The British Columbia public is by and large familiar with the concept of administration and distribution by a personal representative having fiduciary obligations and a temporary title to the assets of an estate, and also with the concept of probate as an official confirmation of the personal representative’s powers. While informal administrations by families of the deceased take place, the public is unfamiliar, as are the province’s legal practitioners, with a system in which the successors collectively become directly liable to creditors of the estate. In the Subcommittee’s opinion, a new summary administration procedure designed in keeping with the princi-

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96. *Ibid.*, § 1305.

97. *Ibid.*, § 103, para. 21.

98. *Ibid.*, §§ 1307(1), (2).

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ples of common law legal systems will be more readily understood and used than a hybrid one.

The U.S. affidavit collection procedure is more consistent with the common law model. Under it, an identifiable individual acquires authority to gather assets and is accountable to the successors for them, occupying a position similar to a personal representative. It provides a simple, fast means of initiating the administration without the need for court appointment. It is equally adaptable to intestacies and cases where there is a will. An executor can swear a small estate affidavit in lieu of obtaining probate if an estate consists only of personal property. Due to the statutory release and discharge from liability that is a feature of the procedure, third parties such as financial institutions can have confidence that they may release estate assets to the deponent on the strength of an affidavit conforming on its face to the statutory requirements without fear of liability.

In the Subcommittee's view, the affidavit collection procedure provides a good foundation for a new summary administration procedure for small estates in British Columbia. Having settled on this model, the task then is to adapt it to British Columbia's legal environment.

### **B. Size of Estates Eligible for Summary Administration**

What is a "small estate" in current terms? This is a subjective question, and any answer will be somewhat arbitrary. The recent increase in the value ceiling applicable under section 20 of the *Estate Administration Act* to \$25,000 (the threshold for probate fees to apply) could provide one possible answer. The Subcommittee, however, believes that \$25,000 is too low. It also believes that access to summary administration should not necessarily be linked with exemption from probate fees.

Another possible ceiling for "small estates" is the level of the surviving spouse's preferred share in intestacy. It is currently fixed at \$65,000 by s. 85(4) of the *Estate Administration Act*. Below this amount, the entire estate goes to the spouse, and if the estate is larger than the preferred share, the spouse receives that amount before the balance is divided.

Alberta's recent step in raising the limit of the size of estates which the Public Trustee may elect to administer without grant to \$50,000 might also provide some guidance.

Given that summary administration is intended to be simple and inexpensive, an important factor may be that British Columbia's Public Guardian and Trustee will not require bonding or other security in estates under \$50,000.

In the Subcommittee's opinion, a \$50,000 limit would represent a reasonable estimate of the value of a typical small estate in which the assets might consist of a motor vehicle, a modest

bank account, and some personal property of relatively negligible value. The Subcommittee recommends that summary administration under the new procedure should be available for the time being if the estate is not more than \$50,000 before deduction of liabilities. The limit should be set by regulation so it may be more easily varied in response to changing economic conditions. It should be reviewed after the new procedure has been in effect for several years to determine if it remains a realistic benchmark.

The question of what should be done if the value of the estate is found after a declaration is filed to be in excess of the limit also needs to be answered. In that case it appears the proper course of action would be to suspend activity under the summary procedure and apply for a regular grant. If the summary procedure continues once it is apparent that the estate would not qualify for summary administration if its full extent had been known, issues will be raised concerning the authority to carry on under the summary procedure, and difficulties will be encountered in dealings with third parties.

### C. Composition of Eligible Estates

#### 1. SHOULD ESTATES INCLUDING REAL PROPERTY BE ELIGIBLE?

Real property registered in the name of a deceased person cannot be transferred by a personal representative without a grant of probate or administration, and recommendations for significant modification of requirements of the *Land Title Act* are beyond the terms of reference of the Succession Law Reform Project. While it would be quite possible to obtain a limited grant extending only to real property for the purpose of selling or transferring it, the Subcommittee does not believe that the division of an estate for the purposes of administration should be encouraged. It creates a potential for persons purporting to act for the same estate under separate instruments, which would give rise to confusion.

In any event, given the level of land values in British Columbia, most estates that include real property will have a value greater than \$50,000, our recommended upper limit for summary administration. Restricting eligibility for the procedure to estates consisting entirely of personal property will exclude very few estates that would not be excluded in any case by their value.<sup>99</sup>

The Subcommittee's view therefore is that only estates that do not include any real property should be eligible for summary administration at the present time. If s. 268 of the *Land Title*

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99. Exceptions may be cases where estates hold rights and interests in or relating to land that are less than the fee simple title, e.g. easements, rights of way and some mortgages. For registration in the Land Title Office of instruments dealing with these rights and interests, however, a grant of probate or administration generally has to be obtained.

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*Act* were to be amended in the future to allow land title registrars to waive the requirement for submission of a certified copy of a grant of probate or letter of administration where an estate is valued below a given amount, rather than only authorizing the waiver of resealing, the issue of whether estates that include real property should be eligible for summary administration should be revisited.

### 2. MANUFACTURED HOMES INCLUDED IN AN ESTATE

An estate including a manufactured (mobile) home should be eligible, providing that the manufactured home is not by law part of the land on which it is located. The *Manufactured Home Act* provides that a manufactured home moved to a pad in a manufactured home park, or that was previously unoccupied when purchased while already in a manufactured home park, is not part of the land unless an agreement to that effect is entered into and filed in the Land Title Office.<sup>100</sup>

In order to accommodate the proposed summary administration procedure, section 7 of the *Manufactured Home Regulation* should be amended to permit transfer of a manufactured home that is not real property in both testate and intestate situations without probate or grant of administration if the estate is less than \$50,000, or the limit prescribed at the time the transfer is presented for registration.

#### D. Form of Document Initiating Summary Administration Procedure

In regular probate procedure, an application for probate or letters of administration is made by means of an affidavit sworn by the applicant, accompanied with detailed schedules providing information about the deceased, the will if any, and the assets making up the estate. The affidavit and schedules must be in a form prescribed by the *Rules of Court*.<sup>101</sup>

The Subcommittee believes that even though the proposed summary administration procedure is designed to be informal, requiring a sworn statement is important to convey to the person intending to assume responsibility for the administration of the estate that he or she is taking a serious legal step. As the statement, when filed in court, will also serve as evidence of his or her authority, it is important that it be surrounded with some degree of solemnity.

Affidavits are usually intended for use in connection with court proceedings, however. The proposed summary administration, unlike regular probate procedure, is designed to require

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100. S.B.C. 2003, c. 75, s. 23(2).

101. See Supreme Court Rule 61(3) and Appendix A to the *Rules of Court*, Forms 69, 70 and 71.

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minimal contact with the court. Outside the context of court proceedings, statutory declarations are the typical means by which information is solemnly affirmed for a purpose having legal implications. The Subcommittee believes that the initiating document should take the form of a statutory declaration.

The form and content of the statutory declaration should be prescribed by regulation to standardize the procedure, so that declarants and third parties may determine readily what is required. The wording that must be incorporated into every statutory declaration should be clearly spelled out.

After some experimentation with a unitary form, the Subcommittee concluded that it would be confusing to have questions about wills appear on a form that is to be used in an intestacy. Therefore, there should be separate forms prescribed for use where the deceased left a will and where there is no will. We refer below to such forms as “small estate declarations” and persons who make them “declarants.”

Recommended forms for testate and intestate small estate declarations, and a form of supplementary declaration for correcting information in a small estate declaration already filed, are set out in Appendix B to this Interim Report.

### E. Who Should Be Declarants?

#### 1. GENERAL PRINCIPLES GOVERNING THE RIGHT TO A GRANT OF PROBATE OR ADMINISTRATION

The principle on which grants of probate are normally made is that the named executor has the first right to a grant, followed by alternate executors, then by a residuary beneficiary (i.e., a beneficiary to whom the will gives the balance of the estate remaining after deduction of all the other gifts), and finally the other beneficiaries. In intestacies, the right to administration is governed by the principle that “right follows interest.” While the *Estate Administration Act* does not create a hierarchy among potential administrators, a spouse is usually considered to have the first priority to be granted administration of the estate, followed by others entitled to inherit, i.e. the next of kin.<sup>102</sup> If next of kin are not capable and willing to act, another suitable person may be appointed, including the Official Administrator.<sup>103</sup>

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102. *Estate Administration Act, supra*, note 18, s. 6(1). A recommendation for a statutory hierarchy among potential administrators is likely to emerge from the Succession Law Reform Project.

103. *Ibid.*, ss. , 7(1), (2), 40(1)-(3), 42(1).

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### 2. SHOULD THE SAME PRINCIPLES APPLY TO SMALL ESTATE DECLARATIONS?

Usually the only persons willing to assume the responsibility to administer an estate other than a named executor are members of the deceased's family or other relatives who are entitled to inherit, or in other words those who stand to benefit from completion of the task followed by distribution. The usual principles on which grants are made are based on this assumption. It is logical to apply the same principles in connection with small estate declarations.

### 3. DECLARANTS WHERE THE DECEASED LEFT A WILL

Accordingly, where there is a will, the executor or executors must make the declaration if one or more are named in it. As an executor has the exclusive legal authority stemming from the will to deal with assets of the estate, all executors and any alternate executors named in the will must renounce if they are still alive and mentally capable before anyone else may deal with estate property. If the executors and any named alternates have renounced their office, have died, or are legally incompetent by reason of mental incapacity, the right to make the declaration should fall to a beneficiary.

### 4. DECLARANTS WHERE THE DECEASED LEFT NO WILL

If there is no will, the spouse, if any, and other persons entitled to receive a share of the estate should have the right to be declarants. This is in keeping with the general principle that "right follows interest."

### 5. NOMINEES AS DECLARANTS

There could be cases in which a potential declarant is not able to act personally or wishes another person who may not be entitled to share in the distribution of the estate to act instead. For example, an elderly spouse of the deceased in poor health may wish a son or daughter or a trusted family friend to deal with the estate. The son or daughter may not have an independent right to be a declarant because he or she will not take a direct share in the distribution.

In order to make the proposed summary administration procedure available to small estates in the greatest variety of circumstances, the Subcommittee believes that a person other than a beneficiary or a person entitled to share in an intestacy should be able to be a declarant if that person is the nominee of someone who is a beneficiary or entitled in intestacy. Without the co-operation of those with a direct interest in the estate, however, it is likely that a nominee such as a son, daughter, or friend will encounter much difficulty in trying to administer it. To avoid later complications, it is reasonable to require that a nominee have the

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written consent of all persons entitled to a share of the estate in order to serve as the declarant.

### 6. THE OFFICIAL ADMINISTRATOR AS A DECLARANT

In order to make the summary administration procedure usable if the deceased has no spouse or relatives capable and willing to be the declarant, the procedure should be available also to the Official Administrator. This would bring about benefits in terms of greater cost-efficiency in cases where administration of a small estate by a public authority is necessary. It would also help to standardize practice in public and private administration of estates.

### 7. CREDITORS

It is possible for a creditor of the deceased to obtain a grant if no one else applies, although it happens very rarely. Currently there is nothing to prevent a creditor from applying under section 20 of the *Estate Administration Act* for administration of an estate under \$25,000. Under that procedure, however, the suitability of an applicant for appointment as administrator could be considered by the registrar, and the appointment could be refused. This is not the case under the proposed summary administration procedure, whereby the court does not vet the appointment. The Subcommittee believes that it is preferable to exclude creditors from the class of potential declarants under the proposed summary administration procedure. If necessary, a creditor can apply for a regular grant of administration.

### F. Contents of the Small Estate Declaration

The Subcommittee studied examples of the forms of small estate affidavits used in various U.S. jurisdictions. Some were fairly simple and plainly worded, while others were considerably more elaborate. The conclusions set out below for the appropriate contents of a small estate declaration are based partly on a synthesis of those models (particularly the Oregon form), and partly on the information required in a personal representative's affidavit used in a regular application for grant of probate or administration in British Columbia.

The Subcommittee has tried to restrict the required contents to what is functionally necessary, or in other words information that the declarant, beneficiaries, and third parties dealing with the declarant during the administration of the estate would need to know. This includes information revealing the fact of death, the basis on which the declarant claims to have a right to act, the eligibility of the estate for summary administration, and the identities of persons interested in the estate. The statements required in the declaration should also draw the declarant's attention to legal obligations that he or she must fulfil, *e.g.* the duty to

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account to beneficiaries, to pay the deceased's debts, and distribute the property among those entitled.

With those considerations in mind, the Subcommittee believes the prescribed contents of a small estate declaration and its exhibits should include:

- (a) the declarant's identity and address;
- (b) a statement of the basis on which the declarant claims to be entitled to make the declaration (e.g. as an executor, spouse, beneficiary, employee of the Public Guardian and Trustee, etc.);

If the declarant is an agent of someone who would be entitled to make the declaration personally, the consents to the agent acting as the declarant by the persons entitled to a share of the estate should be attached as exhibits.

If executors have renounced the executorship, the renunciations must be attached as exhibits to confirm the declarant's right to act.

- (c) the identity and last address of the deceased;
- (d) the date and place of death;
- (e) a photocopy of the death certificate;

While this is not required as part of a regular application for grant, it is routinely insisted upon by financial institutions and other commercial entities as a prerequisite to releasing assets without a grant of probate or administration.

- (f) the will, if any;
- (g) the results of a wills notice search issued by the Vital Statistics Agency;
- (h) facts indicating that the will, if any, is formally valid and unrevoked by later marriage, i.e. that it appears to have been signed in the presence of two subscribing witnesses and that the deceased did not marry or remarry after the will was signed to the best of the declarant's belief;
- (i) facts indicating the eligibility of the estate for summary administration without grant:

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- (i) that the deceased owned no real property in British Columbia (other than real property held in joint tenancy that would go to a surviving joint owner by right of survivorship);
- (ii) the value of the assets is not more than \$50,000;
- (j) a listing of the assets;

Financial institutions are reluctant to release assets of a deceased customer unless it is clear from the probate documentation that the grant to the personal representative covers those assets. Without a formal grant confirming the nature of the declarant's authority, the declarant would likely face difficulty in gaining control of assets that are not referred to in the declaration.

- (k) a list of unpaid debts and the creditors to whom they are owed;
- (l) a list of beneficiaries, or in an intestacy, the persons entitled to share in the distribution and their last known addresses;
- (m) statements which alert the declarant to his or her duties under the summary administration procedure and the general law concerning administration of estates:
  - (i) a copy of the small estate declaration will be mailed or delivered to the persons entitled to receive notice of the declarant's intention to file the declaration (i.e. beneficiaries or intestacy heirs and potential *Wills Variation Act* claimants, and the Public Guardian and Trustee if the circumstances so require);
  - (ii) the small estate declaration will not be filed until ten days have elapsed since a copy of the declaration was delivered or mailed;
  - (iii) a record of receipts and disbursements will be kept;
  - (iv) funeral and administration expenses and valid debts including any applicable taxes will be paid;
  - (v) the balance of the estate will be distributed among those entitled to share in it according to their respective entitlements, not sooner than six months from the date of filing of the small estate declaration if there is a will, unless the deceased's spouse and children have all reached majority and consent to earlier distribution, or the court authorizes the early distribution. In an intestacy,

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distribution must not occur before one year has elapsed since the date of death.<sup>104</sup>

- (vi) assets subject to a trust created by the will, if any, will be held and dealt with according to the terms of the trust.

The prescribed forms should be designed so that they may be completed and filed jointly by two or more declarants. This would provide greater flexibility in the summary administration procedure and may allow it to be used in circumstances where there is some tension or dispute concerning who should be the appropriate declarant. A family member may be unwilling to act alone, for example. Another example of a situation where a joint declaration could be used might be one in which siblings do not fully trust or have confidence in the family member who intends to act, and wish to have the safeguard of two family members carrying out the administration.

### G. Requirement for Filing the Small Estate Declaration

#### 1. GENERAL

Some U.S. states which have the affidavit collection procedure require the affidavit to be filed in the registry of the local court with probate jurisdiction.<sup>105</sup> Most do not. Undoubtedly a procedure which bypasses the probate court completely has attractions in terms of simplicity, speed, and reduction of registry workload. In adapting the procedure to British Columbia's legal system, however, the features of that legal system must be taken into account. So must the realities of dealing with commercial entities and financial institutions that are alert to the possibilities of fraud and zealously avoid exposure to liability.

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104. See *Estate Administration Act*, s. 74. A recommendation for the repeal of s. 74 is likely to emerge from the Succession Law Reform Project, but until the section is actually repealed the prohibition on distribution of an intestate estate within a year from the date of death remains in force.

105. Some examples are: N.J., ss. 3B:10-3, 10-4; Ore., s. 114.515; Conn., s. 45a-273; N.C., s. 28-25-1; S.C., s. 62-3-1201; Ark., s. 28-41-101; Tenn., s. 30-4-103. New York has a slightly different procedure requiring a filing by the "volunteer administrator." See the subheading "Settlement of Small Estates Without Administration in New York," *supra*, and note 90.

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### 2. THE *WILLS VARIATION ACT* LIMITATION PERIOD

The *Wills Variation Act* with its prohibition on distribution within six months after the date of probate is an example of dependant's relief legislation found in Canadian and other Commonwealth jurisdictions. It is not a feature of U.S. legal systems, where statutory allowances are relied upon instead.

The six-month limitation period for commencing an action under the *Wills Variation Act*<sup>106</sup> begins to run from the date on which a grant of probate is issued or a grant from outside British Columbia is resealed. The Act gives the court a discretionary power to order that provision be made out of the estate for the testator's spouse or children if the court finds that the will does not "make adequate provision" for their "proper maintenance and support."<sup>107</sup> No part of an estate may be distributed to beneficiaries until that limitation period has passed, unless all persons who could claim under the Act consent or the court authorizes the distribution.<sup>108</sup> A personal representative who distributes property without consent or authorization before the limitation period has run does so at risk of personal liability towards claimants in whose favour an order under the Act may later be made.

In most Canadian provinces and territories, unlike British Columbia, dependant's relief legislation also applies to intestacies. In those jurisdictions, a court may vary the scheme of intestate distribution if it finds this is warranted to give a larger share to a family member with special needs. A recommendation to extend the *Wills Variation Act* to intestacies for the sake of uniformity with other Canadian jurisdictions is under consideration in the Succession Law Reform Project. This would mean the limitation period would become a factor in intestacies as well as in estates affected by a will.

If filing the small estate declaration in the court registry were not required as the substitute for issuance of probate under the regular procedure so as to start the running of time under the six-month limitation period, the limitation period would never expire because it would not have begun. The result would be that a declarant could never distribute any property safely. Conversely, without a publicly accessible record of a small estate declaration having been filed, potential claimants under the Act would be unable to confirm when or if time is running against them.

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106. R.S.B.C. 1996, c. 490.

107. *Ibid.*, s. 2.

108. *Ibid.*, s. 12.

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A consequential amendment to the *Wills Variation Act* would be required to make the date of filing of a small estate declaration the date from which time starts to run in a summarily administered estate.

### 3. LIMITATION PERIOD FOR APPLICATIONS TO DETERMINE SPOUSAL STATUS - SECTION 98(3) OF THE *ESTATE ADMINISTRATION ACT*

Under section 98(1) of the *Estate Administration Act*, a spouse separated from the deceased for more than a year at the time of the deceased's death loses the right to a share of the deceased's estate if the deceased dies intestate, unless the court exercises a discretion to award a share to the separated spouse. A surviving spouse of an intestate whose claim to a spousal share of the estate is being resisted by the administrator or other heirs, for example because of disagreement over when the date of separation occurred, has six months from the date of issuance of a grant of administration to apply to court have the claim decided.<sup>109</sup> This limitation period raises the same issues as that under the *Wills Variation Act*. The surviving spouse and the declarant must both know when time has started to run. A requirement to file the small estate declaration provides a verifiable starting point.

### 4. DUTY OF THE PUBLIC GUARDIAN AND TRUSTEE TO PROTECT MINORS AND MENTALLY INCAPABLE ADULTS

The Public Guardian and Trustee is charged with the duty to hold the share of a minor in an estate consisting of money in trust until the minor attains the age of majority, unless another trustee has been appointed for that purpose. The *Estate Administration Act* requires payment of a minor's share to the Public Guardian and Trustee unless the will provides otherwise.<sup>110</sup>

The Public Guardian and Trustee may be the committee of a mentally incapable person who is a beneficiary of an estate, and as such has a duty to receive and manage the share of that person.<sup>111</sup> The Public Guardian and Trustee also has certain supervisory duties under the *Patients Property Act* in respect of the accounts and activities of private committees.<sup>112</sup> In order to enable these duties to be performed, the Public Guardian and Trustee is entitled to

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109. *Estate Administration Act, supra*, note 18, s. 98(3).

110. *Supra*, note 18, s. 75.

111. *Patients Property Act*, R.S.B.C. 1996, c. 349, ss. 6(3), 15, 18.

112. *Ibid.*, ss. 10(1), 13(1).

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receive notice of a regular application for probate or administration in an estate in which a minor or mentally incapable person has an interest.<sup>113</sup>

The Public Guardian and Trustee must be able to determine who has taken responsibility for an estate from which a minor or mentally incapable person is entitled to inherit, especially if those handling the estate fail to give the proper notice. Checking the court registry for this information would be the first step in any investigation to determine what has happened in an estate. If the small estate declaration did not have to be filed, this information would not be on public record and might not otherwise come to light. Filing is necessary to create the searchable public record of the declarant's identity that is essential for the Public Guardian and Trustee to perform his or her statutory duties.

### 5. CONFIRMATION OF THE DECLARANT'S AUTHORITY AND ASSURANCE TO THIRD PARTIES

Filing the small estate declaration permits anyone to determine if the declarant actually has authority to collect assets and give receipts on behalf of the estate. Both beneficiaries and third parties dealing with anyone claiming to be a declarant may need this information. A court registry stamp on a copy of the small estate declaration would signify that the declarant has publicly assumed responsibility for collecting the assets, discharging the deceased's liabilities, and distributing the remaining estate properly among those entitled. Forcing the declarant to go on record in a publicly searchable database is thus a deterrent to fraud and misappropriation. It also gives assurance to third parties that they can rely on the small estate declaration and need not look behind it.

### 6. CONCLUSION REGARDING FILING REQUIREMENT

As the limitation periods under the *Wills Variation Act* and the *Estate Administration Act* depend on a readily verifiable date of commencement, a requirement to file the small estate declaration in the court registry is necessary.

It must also be kept in mind that the proposed summary administration procedure involves no vetting of application documents to verify that the declarant has a right to perform the role of a personal representative and is the appropriate person to fill that role, nor that the will, if any, is genuine and formally valid. Without this protection for beneficiaries and third parties dealing with the declarant, there must be a safeguard built into the procedure that would allow them to have sufficient confidence that the declarant is the equivalent of a

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113. *Estate Administration Act*, *supra*, note 18, s. 112(4), (5).

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personal representative who has been granted probate or the administration of the estate. In the Subcommittee's opinion, having to file the declaration in the court registry and thereby create a public record showing that the declarant has assumed the responsibilities of a personal representative is the minimum required to attain that level of assurance. Without this, the Subcommittee would not be confident the proposed summary procedure would be effective as a substitute for regular probate procedure.

The proposed summary administration procedure would substitute the following steps for the close review of application material which the regular probate procedure requires on the part of the registry:

- (a) a computer search of the civil registry database to determine if probate or letters of administration have been granted or applied for, or if a caveat or other small estate declaration has been filed previously in relation to the same estate;
- (b) stamping and numbering of the small estate declaration and returning a stamped copy to the declarant;
- (c) creation of a brief searchable database entry under the estate name to record that a small estate declaration has been filed.

This is virtually as simple as issuing a writ of summons in a civil lawsuit. The summary administration procedure should therefore result in a substantial saving in registry staff time, despite the requirement to file the declaration.

### **H. Waiting Period**

The U.S. state legislation providing affidavit collection procedures typically requires a period of time to elapse after death before a small estate affidavit can be used. Often there is a requirement for the affidavit to state that this period of time, generally thirty days, has passed since the death. The purpose is to leave a reasonable period of time for someone to apply in the regular manner for probate or administration.

The Subcommittee thinks a waiting period is an appropriate feature to incorporate into the proposed British Columbia summary administration procedure as well. The summary administration procedure is after all a substitute for a grant of probate or letters of administration. If an interested party believes that a formal grant is necessary or warranted, that party should have the opportunity to apply for it, subject to the normal rights of others to object to the application. Under regular probate procedure, a grant may not be issued for

seven days after death, unless the court orders otherwise.<sup>114</sup> As there is no delay under the proposed summary administration procedure between the filing of the declaration and acquisition of authority equivalent to that obtained under a grant, while under the regular procedure a grant does not issue immediately in most cases, fairness to anyone wishing to apply for a formal grant requires a somewhat longer waiting period before a small estate declaration may be filed. A 21-day waiting period, running from the date of death, is suggested.

### I. Notice of the Intention to File a Small Estate Declaration

#### 1. GENERAL

The ease with which a small estate declaration may be filed, giving instant authority to administer the estate and pre-empting other potential declarants, leaves the procedure open to abuse. Persons interested in the estate should be made aware that the declarant plans to obtain authority to administer the estate summarily. There may be legitimate objections to the declarant assuming the role of an administrator. Those having objections should have a chance to raise them.

In regular probate procedure, interested parties may file a caveat to object to the application for grant after it is filed and before the grant is made.<sup>115</sup> This would not be possible under the summary procedure that is envisioned here, because the declarant's authority is obtained by the filing of the completed statutory declaration. A caveat would have to be filed before the declaration is filed. In order to give the interested parties the opportunity to place their objections on the record, there must be an interval between the giving of notice and the filing. The Subcommittee recommends that the interval be ten days. This interval could run concurrently with the 21-day waiting period mentioned above.

A simple and effective means of giving notice would be to send a copy of the completed, unfiled small estate declaration to the recipients. This method is recommended.

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114. Supreme Court Rule 61(28).

115. In the larger registries, several weeks usually elapse between the filing of an application and issuance of the grant, allowing an opportunity to file a caveat under Supreme Court Rule 61(34) to object to issuance of a grant to the applicant.

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### 2. WHO SHOULD RECEIVE NOTICE IF THERE IS A WILL

If the deceased left a will, the declarant should give notice to the beneficiaries. Another class of persons whose interests are affected are potential claimants under the *Wills Variation Act*: the spouse and children of the testator. Often the two classes will coincide or overlap, but they are not necessarily identical.

### 3. WHO SHOULD RECEIVE NOTICE IF THERE IS NO WILL

In an intestacy, the spouse is normally considered to have a nearly exclusive right to the administration. This is so well-entrenched that the Subcommittee sees no reason to require a spouse to give notice to anyone of his or her intention to file a small estate declaration.

An exception, however, would be cases in which more than one person could qualify as a “spouse” under the *Estate Administration Act*. This is possible because the term is defined in the Act to include a “common law spouse,” which in turn is defined thus:

“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;

There could be both a common law spouse with whom the deceased was cohabiting at death in a marriage-like relationship and a marital spouse from whom the deceased was separated at death but who, under section 98(1) of the Act, potentially could be awarded a share of the estate. The possibility is distinctly contemplated by section 85.1, which states that if two or more persons are entitled as spouses, they must share in the proportions the court considers just.<sup>116</sup> If someone other than the intended declarant is also a “spouse,” then that person should receive notice.

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116. Of course, they could also agree among themselves and the personal representative as to how the spousal share of the estate should be apportioned and avoid having to apply for a court order.

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If the intended declarant is not the deceased's spouse, then the spouse (including a separated spouse not disqualified by length of separation from inheriting) and others entitled to inherit in the intestacy should receive notice.

If the deceased had no spouse, notice should go to the persons who are entitled by law to share in the estate.<sup>117</sup>

#### 4. NOTICE TO THE PUBLIC GUARDIAN AND TRUSTEE

The Public Guardian and Trustee is entitled to receive notice of a regular application for grant if a minor or a mentally incapable adult (with or without a private committee) is interested in the estate, along with the parents or guardian of the minor, or the committee, if any.<sup>118</sup> The Office of the Public Guardian and Trustee informed the Subcommittee that it would insist on receiving notice in such cases regardless of the size of the estate in order to be in a position to carry out its statutory mandate to protect minors and the mentally incapable. The Subcommittee accepts this position and recommends that a declarant be required to give notice to the Public Guardian and Trustee if there is a minor or mentally incapable beneficiary, intestate successor, or potential *Wills Variation Act* claimant.

#### J. Security

Existing legislation, as noted above, recognizes that the small size of an estate may be a ground for dispensing with security. The Subcommittee's view is that there should be no security requirement under the summary administration procedure. As mentioned above, the Office of the Public Guardian and Trustee has been consulted on this matter and does not oppose removal of a security requirement in estates up to \$50,000 in value.

#### K. Release of Liability for Third Parties Relying on Small Estate Declaration

It was noted above that a feature of all U.S. affidavit collection legislation is a statutory release and discharge from liability for third parties who rely on a small estate affidavit as justification for transferring custody or control of estate assets or making a payment to the person who swore the affidavit. This statutory release is essential for the summary administration procedure to function effectively. It should place anyone dealing with a declarant in the same position as if dealing with a personal representative who can provide a certified copy of a grant of probate or administration.

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117. See the table of persons entitled to inherit in an intestacy that appears at the end of the intestate form of small estate declaration in Appendix B.

118. *Estate Administration Act, supra*, note 18, s. 112(4), (5).

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The implementing legislation should state that anyone who transfers or relinquishes control of assets of an estate or makes a payment to a declarant pursuant to a filed small estate declaration is discharged and released from liability to the same extent as if the declarant had been an executor to whom probate has been granted or a court-appointed administrator. The prescribed forms for small estate declarations should include a notice to third parties informing them of this statutory release from liability in order to encourage co-operation with the declarant.

### L. Accounts

The accounting obligations of a personal representative under a full passing of accounts under the regular probate procedure are fairly onerous.<sup>119</sup> Formal passing of accounts following distribution of the estate is theoretically required in order for a personal representative to be finally discharged, although it is more often than not avoided through obtaining consents of all interested persons to the accounts.<sup>120</sup>

This formality need not be carried over into the summary administration procedure, but an understandable record of financial transactions in the course of administration is still essential to demonstrate that what ought to be done in the estate has been done. Some of the U.S. affidavit collection legislation requires that a separate bank account be opened for the estate. The Subcommittee does not think that step needs to be made a statutory requirement, but as a minimum the declarant should be required to keep a record of all receipts and disbursements and disclose it on request to beneficiaries or those entitled to share in intestacy, as the case may be.

If the declarant fails to keep a record of receipts and disbursements related to the estate or to disclose the record, the statutory machinery to compel formal passing of accounts by a

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119. Section 99(1) of the *Trustee Act*, R.S.B.C. 1996, c. 464 requires an executor or administrator to pass accounts within two years from the date probate or administration was granted or from the date of his or her appointment, unless all beneficiaries consent to the accounts or the court orders otherwise. Under s. 99(2), an executor or administrator must pass accounts annually within one month of the anniversary date of the date of grant or of his or her appointment, if a beneficiary delivers a notice demanding this. The court may, however, make an order directing the passing of accounts at the times and in the manner it considers appropriate. Under the draft *Trustee Act* proposed in the BCLI *Report on a Modern Trustee Act for British Columbia*, the provisions on passing of accounts would continue to apply to personal representatives as well as trustees, but would only be required if ordered on the application of a beneficiary or a trustee (defined for this purpose to include a personal representative.)

120. *Estate Administration Act*, *supra*, note 18, s. 29(1). See also *Re Harrison*, [1946] 1 W.W.R. 28 (B.C.S.C.).

## Interim Report on Summary Administration of Small Estates

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personal representative could be extended to give a remedy to the beneficiaries or intestate successors. This Subcommittee recommends that a beneficiary or intestate successor be entitled to apply for an order requiring passing of accounts if the declarant's disclosure or account-keeping is unsatisfactory.

### M. Offences

The American affidavit collection procedures typically include significant criminal penalties for their misuse. These criminal sanctions reflect the fact that the informality of the procedure and the lack of court oversight over the admission of the will or the appointment of the administrator has a dark side: they increase the scope for fraud and misappropriation.

Without a mechanism to substitute for the preventive and deterrent functions of court supervision, a summary administration procedure like the one proposed here would provide ample opportunity for deception and looting. If the procedure is to be effective in achieving its aims, it must attract the confidence of the families of deceased persons, financial institutions, and the general public. Creation of a provincial offence relating specifically to conduct amounting to misuse of the summary administration procedure is therefore appropriate, even if the same acts may also constitute *Criminal Code* offences. The offence should cover filing an intentionally false small estate declaration, filing one for an improper purpose, or the concealment, conversion, or misappropriation of property belonging to the estate. Given the considerable powers that may be easily acquired through a small estate declaration, misuse of this kind should attract a penalty greater than the standard penalty under the provincial *Offence Act*, i.e. a two thousand dollar fine or six months' imprisonment, or both.<sup>121</sup> In the Subcommittee's view, the penalty should be a fine up to \$10,000, twelve months' imprisonment, or both.

### N. Fee Levels

The Small Estates Subcommittee took the position early in its deliberations that the court filing fee, probate fees on estates between \$25,000 and \$50,000, and fees charged by the Public Guardian and Trustee to receive and review documentation, should be waived or at least reduced in summarily administered estates. The reason for this was to encourage use of the summary administration procedure and make it more cost-efficient. The Subcommittee was informed later that it was unlikely such fees would be eliminated because of a general governmental policy of preserving revenue-neutrality. Removing filing and probate fees in estates in the \$25,000 to \$50,000 range would mean the revenue loss would have to be recovered by fee increases elsewhere. The Subcommittee continues, however, to

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121. R.S.B.C. 1996, c. 338, s. 4.

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hold the view that the elimination or reduction of probate, filing, and document examination fees would increase the efficiency of the procedure proposed in this Interim Report.

### O. Implementation of the Proposed Summary Administration Procedure

The draft legislation in Appendix A is an illustration of how the procedure envisioned here could be implemented on an interim basis within the present structure of the *Estate Administration Act*. It is not intended to be an exclusive expression of how implementation might be achieved. The legislation takes the form of an amending statute that adds a new Part 5.1 to the existing *Estate Administration Act* dealing with summary administration of estates under a prescribed size. It would repeal section 20, the current provision concerning issuance of grants of administration in small estates.<sup>122</sup>

While the new Part 5.1 is largely self-contained, some consequential amendments to various statutes will be necessary for the summary procedure to be effective. These will be directed primarily at recognizing small estate declarations as procedurally equivalent to grants of probate or administration issued in British Columbia and declarants as the equivalents of personal representatives in all cases where legislative or administrative policy does not insist upon use of formal grants.

In particular, provisions that make issuance of a grant of probate or administration the point at which time begins to run under a limited period for asserting a claim or right, or taking some step, will need to be amended to ensure that the filing of a small estate declaration has the same effect. These include section 3(1) of the *Wills Variation Act* and section 98(3) of the *Estate Administration Act*.

Issuance of a grant while a small estate declaration is in effect must be prevented in order to prevent confusion surrounding authority to administer the estate. This might be more easily accomplished by amending Rule 61 of the *Rules of Court* rather than the *Estate Administration Act*.

While certain obvious consequential amendments are included in Appendix A, the Subcommittee recognizes that Legislative Counsel is better placed to determine the extent of the consequential amendments required as well as their form, and has not attempted to usurp that role.

## VIII. Summary

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122. See the text following the subheading “Section 20 of the *Estate Administration Act*,” *supra*.

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The Small Estates Subcommittee proposes a new procedure for summary administration of small estates based on the following principles:

- The procedure should be available in estates consisting only of personal property with a value not in excess of a prescribed amount, which the Subcommittee suggests be fixed provisionally at \$50,000.
- No grant of probate or administration would be issued.
- Summary administration of an estate would be initiated by the filing in a Supreme Court registry of a completed statutory declaration in prescribed form (“small estate declaration”) by
  - an executor,
  - a beneficiary under a will,
  - in an intestacy, a spouse or other person entitled to share in the distribution of the estate,
  - an agent of a person with a beneficial interest in the estate, if all persons beneficially interested consent in writing to the agent acting as the declarant, or
  - the official administrator.
- A small estate declaration could not be filed until 21 days have elapsed since the death of the deceased.
- A declarant would be required to give notice of the intention to invoke the summary administration procedure by mailing or delivering a copy of the completed small estate declaration with the will, if any, attached to all beneficiaries or heirs in intestacy, as the case may be, and potential claimants under the *Wills Variation Act* (i.e., the spouse and children of the deceased) at least 10 days before filing it.
- A declarant would not be required to furnish security.
- At the time a declaration is submitted to the court registry for filing, a computer search would be carried out to determine whether:

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- probate or letters of administration have already been issued,
- an application for probate or letters of administration has been made
- another small estate declaration has already been filed, or
- a caveat opposing issuance of a grant of probate or administration has been filed

in relation to the same estate. If so, the declaration would be rejected. If not, the declaration would be filed.

- A copy of the small estate declaration with a registry stamp indicating the filing would be returned to the declarant and a publicly searchable entry of the filing under the name of the deceased would be made.
- On the filing of the small estate declaration, the declarant would acquire the powers of a personal representative to administer and distribute the estate.
- A person who relied on a copy of a filed small estate declaration in transferring or delivering assets of the estate or information relevant to them, or in making a payment, to the declarant would be statutorily released and discharged from any resulting liability to any person, to the same extent as if the declarant were an executor who had obtained probate or an administrator appointed by the court.
- A declarant would not be required to keep formal accounts patterned after those required in regular estate administrations but would be required to keep a record of receipts and disbursements relating to the estate and to disclose it on request to persons having a beneficial interest in the estate. A person with a beneficial interest could apply for an order requiring the declarant to pass accounts in the regular manner if these obligations were not performed satisfactorily.
- Concurrently with the implementation of the procedure outlined above, section 20 of the *Estate Administration Act* would be repealed. Consequential amendments would be made to the *Wills Variation Act* and other legislation so that a small estate declaration would be treated as the equivalent of the issuance of a grant of probate or administration, and a declarant placed in the same position as a personal representative to whom probate or administration had been granted.

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The Subcommittee believes that the procedure envisioned in this Interim Report will provide an expedient, inexpensive, and effective means for the orderly administration of small estates.

**APPENDIX A**

**DRAFT IMPLEMENTING LEGISLATION**

## Estate Administration (Small Estates) Amendment Act

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

1. The *Estate Administration Act* is amended by adding the following Part immediately after Part 5:

### Part 5.1

#### SUMMARY ADMINISTRATION OF SMALL ESTATES

##### Definitions

55.1 In this Part,

“**declarant**” means a person who completes a declaration in accordance with this Part;

“**declaration**” means a statutory declaration under section 55.3;

“**file**” with reference to a declaration, means filing a completed declaration in a registry of the Supreme Court;

“**gross value**” means fair market value without deduction for any debt, charge or security interest;

“**real property**” does not include a manufactured home situated on land not owned by the owner of the manufactured home unless an agreement that the

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manufactured home is part of the land has been filed in accordance with section 23(2) of the *Manufactured Home Act*.

**Comment:** The definitions are self-explanatory.

### Application of Part

- 55.2** (1) This Part applies where the estate of a deceased person has a gross value at the date of death of that person that is not more than an amount prescribed by regulation.
- (2) This Part does not apply
- (a) to an estate that includes real property, or
  - (b) if the address or whereabouts of a person described in sections 55.7(1) or (2) are unknown, unless the declarant is the official administrator.

**Comment:** Section 55.2(1) indicates that Part 5.1 applies only if the gross value of an estate is not more than an amount prescribed by regulation. The Small Estates Subcommittee recommends that this limit be set initially at \$50,000 and increased later if appropriate. The value of a small estate in which the assets typically consist of an automobile and a modest bank account would currently approximate this amount.

Section 55.2(2)(a) excludes estates comprising real property from the scope of Part 5.1. ("Real property" consists of land and interests in land.) The reason for this exclusion is that Part 5.1 does not call for the issuance of a grant of probate or administration. A grant is necessary in order to transfer the title to land (or a registrable interest in land, such as a mortgage or other charge) into the name of a personal representative so that it can then be transferred to a beneficiary or a purchaser. (See ss. 265, 266(1), (4), (5) of the *Land Title Act*, R.S.B.C. 1996, c. 250.) The level of land values in British Columbia are such that in most cases, however, an estate that held some real property would be larger in value than the limit referred to in s. 55.2(1) and so could not be administered under Part 5.1 in any event.

Section 55.2(2)(b) indicates Part 5.1 does not apply if the address or whereabouts of a person who is entitled under s. 55.7(1) or (2) to receive notice of the intended filing of a declaration are unknown. In such a case it would be necessary to apply for probate or administration in the regular manner and seek an order from the registrar under s. 112(3) of the *Estate Administration Act*, R.S.B.C. 1996, c. 122 dispensing with or varying the notice requirements in light of the circumstances. This exclusion from the scope of Part 5.1 does not apply if the declarant is the Official Administrator, because s. 55.7(4) exempts the Official Administrator from the requirement to give notice before filing a declaration.

### Who may file a declaration

- 55.3** (1) If a deceased person has died leaving a will,
- (a) an executor, or
  - (b) if each executor and alternate executor has either renounced or is dead or is mentally incapable
    - (i) a beneficiary under the will,
    - (ii) any other person having the written consent of all persons entitled to a share of the estate, or
    - (iii) the official administrator
- may file a declaration in accordance with this Part.

**Comment:** Section 55.3(1) deals with who may be a declarant if the deceased left a will. Normally the declarant(s) should be the executor(s) named in a will. Not only is an executor chosen by the deceased, but an executor's authority arises legally from the will itself, which comes into effect on the testator's death. A grant of probate or a filed, court-stamped declaration under Part 5.1 only serve as the public confirmation and evidence of that authority. They are not strictly necessary for the exercise of the executor's powers. Thus only if every named executor and named alternate has predeceased the testator, renounced the executorship, or is legally disabled from acting by reason of mental incapacity should another person acquire the ability to administer the estate. If those circumstances exist, paragraph (b) of s. 55.3(1) states that a beneficiary under the will may file a declaration. Alternatively, someone who does not take under the will may be the declarant if that person has the written consent of all persons entitled to a share of the estate. (In a partial intestacy, i.e. where a will does not dispose of all the testator's property, the persons entitled to a share of the intestate portion of the estate as well as the beneficiaries under the will would have to consent to a non-beneficiary acting as the declarant.)

The Official Administrator may also be the declarant in order to be able to act as an "administrator of last resort."

- (2) If a deceased person has died without leaving a will,
- (a) a spouse of the deceased person,
  - (b) a person entitled to a share of the estate under Part 10,
  - (c) any other person having the written consent of all persons entitled to a share of the estate under Part 10, or
  - (d) the official administrator
- may file a declaration in accordance with this Part.

**Comment:** Section 55.3(2) states who may be a declarant in intestacies (cases where no will was left.) These are the deceased's spouse, a person entitled to share in the

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distribution of the estate, or someone having the written consent of all persons entitled to share in the distribution. Again the Official Administrator is another potential declarant in order to ensure that someone may administer an estate even if the deceased died without a spouse or any relative ready and willing to act. The Official Administrator is not restricted to acting only in those circumstances, however.

- (3) The official administrator is not required to obtain or file the consent of any person when filing a declaration under this Part.

**Comment:** Section 55.3(3) makes it clear that the Official Administrator may act as a declarant without first having to obtain the consent of any person, including any relatives of the deceased. It corresponds to the present s. 20(3.1) of the *Estate Administration Act*, which relieves the Official Administrator of a need to prove that there are no relatives of the deceased ready and willing to act before the Official Administrator may administer the estate.

### When declaration may be filed

#### 55.4 If

- (a) no grant of probate or of administration of the estate of a deceased person is in effect in British Columbia,
- (b) no application is pending in British Columbia for a grant of probate or administration of the estate,
- (c) no declaration has been filed in respect of the estate, and
- (d) no caveat opposing the issuance of a grant of probate or administration of the estate is in effect,

a person described in section 55.3(1) or (2) may file a declaration in a registry of the Supreme Court not less than 21 days after the date of death of the deceased person and not less than 10 days after notice is given in accordance with section 55.7.

**Comment:** Section 55.4 prescribes a waiting period of 21 days following death before a declaration may be filed. This is to allow an opportunity for someone to apply for probate or a grant of administration in the regular manner, or to file a caveat under Rule 61 of the *Rules of Court* against the issuance of a grant. If an application for grant is pending at the end of the 21-day period, no declaration may be filed. If a previous declaration has already been filed, s. 55.4 prevents the filing of a second one because the first one would have conferred exclusive authority to administer the estate.

In addition to requiring that 21 days elapse between the date of death and the filing of a declaration, s. 55.4 also requires that a declarant other than the Official Administrator must wait at least 10 days after giving the notice required by ss. 55.7(1) or (2) before filing.

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### Form of declaration

- 55.5** (1) A declaration must be completed in the form prescribed by regulation under the *Court Rules Act*.
- (2) A regulation referred to in subsection (1) may prescribe different forms of declaration for use when a person dies leaving a will and when a person dies intestate.
- (3) Two or more declarants may file a single declaration together.

**Comment:** Self-explanatory.

### Documents to accompany a declaration

- 55.6** The following must accompany the declaration as exhibits to it:
- (a) the original will of the deceased person, if any,
  - (b) a legible photocopy of a death certificate for the deceased person,
  - (c) a certificate issued under section 36(3)(a) of the *Wills Act* stating the results of a search for a notice filed under that Act in respect of a will of the deceased person,
  - (d) if any executor or alternate executor who would have been entitled to a grant of probate in priority to the declarant has renounced probate, the original renunciation of that executor or alternate executor,
  - (e) if the declarant is a person described in sections 55.3(1)(b)(ii) or 55.3(2)(c), every written consent required by those sections.

**Comment:** Section 55.6 lists the exhibits that must accompany a declaration. If there is a will, the original will must be filed with the declaration, as in a regular application for probate. While the summary administration procedure under Part 5.1 does not involve a court order confirming its validity as in probate, the requirement to file the will deters misappropriation and fraudulent concealment of testamentary dispositions.

A photocopy of a death certificate is not required as part of a regular application for grant, and a wills notice search result is required only in an application for a grant of administration, not probate. Section 55.6 nevertheless requires both documents to be attached to a declaration because the summary administration procedure does not involve the making of any order by the court attesting to the fact of death and the personal representative's authority. When the release of assets in the control of a third party is sought without a grant having been obtained, the third party will insist on proof of death and production of a will, at

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a minimum. The search result and photocopy of a death certificate attached to a copy of a filed declaration will aid the declarant in securing the release or delivery of estate assets by third parties.

Renunciations of executors (if any) and consents to a person without an interest in the estate acting as a declarant are required in order to establish the declarant's right to file the declaration in the circumstances described in ss. 55.3(1)(b)(ii) or 55.3(2)(c).

### Notice to Beneficiaries and Family of Deceased

- 55.7** (1) If a deceased person has left a will, at least 10 days before filing a declaration a declarant must mail a copy of the completed declaration to, or leave a copy with,
- (a) each beneficiary under the will other than the declarant, and
  - (b) a person who would be entitled to apply under the *Wills Variation Act* with respect to the will.

**Comment:** Section 55.7(1) applies where the deceased left a will. It imposes a duty on a declarant to give 10 days' notice of the declarant's intention to file a declaration and thereby invoke the summary administration procedure. Notice is given by providing a copy of a completed but unfiled declaration to the persons described in paragraphs (a) and (b) of s. 55.7(1) by mail or leaving a copy with each of them. The purpose of the notice is to make persons having an interest in the estate aware of who is intending to administer the estate and that the summary procedure will be used instead of seeking a grant in the regular manner.

- (2) If a deceased person has left no will, at least 10 days before filing a declaration a declarant must mail a copy of the completed declaration to, or leave a copy with
- (a) the spouse of the deceased person, unless the declarant is the spouse and there is no other person who is a spouse of the deceased within the meaning of this Act, and
  - (b) any person other than a spouse who is entitled to a share of the estate of the deceased person under Part 10.

**Comment:** Section 55.7(2) describes who is to receive the 10 days' notice of intended filing of a declaration where the deceased died without a will. If the declarant is the spouse of the deceased, there is no requirement for notice because a spouse is considered to have a pre-eminent right to administer an intestate estate. There could be more than one person who comes within the present definition of "spouse" under s. 1 of the *Estate Administration Act*, however. For example, the deceased could have been legally married but separated for a

## Interim Report on Summary Administration of Small Estates

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lengthy period at the time of death and also have a “common law spouse,” currently defined in s. 1 to include a person who had cohabited with the deceased in a marriage-like relationship for at least two years immediately prior to death. The legally married spouse and the common law spouse are both “spouses” for the purposes of the *Estate Administration Act*. Each has an equal right under both the regular procedure for obtaining a grant of administration and the summary procedure under Part 5.1 to have authority to administer the estate conferred on him or her. In such a case the exception to the notice requirement in the case of spouses does not apply and a spouse intending to file a declaration must provide a copy of the completed, unfiled declaration to the other spouse.

- (3) If a person entitled under this section to receive a copy of a declaration is a minor or is mentally incapable or has a representative appointed under a representation agreement, an attorney appointed under an enduring power of attorney, or a committee, a declarant must deliver the copy to
- (a) the Public Guardian and Trustee, and
  - (b) the parent, guardian, representative, attorney, or committee, if any, of that person.

**Comment:** Under the regular procedure for obtaining a grant of probate or administration, the Public Guardian and Trustee must receive a copy of all material filed in an application for grant if a minor or mentally incapable adult has an interest in the estate. (See ss. 112(4), (5) of the *Estate Administration Act*.) Section 55.7(3) imposes the same requirement under the summary administration procedure so that the Public Guardian and Trustee may carry out his or her responsibility to protect the interests of minors and the mentally incapable.

- (4) This section does not apply if the declarant is the official administrator.

**Comment:** Section 112(9) of the *Estate Administration Act* exempts the official administrator from giving notice of an application for probate or administration. Section 55.7(4) confers a similar exemption under the summary administration procedure.

### Effect of filing of declaration

- 55.8** (1) Subject to subsection (2), upon filing a declaration in a registry, a declarant has
- (a) the same authority and powers, and
  - (b) the same duty
- to administer the estate of the deceased person to whom the declaration relates according to law as if the declarant had been an executor to whom probate of the will had been granted or in the case of intestacy as if appointed the administrator of the estate of the deceased person by order of the court.

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**Comment:** Filing a declaration confers on a declarant the powers and duties of a personal representative who has taken out a grant, except as provided in s. 55.8(2).

- (2) A declarant is not required to pass accounts under the *Trustee Act* unless an order to the contrary is made under section 55.12(2).

**Comment:** Subsection (2) exempts declarants from the duty of a personal representative under ss. 99(1) and (2) of the present *Trustee Act* to pass accounts periodically, or annually if required by a beneficially interested person, unless all beneficiaries approve the accounts. A declarant may be ordered under s. 55.12(2) to pass accounts on the application of a person with a right to a share of the estate if the declarant breaches the relaxed accounting obligations imposed by s. 55.12(1).

### Declarant not required to furnish security

**55.9** A declarant is not required to furnish security.

**Comment:** Section 16(1) of the *Estate Administration Act* requires anyone applying to be appointed an administrator of an estate to provide a bond. (Executors are not required to do so.) The cost of an administration bond is charged to the estate. In a small estate, the cost of a bond may deplete the estate to an unreasonable extent. Section 17(1)(a)(ii) allows the court to dispense with bonding in the regular procedure if “the estate is of small value.” Section 55.9 removes all requirements for any form of security when an estate is administered summarily under Part 5.1.

### Supplementary declaration

- 55.10** (1) Subject to subsection (2) and to section 55.11, if after filing a declaration a declarant becomes aware that the declaration is inaccurate or deficient, the declarant must file a supplementary declaration in the prescribed form, correcting the error or deficiency.
- (2) It is unnecessary to file a supplementary declaration only to list an additional asset if the asset had a value of less than \$1000 at the date of death and the declarant was not aware of the asset when the declarant filed the initial declaration.

**Comment:** A supplementary declaration is required by s. 55.10(1) if the information in the original declaration is inaccurate or deficient in some other manner, except in the circumstances addressed by subsection (2) of s. 55.10 and s. 55.11. Subsection (2)

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indicates a supplementary declaration is not needed if the only deficiency is the failure to list an asset less than \$1000 in value if the declarant did not know of it at the time the first declaration was filed. The notice requirement under s. 55.7(1) or (2) does not apply to the filing of a supplementary declaration.

### Part found inapplicable after filing of declaration

- 55.11** (1) The authority of the declarant to administer the estate terminates except for the purpose of preserving assets until a grant of probate or administration is made if, after the declarant has filed a declaration relating to that estate,
- (a) real estate is found to belong to an estate,
  - (b) assets are discovered to belong to the estate and their value when combined with the value of the assets disclosed in the declaration results in a gross value for the estate greater than the prescribed amount referred to in section 55.2(1),
  - (c) the fair market value of the assets disclosed in the declaration is found to have been greater at the time of death than the prescribed amount referred to in section 55.2(1),
- unless the court otherwise orders.

**Comment:** Section 55.11(1) addresses what happens if facts come to light after a declaration has been filed showing that the estate does not qualify for summary administration under Part 5.1. For example, real property belonging to the estate might be discovered. The deceased may have secretly severed a joint tenancy during his or her lifetime, so that the deceased's interest in the real property belongs to the deceased's estate instead of automatically vesting in the other joint tenant by right of survivorship. Another reason the estate might not qualify is that value of the assets listed in the declaration may have been underestimated. Where it is discovered at any time after the declaration is filed that Part 5.1 does not actually apply to the estate, the declarant must cease acting on the basis of the declaration, except for taking steps needed to preserve assets from loss or deterioration. A grant of probate or administration would then have to be obtained in the regular manner.

- (2) Without limiting subsection (1), the court may, on application by a person with an interest in the proper administration of the estate, including the declarant, terminate the authority of a declarant if the court is satisfied that the declarant should not continue to administer the estate.

**Comment:** Subsection (2) empowers the court to terminate the authority of a declarant to administer the estate. While termination of a declarant's authority under subsection (1) takes place automatically because of the discovery of facts showing the estate does not

## Interim Report on Summary Administration of Small Estates

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qualify for summary administration, termination of authority under subsection (2) requires an application to the court and takes place only if the court is persuaded that the declarant should not continue in that role. If a declarant's authority is terminated under subsection (2), summary administration could continue under a fresh declaration completed by another person qualified under s. 55.3(1) or (2), or under a grant of probate or administration obtained under the regular probate procedure.

Grounds that would justify termination of a declarant's authority would be essentially the same ones on which a court will remove a personal representative. Under present law these are generally dishonesty, conduct endangering the estate, acting without proper care or without reasonable fidelity: *Conroy v. Stokes*, [1952] 4 D.L.R. 124 (B.C.C.A.); *Weinstein v. Weinstein* (1996), 13 E.T.R. (2d) 227 (C.A.); *Erlichman v. Erlichman Estate*, [2000] B.C.J. No. 198, 2000 BCSC 173. Mental incapacity would be another valid reason. In order to give the court sufficient discretion to respond to the circumstances of particular cases, however, subsection (2) does not restrict the grounds on which the court may act.

Anyone with an interest in the proper administration of the estate may apply to have the declarant's authority terminated. While the typical applicant would be a beneficiary or intestate successor of the deceased, the class of persons concerned to see the estate administered properly is not necessarily restricted to those having a beneficial interest under a will or intestacy. Potential applicants could include a creditor, or the Public Guardian and Trustee acting to protect a minor or mentally incapable adult with a beneficial interest. Subsection (2) also permits the declarant to apply to be relieved of the duties attaching to the role, because there may be a legitimate reason, such as illness, to relinquish it.

- (3) Nothing in this section affects the validity of anything done in good faith by a declarant in relation to the administration of an estate before
  - (a) the declarant became or ought to have become aware of facts referred to in paragraphs (1)(a) to (c), or
  - (b) the authority of the declarant is terminated by the court.

**Comment:** Subsection (3) confirms that steps taken by a declarant while acting under the belief that Part 5.1 applies to an estate before it becomes or ought to become evident to the declarant that the estate does not qualify for summary administration, or before the declarant's authority is terminated by the court under subsection (2), are not invalidated because of the termination of the declarant's authority afterwards.

### Accounts

- 55.12** (1) A declarant must
  - (a) keep a written account of all receipts and disbursements relating to the administration of the estate, and

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- (b) on the request of a beneficiary or a person entitled under Part 10 to a share of the estate, disclose the account mentioned in paragraph (a) to that person.

**Comment:** Section 55.12(1) imposes very basic accounting responsibilities on a declarant. The declarant is required merely to keep a record of receipts and disbursements and show the record on request to a person who is entitled to share in the eventual distribution of the estates.

- (2) If a declarant fails to comply with paragraph (1)(b) a beneficiary or a person entitled under Part 10 to a share of the estate may apply under the *Trustee Act* for an order requiring the declarant to pass accounts.

**Comment:** An executor or administrator must pass accounts before the registrar under s. 99 of the present *Trustee Act* unless all persons beneficially interested in the estate agree to the accounts and consent to them not having to be passed. While s. 55.8(2) exempts declarants from this requirement, a person entitled to share in the distribution of the estate may apply under s. 55.12(2) for an order requiring passing of accounts under the *Trustee Act* if the declarant does not comply with the relaxed accounting and disclosure requirements of subsection (1).

### Remuneration

- 55.13** A declarant is entitled to remuneration under the *Trustee Act* as if the declarant were an executor or administrator.

**Comment:** Sections 88-90 of the present *Trustee Act* provide for the remuneration of personal representatives from the estate in the form of an allowance out of the estate. Section 55.13 extends this right to declarants under the summary administration procedure of Part 5.1.

### Third persons dealing with declarant released from liability

- 55.14** Anyone who pays, transfers, delivers, releases to or otherwise provides any asset or documents or information concerning the assets of a deceased person to a declarant who has filed a declaration is discharged and released from any liability for loss or damage of any kind to any person that may result to the same extent as if the declarant were an executor who had been granted probate or an administrator appointed by the court.

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**Comment:** Section 55.14 is a key provision discharging third parties who deal with a declarant from liability if they rely on proof of the filing of a declaration (e.g., a court-stamped photocopy) in turning over to the declarant assets of the deceased person to whose estate the declaration relates. The section allows third parties such as financial institutions to deal with the declarant exactly as if the declarant had taken out a grant of probate or administration, without fear of liability to anyone for doing so.

### Offence by declarant

**55.15** A declarant who

- (a) intentionally files a false declaration,
- (b) files a declaration for an improper purpose, or
- (c) conceals, converts or otherwise misappropriates property belonging to the estate,

commits an offence and is liable to a fine of not more than \$10,000 or to imprisonment for twelve months, or to both.

**Comment:** Section 55.15 concerns offences by declarants. It provides penalties for various forms of misfeasance and misuse of the summary administration procedure that are more severe than the general penalty under the *Offence Act* lest the informal nature of the procedure have unwanted effects. The ease with which a declaration may be filed, the lack of need for close scrutiny by the court registry to determine the suitability of the declarant to serve, and the extensive powers that the filing confers on the declarant could facilitate fraud, concealment and misappropriation unless these abuses are effectively deterred by strong sanctions.

### Other remedies preserved

**55.16** Nothing in sections 55.14 or 55.15 detracts from any civil or other remedy at law which a declarant may have against another person or which another person may have against a declarant.

**Comment:** Self-explanatory.

### Consequential Amendments

#### *Estate Administration Act*

**2. Section 20 of the *Estate Administration Act* is repealed.**

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**Comment:** Part 5.1 is intended to supplant the existing s. 20 of the *Estate Administration Act*. This Bill therefore provides for the repeal of s. 20.

3. **Section 98(3) is amended by adding** “or the filing of a small estate declaration in relation to that estate” **after “estate”**.

### *Probate Fee Act*

4. **Section 1 of the *Probate Fee Act* is amended**
- (a) **by adding** “or a small estate declaration” **at the end of the definition of “grant”**,
  - (b) **by adding the following after the definition of “grant”:**
    - “issue of any grant” includes the filing of a small estate declaration
  - (c) **by adding** “, or that is declared in a small estate declaration to be the gross value of the personal property of the deceased listed in the small estate declaration” **after “death” where it appears for the second time in the definition of “value of the estate”**.
5. **Section 2(4) is amended**
- (a) **by adding** “or in the small estate declaration”
    - (i) **after “resealing” where it appears for the second time, and**
    - (ii) **at the end of section 2(4), and**
  - (b) **by adding** “or small estate declaration” **after “value attributed to an asset in that statement”**.
6. **Section 5(1) is amended by adding** “or in the small estate declaration” **after “resealing” in paragraphs (a) and (b)**.

### *Wills Variation Act*

7. **Section 1 of the *Wills Variation Act* is amended by adding** “and a declarant who has filed a small estate declaration under Part 5.1 of the *Estate Administration Act*” **after “annexed” in the definition of “executor.”**
8. **Section 3(1) is amended by adding** “or the filing of a small estate declaration,” **after “will” in paragraph (a) where it appears for the second time;**

9. Section 12(1) is amended by adding “or the filing of a small estate declaration” after “will” where it appears for the second time.

**[ADDITIONAL CONSEQUENTIAL AMENDMENTS CONSIDERED NECESSARY OR APPROPRIATE BY LEGISLATIVE COUNSEL MAY BE ADDED]**

**Commencement**

10. This Act comes into force by regulation of the Lieutenant Governor in Council.

**APPENDIX B**

**FORMS OF TESTATE AND INTESTATE  
SMALL ESTATE DECLARATIONS  
AND SUPPLEMENTARY DECLARATION**

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No. \_\_\_\_\_ Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
**SUMMARY ADMINISTRATION OF ESTATE UNDER \$50,000**

**RE: ESTATE OF \_\_\_\_\_, DECEASED**  
**(referred to below as “the Deceased”)**

**SMALL ESTATE DECLARATION**

*[Form For Use In Estates Under \$50,000 Where The Deceased Left A Will Note: For This Form To Have Legal Effect, It Must Not Be Altered Except To Supply the Information And Signatures It Requires]*

I/We \_\_\_\_\_, SOLEMNLY DECLARE THAT:  
*[print full name(s)]*

**A. The Declarant(s)**

1. My/Our address(es) is/are:

\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

2. I am/We are entitled to make this Declaration because:

*[Check the statement(s) that apply]*

I am/we are

- Named as the executor(s) in the will of the Deceased.
- A beneficiary/Beneficiaries named in the will of the Deceased and all executors named in the will are either dead, or are mentally incapable, or have renounced.

*[If an executor or any alternate executor has renounced, you must attach the original signed renunciation as an exhibit to this Declaration.]*

*OR*

- I/We have the written consent of the beneficiaries listed in paragraph 16 to make this Declaration, and
  - all executors named in the will are either dead, or are mentally incapable, or have renounced, and
  - the **written consents** of the beneficiaries are attached **as exhibits** to this Declaration.

*OR*

- I am an employee of the Public Guardian and Trustee/Official Administrator.

### **B. The Deceased**

3. (a) The full name of the Deceased is \_\_\_\_\_.

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- (b) The Deceased also used or was known by these other names as shown on the will search result attached as an exhibit:

*[List all other names by which the Deceased was known. The wills search result you attach must show all the names.]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. The last address of the Deceased is:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

5. The Deceased died on \_\_\_\_\_, 20\_\_ . A photocopy of the death certificate is attached as an exhibit to this Declaration.
6. No application for probate or administration and no other Small Estate Declaration has been filed in British Columbia for the Deceased's estate, as far as I/we know.

**C. The Deceased's Will**

7. I/We believe the will attached as an exhibit to this Declaration is the Deceased's original last will. Any codicil to the last will is also attached as part of the exhibit.

*[A "codicil" is a separate document that adds to or changes part of a will. It should be signed by the Deceased and by two witnesses who see the Deceased sign, exactly like a will. If there are any codicils, you must attach them with the will as an exhibit.]*

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8. I/We have attached the results of a wills search issued by the Vital Statistics Agency showing all names used by the Deceased or by which the Deceased was known as an exhibit.

*[You must request a wills search by the Vital Statistics Agency under the name of the Deceased and all names by which the Deceased was also known. You must attach the results received from the Vital Statistics Agency.]*

9. The Deceased's last will and all codicils appear(s) to have been signed by the Deceased in the presence of two witnesses, neither of whom is a beneficiary or a husband or wife of a beneficiary.
10. The Deceased did not marry or remarry after signing the last will, as far as I/we know.

### **D. The Assets of the Deceased**

11. As far as I/we know:

- The Deceased owned no real estate in British Columbia.

*OR*

Any real estate in British Columbia that the Deceased owned was in joint tenancy and at least one other joint owner was alive when the Deceased died.

*[NOTE: You cannot file a Small Estate Declaration if the Deceased owned real estate unless it was held in joint tenancy and another joint owner was alive when the Deceased died. A manufactured home on land not owned by the Deceased is not "real estate" unless it is declared to be part of the land on which it is situated in a written agreement filed in the manufactured home registry under s. 23(2) of the Manufactured Home Act, S.B.C. 2003, c. 75.]*

- The value of the assets of the Deceased on the date of death without deduction for debts is not more than \$50,000.

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- The assets of the Deceased's estate are:

*[List each asset included in the estate and its date of death value in Canadian dollars. Do NOT include assets that transfer automatically to others on proof of death, such as joint bank accounts (with right of survivorship), or insurance, pensions, RRSPs and RRIFs with a named beneficiary other than "estate." Attach a separate sheet if there isn't enough space on the form.]*

**Description of Asset**

**Value**

**Total: \$**

*[must not be more than \$50,000]*

12. I/We will file a supplementary declaration listing any additional asset of the Deceased more than \$1,000 in value when I/we learn of it.
13. I/We will apply for probate or administration with will annexed if:
- additional assets of the Deceased are found that raise the total date of death value of the Deceased's estate above \$50,000
- OR
- if I/we learn that the total date of death value of the assets listed above is more than \$50,000.

In either of those cases, I/we will not take further steps in relation to the Deceased's estate until I/we receive a grant of probate or administration, except to do what is necessary to preserve the assets.

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### E. Creditors

14. I/We have made all reasonable efforts to find out who the creditors of the Deceased are and how much each creditor claims.
15. As far as I/we know, these debts or other claims against the Deceased's estate are unpaid:

*[List all unpaid claims against the estate, whether you dispute them or not. Attach a separate sheet if there isn't enough space on the form. Note you may be personally liable to creditors if you distribute the assets of the Deceased without first paying the debts of the Deceased. The procedure for giving notice to creditors of a deceased person to present their claims is set out in section 38 of the Trustee Act, R.S.B.C. 1996, c. 464.]*

<b>Creditor's Name</b>	<b>Last Known Address</b>	<b>Amount or Estimate of Claim</b>
------------------------	---------------------------	------------------------------------

### F. Beneficiaries

16. As far as I/we know, the beneficiaries named in the will of the deceased, their last known addresses, and what they are entitled to receive are:

<b>Name</b>	<b>Last Known Address</b>	<b>Should Receive</b>
-------------	---------------------------	-----------------------

**G. Ten-Day Notice to Family of Deceased and Beneficiaries Under Will**

*[Paragraphs 18-20 inclusive do not apply to the Public Guardian and Trustee/Official Administrator]*

17. The spouse and children (including any adopted children) of the Deceased are:

*[Note: List the following persons as a “spouse” of the Deceased for the purpose of this item of the Declaration, even if there is more than one person who fits the description:*

- a person who was legally married to the Deceased at the time of death*
- a person who was living and cohabiting with the Deceased in a marriage-like relationship and who had done so for at least two years, including a same-sex partner]*

<b>Name</b>	<b>Last Known Address</b>	<b>Relationship to Deceased</b>
-------------	---------------------------	---------------------------------

18. I/We will mail or deliver a copy of this Declaration after it is completed to all persons listed in paragraphs 16 or 17. **I/We will wait at least 21 days after the death of the Deceased and at least 10 days after mailing or delivering a copy of this Declaration to those persons before I/we file it in the Court.**

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19. If a person listed in paragraphs 16 or 17 is a minor, or an adult who is or may be mentally incapable, I/we will deliver a copy of this completed Declaration to the guardian or committee, if any, of that person **AND TO** the Public Guardian and Trustee at 700-808 West Hastings Street, Vancouver, British Columbia V6C 3L3 at least 10 days before the date on which I/we file this Declaration in the Court.
20. If a minor is or becomes entitled to receive any money from the estate of the Deceased, I/we will pay or transfer the money to the Public Guardian and Trustee at 700-808 West Hastings Street, Vancouver, British Columbia V6C 3L3 unless the will says that the money is to be held in trust for the minor.

### H. Duties of Declarant(s)

21. I/We will:

- keep records of all receipts and disbursements from estate funds and account to the beneficiaries

*[NOTE: It is recommended that you open an account for the estate funds with a financial institution.]*

- pay the funeral expenses of the Deceased, the expenses of administering the estate, and the valid debts of the estate including any applicable income and other taxes, to the extent of the assets of the Deceased that come into my/our possession
- deal with trust assets in accordance with the terms of the trust, if the will creates a trust
- distribute the balance of the Deceased's assets to the persons entitled to receive them according to what each person should receive. If the Deceased died leaving a spouse or children I/we will NOT DISTRIBUTE assets of the Deceased for SIX MONTHS from the date on which I/we file this Declaration unless

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- the spouse and children have all reached the age of majority, and have given their consent,
- or
- the Court authorizes me/us to distribute sooner.

*[It is recommended that all consents be in writing.]*

22. I/We am/are aware that it is a serious criminal offence to make a false statutory declaration.

AND I/WE MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME LEGAL FORCE AND EFFECT AS IF MADE UNDER OATH.

DECLARED before me at

\_\_\_\_\_

this    day of            , 20\_\_

\_\_\_\_\_  
Declarant

\_\_\_\_\_  
A notary public or commissioner for  
taking affidavits

\_\_\_\_\_  
Declarant

\_\_\_\_\_  
*[Name and address of notary or  
commissioner]*

\_\_\_\_\_  
*[Don't sign until a notary or commissioner is  
present to see you sign and check that all the  
exhibits are attached and marked as exhibits  
to your declaration.]*

**Notice to Persons Dealing With Declarant  
or  
Having Possession or Control of  
Assets of the Deceased**

**If this Small Estate Declaration is made before a notary public or commissioner, bears the stamp of the Supreme Court of British Columbia, and a registry number appears in the upper right corner of the first page, it has been filed in Court and pursuant to Part 5.1 of the *Estate Administration Act*:**

- **A Declarant has the powers of an executor**
- **You are required by law to deal with a Declarant as if the Declarant were an executor named in the will of the Deceased who has been granted probate**
- **You are not required to inquire into the truth of any statement in this Small Estate Declaration**
- **Anyone who pays, delivers, or transfers to a Declarant personal property of the Deceased or documents or information concerning personal property of the Deceased on the basis of this Small Estate Declaration is discharged and released from any liability for loss or damage of any kind to any person that may result to the same extent as if dealing with an executor who has been granted probate.**

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No.

\_\_\_\_\_Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**SUMMARY ADMINISTRATION OF ESTATE UNDER \$50,000**

**RE: ESTATE OF \_\_\_\_\_, DECEASED**  
(referred to below as “the Deceased”)

**SMALL ESTATE DECLARATION**

*[Form For Use In Estates Under \$50,000 Where The Deceased Left No Will Note: For This Form To Have Legal Effect, It Must Not Be Altered Except To Supply the Information And Signatures It Requires]*

I/We, \_\_\_\_\_, SOLEMNLY DECLARE THAT:  
*[print full name(s)]*

**A. The Declarant(s)**

1. My/Our address(es) is/are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. I/We are entitled to make this declaration because:

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*[check the statement that applies]*

- I/We am/are (a) person(s) listed in paragraph 14 as being entitled to share in the Deceased's estate and I/we are the Deceased's
- spouse
  - child(ren)
  - grandchild(ren), great-grandchild(ren) or other descendant(s)
  - parent(s)
  - brother(s) or sister(s)
  - niece(s) or nephew(s)
  - other next of kin \_\_\_\_\_ (*specify*).

*OR*

- I/We have the written consent to this declaration of the persons listed in paragraph 14 as being entitled to the estate of the Deceased and their **written consents** are attached **as exhibits** to this Declaration.

*OR*

- I am an employee of the Public Guardian and Trustee/Official Administrator.

### **B. The Deceased**

3. (a) The full name of the Deceased is \_\_\_\_\_.

(b) The Deceased also used or was known by these other names:

*[List all other names by which the Deceased was known. The wills search result you attach must show all the names.]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The last address of the Deceased is:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. The Deceased died on \_\_\_\_\_, 20\_\_\_. A photocopy of the death certificate is attached as an exhibit to this Declaration.
6. No application for probate or administration and no other Small Estate Declaration has been filed in British Columbia for the Deceased's estate, as far as I/we know.

### **C. The Deceased Left No Will**

7. I/We have searched diligently for the last will of the Deceased. No will was found.
8. I/We have attached the results of a wills search issued by the Vital Statistics Agency showing all names used by the Deceased or by which the Deceased was known as an exhibit.

*[You must request a wills search by the Vital Statistics Agency under the name of the Deceased and all names by which the Deceased was also known. You must attach the results received from the Vital Statistics Agency.]*

### **D. The Assets of the Deceased**

9. As far as I/we know:
  - The Deceased owned no real estate in British Columbia.

*OR*

Any real estate in British Columbia that the Deceased owned was in joint tenancy and at least one other joint owner was alive when the Deceased died.

## Interim Report on Summary Administration of Small Estates

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*[NOTE: You may not file a Small Estate Declaration if the Deceased owned real estate unless it was held in joint tenancy and another joint owner was alive when the Deceased died. A manufactured home on land not owned by the Deceased is not “real estate” unless it is declared to be part of the land on which it is situated in a written agreement filed in the manufactured home registry under s. 23(2) of the Manufactured Home Act, S.B.C. 2003, c. 75.]*

- The value of the assets of the Deceased on the date of death without deduction for debts is not more than \$50,000.
- The assets of the Deceased’s estate are:

*[List each asset included in the estate and its date of death value in Canadian dollars. Do NOT include assets that transfer automatically to others on proof of death, such as joint bank accounts (with right of survivorship) or insurance, pensions, RRSPs and RRIFs with a named beneficiary other than “estate.” Attach a separate sheet if there isn’t enough space.]*

Description of Asset

Value

**Total: \$**

*[must not be more than \$50,000]*

10. I/We will file a supplementary declaration listing any additional asset of the Deceased more than \$1,000 in value when I/we learn of it.

11. I/We will apply for administration if:

## Interim Report on Summary Administration of Small Estates

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- additional assets of the Deceased are found that raise the total date of death value of the Deceased's assets above \$50,000

OR

- I/We learn that the total date of death value of the assets listed above is more than \$50,000.

In either of those cases, I/we will not take further steps in relation to the Deceased's estate until I/we receive a grant of administration, except to do what is necessary to preserve the assets.

### E. Creditors

12. I/We have made all reasonable efforts to find out who the creditors of the Deceased are and how much each creditor claims.
13. As far as I/we know, these debts or other claims against the Deceased's estate are unpaid:

*[List all unpaid claims against the estate, whether you dispute them or not. Attach a separate sheet if there isn't enough space on the form. Note you may be personally liable to creditors if you distribute the property of the Deceased without first paying the debts of the Deceased. The procedure for giving notice to creditors of a deceased person to present their claims is set out in section 38 of the Trustee Act, R.S.B.C. 1996, c. 464.]*

Creditor's Name	Last Known Address	Amount or Estimate of Claim
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### F. Persons Entitled to the Estate

## Interim Report on Summary Administration of Small Estates

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14. As far as I/we know, the following persons are entitled to the following shares of the Deceased's assets:

*[When a person dies without leaving a will, certain rules of law determine who has a right to inherit and how much. See the Table on the last page of this form. If one person is entitled to get the whole estate, enter "Entire estate" in the column with the heading "Should Receive." If it is one-third of the estate, enter "One-third," etc. Attach a separate sheet if there isn't enough space on the form.]*

Name	Relationship to Deceased	Should Receive
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### G. Ten-Day Notice to Family of Deceased

*[This section does not apply to the Public Guardian and Trustee/ Official Administrator.]*

15. I/We will mail or deliver a copy of this Declaration after it is completed to all persons listed in paragraph 14 of this Declaration, including any spouse of the Deceased who has been separated from the Deceased for less than one year. **I/We will wait at least 21 days after the death of the Deceased and at least 10 days after mailing or delivering a copy of this Declaration to those persons before I/we file it in the Court.**
16. If a person listed in paragraph 14 is a minor, or an adult who is or may be mentally incapable, I/we will deliver a copy of this completed Declaration to the guardian or committee, if any, of that person AND TO the Public Guardian and Trustee at 700-808 West Hastings Street, Vancouver, British Columbia V6C 3L3 at least 10 days before the date on which I/we file this Declaration in the Court.

## Interim Report on Summary Administration of Small Estates

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17. If a minor is or becomes entitled to receive any money from the estate of the Deceased, I/we will pay or transfer the money to the Public Guardian and Trustee at 700-808 West Hastings Street, Vancouver, British Columbia V6C 3L3.

### H. Duties of Declarant

18. I/We will:

- keep records of all receipts and disbursements from estate funds and account to the persons who are entitled to receive a share of the Deceased's assets.

*[NOTE: It is recommended that you open an account for the estate funds with a financial institution.]*

- pay the funeral expenses of the Deceased, the expenses of administering the estate, and the valid debts of the estate including any applicable income and other taxes, to the extent of the assets of the Deceased that come into my/our possession.
- distribute the balance of the Deceased's assets to the persons entitled to receive them according to what each person should receive after one year from the Deceased's death, or earlier if the Court authorizes a distribution before one year has passed.

*[Note: You must not distribute the assets of the Deceased to the Deceased's relatives until one year after the death of the Deceased unless the Court authorizes you to distribute earlier.]*

**Interim Report on Summary Administration of Small Estates**

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19. I/We am/are aware that it is a serious criminal offence to make a false statutory declaration.

AND I/WE MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME LEGAL FORCE AND EFFECT AS IF MADE UNDER OATH.

DECLARED before me at

\_\_\_\_\_

this    day of            , 20\_\_

\_\_\_\_\_ Declarant

\_\_\_\_\_ A notary public or commissioner for taking affidavits

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Name and address of notary or commissioner]*

\_\_\_\_\_ Declarant

*[Don't sign until a notary or commissioner is present to see you sign and check that all the exhibits are attached and marked as exhibits to your declaration.]*

**Notice to Persons Dealing With A Declarant  
or  
Having Possession or Control of  
Assets of the Deceased**

**If this Small Estate Declaration is made before a notary public or commissioner, bears the stamp of the Supreme Court of British Columbia, and a registry number appears in the upper right corner of the first page, it has been filed in Court and pursuant to Part 5.1 of the *Estate Administration Act*:**

- **A Declarant has the powers of an administrator of an estate**
- **You are required by law to deal with a Declarant as if the Declarant had been appointed the administrator of the Deceased's estate by the Court**
- **You are not required to inquire into the truth of any statement in this Small Estate Declaration**
- **Anyone who pays, delivers, or transfers to a Declarant personal property of the Deceased or documents or information concerning personal property of the Deceased on the basis of this Small Estate Declaration is discharged and released from any liability for loss or damage of any kind to any person that may result to the same extent as if dealing with an administrator appointed by the Court.**

**Table of Persons Entitled to Inherit on Intestacy<sup>1</sup> and Their Shares When the Gross Value of an Estate Is Not More Than \$50,000**

<p>If the Deceased leaves a surviving spouse</p> <p><i>Note on meaning of “spouse”: For the purpose of a Small Estate Declaration a “spouse” includes:</i></p> <p>(a) <i>a spouse who has been separated from the Deceased for less than one year immediately before the Deceased’s death, but not longer;</i></p> <p>(b) <i>a common law or same sex partner who lived and cohabited with the Deceased in a marriage-like relationship for at least two years immediately before the Deceased’s death.</i></p>	<p>Spouse receives entire estate</p> <p>If there is more than one person qualifying as a spouse, the court must decide how the estate should be divided unless the spouses agree on how much each should receive.</p>
<p>If the Deceased leaves no surviving spouse, but has surviving children</p> <p>OR if one or more of the Deceased’s children died before the Deceased, leaving surviving children or other descendants</p> <p><i>Note on adopted children: Legally adopted children of the Deceased or adopted children of the Deceased’s children are treated as if they were the Deceased’s natural children or grandchildren, as the case may be.</i></p> <p><i>If the Deceased was legally adopted, the Deceased’s adoptive family is treated as if they were his or her blood relatives, and the birth family does not share in the estate.</i></p>	<p>Each child receives an equal share of the estate. The number of shares into which the estate is divided is equal to the number of surviving children plus the number of children who did not survive the Deceased, and who themselves had surviving children or other descendants.</p> <p>Grandchildren or more remote lineal descendants of Deceased receive equal shares in the share their deceased parent would have taken if the parent had survived the death of the Deceased.</p>

1. Half-blood relatives have the same right as full-blood relatives to a share of the estate.

## Interim Report on Summary Administration of Small Estates

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If the Deceased dies leaving no surviving spouse, surviving children, surviving grandchildren, or more remote lineal descendants	Surviving parents of Deceased receive equal shares of the estate
If the Deceased dies leaving no surviving spouse, surviving children, surviving grandchildren or more remote lineal descendants, or surviving parents	Surviving brothers and sisters in equal shares. Children of deceased brother and sister receive equal shares in the share their parent would have taken if the parent had survived the Deceased.
If the Deceased dies leaving no surviving spouse, surviving children, surviving grandchildren or more remote lineal descendants, surviving parents, or surviving brothers and sisters	Nieces and nephews of Deceased receive equal shares.
If the Deceased dies leaving no surviving spouse, surviving children, surviving grandchildren or more remote lineal descendants, surviving parents, surviving brothers and sisters, or surviving nieces and nephews	Closest surviving next of kin receive equal shares.

No. \_\_\_\_\_ Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
**SUMMARY ADMINISTRATION OF ESTATE UNDER \$50,000**

**RE: ESTATE OF \_\_\_\_\_, DECEASED**  
**(referred to below as “the Deceased”)**

**SUPPLEMENTARY SMALL ESTATE DECLARATION**

*[Form For Use In Estates Under \$50,000 When Information Must  
Be Corrected in a Small Estate Declaration That Has Been Filed in  
Court]*

I/WE, \_\_\_\_\_, SOLEMNLY DECLARE THAT:  
*[print full name(s)]*

1. I/We filed a small estate declaration concerning the estate of the Deceased on \_\_\_\_\_, 20\_\_.

*[Provide the date on which you filed the small estate declaration.]*

2. Since I/we filed the small estate declaration, I/we have learned that the small estate declaration must be corrected as shown here:

**Interim Report on Summary Administration of Small Estates**

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*[Enter the number of each numbered paragraph of your small estate declaration that needs to be corrected. Provide the corrected information opposite the paragraph number. Attach a separate sheet if there isn't enough space on the form.]*

*Note that you do not have to file a supplementary small estate declaration if the only change is that an asset of the Deceased less than \$1,000 in value was not listed in the small estate declaration.]*

Number of paragraph of  
small estate declaration

New or corrected information

AND I/WE MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME LEGAL FORCE AND EFFECT AS IF MADE UNDER OATH

DECLARED before me at

\_\_\_\_\_

this    day of                    , 20\_\_

\_\_\_\_\_  
Declarant

\_\_\_\_\_  
A notary public or commissioner for  
taking affidavits

\_\_\_\_\_

\_\_\_\_\_

*[Name and address of notary or commissioner]*

\_\_\_\_\_  
Declarant

*[Don't sign until a notary or commissioner is present to see you sign and check that all the exhibits are attached and marked as exhibits to your declaration.]*

## Interim Report on Summary Administration of Small Estates

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