



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

SURVIVAL OF ACTIONS ACT

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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SURVIVAL OF ACTIONS ACT

CHAPTER S-11

1. Definitions

In this Act

- (a) “**cause of action**” includes a civil proceeding instituted before death, but does not include a prosecution for contravening a statute or bylaw;
- (b) “**claim**” means a claim for damages or equitable relief;
- (c) “**court**” means the Supreme Court of Prince Edward Island (General Division) or any judge thereof;
- (d) “**Estates Section**” means the Supreme Court of Prince Edward Island (Estates Section) or any judge thereof;
- (e) “**personal representative**” means a person to whom letters probate or letters of administration (original or ancillary) or equivalent authority have been granted or resealed by the Estates Section or who is otherwise under the control of the Estates Section in the administration of the estate of a deceased person;
- (f) “**proceeding**” includes an action, application or submission to any court or judge or other body having authority by law or by consent to make decisions as to the rights of persons. *1978, c.21, s.1.*

2. Survival of actions against estate

All causes of action subsisting against a person on the date of his death survive against his estate. *1978, c.21, s.2.*

3. Inception of cause of action

Where damage has been suffered by reason of an act or omission as a result of which a cause of action would have subsisted against a person if he had not died

- (a) before or at the same time as the damage was suffered; or
- (b) under circumstances invoking any presumption or rule of law that he died before the damage was suffered,

there is deemed to have been subsisting against him before his death whatever cause of action as a result of the act or omission would have subsisted if he had not died, or been presumed to have died, before or at the same time as the damage was suffered. *1978, c.21, s.3.*

4. Survival of actions for benefit of estate

- (1) All causes of action vested in a person on the date of his death survive for the benefit of his estate.

Saving for *Fatal Accidents Act* claims

- (2) The rights conferred by this Act for the benefit of the estates of deceased persons are in addition to and not in derogation of any right of action for the benefit of the dependants of deceased persons conferred by the *Fatal Accidents Act* R.S.P.E.I. 1988, Cap. F-5. 1978, c.21, s.4; 1987, c.6, s.20.

5. Damages for benefit of estate

Where a cause of action survives for the benefit of the estate of a deceased person, only damages in respect of actual pecuniary loss to the deceased person or his estate are recoverable and, without restricting the generality of the foregoing, the damages recoverable shall not include

- (a) punitive or exemplary damages;
- (b) damages for loss of expectation of life or loss of amenities;
- (c) damages for pain and suffering;
- (d) damages for physical disfigurement;
- (e) in the case of a breach of promise to marry, such damages as do not flow from the breach of promise to marry. 1978, c.21, s.5.

6. Funeral and administration expenses

Where the death of a person is caused by the act or omission that gives rise to the cause of action, the damages shall be calculated without reference to any loss or gain to his estate consequent on his death, except that there may be included in the damages awarded

- (a) an amount sufficient to cover reasonable expenses of the funeral and the disposal of the body of the deceased;
- (b) an amount not to exceed \$500 to cover reasonable expenses in the taking out of administration of the estate of the deceased,

if those expenses were, or liability therefor was, incurred by the estate and there has been no sum awarded therefor under the *Fatal Accidents Act* R.S.P.E.I. 1988, Cap. F-5. 1978, c.21, s.6.

7. Cause of action as asset or liability of estate

Every cause of action that survives is an asset or liability, as the case may be, of the estate for the benefit of which, or against which, it survives for so long as it may be enforced by a proceeding in respect thereof. 1978, c.21, s.7.

8. Claim against estate

- (1) Where any person purports to have a claim by virtue of a cause of action which survives against an estate of a deceased person, he may present to the personal representative of that estate a written notice stating the existence and description of the claim and, if required by the Estates Section, shall verify it by affidavit.

Limitation

- (2) Any notice of claim shall be presented to the personal representative of the estate against which the claim is made prior to the making of a final decree in the administration of that estate. 1978, c.21, s.8.



9. Claim valuation

- (1) Where a cause of action survives or is considered by the personal representative to have survived it shall be sufficient for the purpose of any inventory of the estate or any application for a bond if the personal representative enters the claim with a general description of the nature of the claim in the inventory or application without valuing such cause of action.

Early distribution of estate

- (2) Where a personal representative desires to distribute or advance any portion of the estate notwithstanding the survival of a cause of action against the estate, he may apply to the Estates Section for permission to make the distribution or advance and permission may be granted upon such terms as to security, proof of insurance or notice to any claimant as the Estates Section considers advisable.

Personal representative protected

- (3) The personal representative shall not be liable to a claimant in respect of any distribution or advance made pursuant to permission granted under subsection (2) and before notice of a claim is presented.

Notice by personal representative

- (4) Whether or not notice of claim under subsection 8(1) has been given, the personal representative may apply without notice to any other person to the Estates Section for a citation, or such other direction as the Estates Section may order, directed to any person and served in such manner as the Estates Section orders, which citation or direction may
- (a) require any person who has not given notice under subsection 8(1) to give written notice of any claim against the estate to the personal representative at the address stated in the notice within thirty days, or such longer period as may be allowed, verified by affidavit if required;
 - (b) state that unless a proceeding is commenced to the knowledge of the personal representative prior to the day appointed for the granting of the final decree and passing of accounts, any claim against the estate shall not be maintainable once the final decree is granted.

Final decree suspended

- (5) Where a citation or direction is given under subsection (4), no final decree in the estate shall be granted within three months from service of the citation or direction unless
- (a) the person upon whom the citation or direction is served gives a release of any claim against the estate other than a claim as a beneficiary; or
 - (b) the Estates Section settles the amount which the final decree shall reserve to meet any successful claim and any security to be provided. *1978, c.21, s.9.*

10. Effect of notice

- (1) For the purpose of any statute or rule of law or procedure relating to the administration of estates of deceased persons, including the *Probate Act*, R.S.P.E.I. 1988, Cap. P-21, a notice of claim under subsection 8(1) is a sufficient notice to the personal representative notwithstanding that no value or amount is attributed to the claim and any such notice shall have the same effect as a notice by a creditor to the personal representative.

Effect of final decree

- (2) Whether or not notice of claim has been given, the granting of the final decree in the administration of the estate of a deceased person extinguishes any and all claims or causes of action against the estate unless
- (a) prior to the final decree, a proceeding against that estate in respect of the claim has been commenced and is pending at the date of making the decree to the knowledge of the personal representative;
 - (b) the final decree preserves the rights of the claimant or makes provision for such claim;
 - (c) an order is made pursuant to section 11;
 - (d) the personal representative acted fraudulently with respect to the claim or cause of action; or
 - (e) the personal representative consents to a proceeding being brought against the estate notwithstanding this section. *1978, c.21, s.10.*

11. Estates Section relief

- (1) Notwithstanding the granting of a final decree, the Estates Section may order that any cause of action against an estate of a deceased person shall not be affected by reason only of the granting of the final decree in the estate.

Effect of order

- (2) No order under this section shall operate to render
- (a) the personal representative liable or accountable for any property distributed or disbursed in accordance with a final decree;
 - (b) any beneficiary of the estate of the deceased liable or accountable for any property received from that estate; or
 - (c) any trustee liable or accountable for any property held in trust for any beneficiary of the estate of the deceased or for any person under the terms of the final decree. *1978, c.21, s.11.*

12. Role of Public Trustee

- (1) Where there is no personal representative of a deceased person against whom a proceeding may be brought or continued in this province, the proceeding may be brought or continued against the Public Trustee as the litigation administrator of the estate of the deceased person until the court otherwise orders.

Affidavit of search

- (2) An affidavit of a barrister that the records of the Estates Section have been searched to the date of commencement of the proceeding and have not disclosed the existence of a personal representative of the estate of the deceased and that he does not know
- (a) the identity of anyone who might apply for such representation in this province except as may be stated in the affidavit; or
 - (b) of any such representative in this province or elsewhere,

is proof, until the contrary is proved, that no personal representative exists for the purposes of subsection (1).



Notices by Public Trustee

- (3) Where the Public Trustee is the litigation administrator of the estate of a deceased person the Public Trustee shall take such steps as the court may direct upon application without notice of the Public Trustee to notify those persons entitled to take out administration of the estate advising them of the proceeding and of their right to apply to act in the place of the Public Trustee.

Extension of time

- (4) The Public Trustee shall on application to the court be entitled to a stay of proceedings or an extension of time to permit such notification or the preparation and filing of a defence as the court may order. *1978, c.21, s.12; 1994, c.52, s.79.*

13. Amendment of proceeding where existing personal representative

- (1) No proceeding shall fail or be dismissed by reason only that the proceeding was brought or continued against the Public Trustee as litigation administrator when a personal representative existed but all such amendments as may be necessary to substitute the personal representative may be made by the court and upon such terms as to service, extension of time, costs or otherwise as the court may order.

Substitution of defendant

- (2) Where a proceeding has been commenced or continued against the Public Trustee or other litigation administrator as the litigation administrator of the estate of the deceased person, the court on the application of
- (a) the personal representative of that estate;
 - (b) the Public Trustee;
 - (c) any litigation administrator; or
 - (d) any person claiming an interest in that estate,
- may order
- (e) the personal representative of that estate; or
 - (f) any other person who consents,
- to be substituted as the defendant or plaintiff by counterclaim in respect of any proceeding on such terms as to costs, indemnity or other matters as the court may order. *1978, c.21, s.13; 1994, c.52, s.79.*

14. Administrator's powers

- (1) A litigation administrator as defendant in any proceeding may take any steps that a defendant may take in a proceeding, including third party proceedings and the bringing, by way of counterclaim, of any action that survives for the benefit of the estate of the deceased person and is subject to, and entitled to, costs.

Effect of judgment

- (2) Any judgment or order obtained by the litigation administrator has the same effect as a judgment or order in favour of the estate of the deceased person;

Idem

- (3) Any judgment or order obtained against a litigation administrator has the same effect as a similar judgment or order against the personal representative, except that no real or personal property of the estate of the deceased persons situate in this province shall be repossessed or

sold under the judgment or order without leave of the court and upon such terms, including notice to any personal representative, creditor, beneficiary or other person, as the court may direct.

Effect of judgment on litigation administrator personally

- (4) No judgment or order obtained by or against the litigation administrator in that capacity affects the litigation administrator in his personal capacity unless it is expressly stated to have that effect. *1978, c.21, s.14.*

15. Recovery of litigation administrator's costs

- (1) Where a judgment or order is obtained by or against a litigation administrator, the litigation administrator has the same claim against the estate of the deceased person for his costs, fees and disbursements as a personal representative would have.

Idem

- (2) Where a judgment or order is obtained by a litigation administrator the litigation administrator may deduct from any recovery of money under or upon the judgment or order such costs, fees and disbursements as the court may allow and shall pay the balance into court or as the court may direct. *1978, c.21, s.15.*

16. Public Trustee as litigation administrator

- (1) Any provision of this Act which applies to a litigation administrator applies also to the Public Trustee.

Idem

- (2) Subsection (1) applies although the Public Trustee subsequently becomes the personal representative of the estate of a deceased person for which estate the Public Trustee has acted or acts as litigation administrator. *1978, c.21, s.16; 1994, s.52, s.79.*

17. Settlements

- (1) Except with the leave of the court or the Estates Section, no person may settle or compromise any cause of action which survives, or any proceeding brought, under this Act.

Confirmation of settlements

- (2) Where any cause of action which survives, or any proceeding brought, under this Act is settled or compromised without leave of the court or the Estates Section, the settlement or compromise is not binding on any personal representative whom the settlement or compromise seeks to bind until the settlement or compromise is confirmed by the court or the Estates Section but is binding on all other parties thereto. *1978, c.21, s.17.*

18. Deceased defendant

- (1) Where a proceeding is commenced naming as a defendant a person who was deceased at the time of its commencement, the court on such notice as it considers proper may make an order validating the proceeding as if that person had been alive at the time the proceeding was commenced and died immediately thereafter.

Personal representative protection

- (2) Upon making an order under subsection (1), the court may impose a term that a personal representative appointed in this province or elsewhere shall not be personally liable in respect



of any part of the estate of the deceased person that he has distributed or otherwise dealt with in good faith while not aware that a proceeding has been commenced and such other terms and conditions including costs as in the circumstances seem just. 1978, c.21, s.18.

19. Pleading this Act

- (1) In any proceeding it shall be sufficient if facts and circumstances are alleged that bring the proceeding within the provisions of this Act without expressly referring to or pleading this Act or its provisions.

Idem

- (2) In any proceeding a demand for further particulars or similar demand may be made requiring an express statement that a person invokes or relies on this Act or any of its provisions. 1978, c.21, s.19.

20. Fatal Accidents Act claim

Where any proceeding is brought in respect to a cause of action which survives, the person against whom the proceeding is brought may apply for a stay of the proceeding until the proceeding includes any claim or is joined to any proceeding which might be made or brought under the *Fatal Accidents Act* or it is otherwise ordered. 1978, c.21, s.20.

21. Limitation of action

Any proceeding upon a cause of action which survives against the estate of a deceased person shall be brought before

- (a) the cause of action is extinguished pursuant to subsection 10(2); or
(b) the expiration of the period within which the proceeding might have been brought against that person if that person had lived,

whichever first occurs. 1978, c.21, s.21.

22. Crown bound

This Act binds the Crown and the *Crown Proceedings Act* R.S.P.E.I. 1988, Cap. C-32 applies to proceedings against the Crown pursuant to this Act. 1978, c.21, s.22.