



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **SURVIVAL OF ACTIONS ACT**

## PLEASE NOTE

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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 King'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](http://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;
- (d.1) “**litigation administrator**” means, in respect of a proceeding, a litigation administrator of the estate of a deceased person;
- (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; 2020, c.84, s.1.*

#### 2. Survival of action against estate

A cause of action existing against a person who dies survives against the person’s estate. *1978, c.21, s.2; 2020, c.84, s.2.*

#### 3. Cause of action deemed to exist before death

Where a cause of action for damages suffered by reason of an act or omission would have existed against a person had the person not died or been presumed to die before or at the time the damage was suffered, the cause of action is deemed to have existed against the person before the person’s death. *1978, c.21, s.3; 2020, c.84, s.3.*

#### 4. Survival of action for benefit of estate

- (1) A cause of action vested in a person who dies survives for the benefit of the person’s 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; 2020, c.84, s.4.

#### 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 the deceased person's 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; 2020, c.84, s.5.

#### 6. Calculation of damages

- (1) Where the death of a person was caused by an act or omission that gives rise to a cause of action, the damages shall be calculated without reference to a loss or gain to the person's estate as a result of the person's death.

##### Funeral and administration expenses

- (2) Notwithstanding subsection (1), where the person's estate has incurred or is liable for the expenses and no sum has been awarded for them under the *Fatal Accidents Act*, damages awarded may include
  - (a) an amount sufficient to cover reasonable expenses of the funeral and the disposal of the body of the deceased person; and
  - (b) an amount not to exceed \$500 to cover reasonable expenses in the taking out of administration of the deceased person's estate. 1978, c.21, s.6; 2020, c.84, s.6.

#### 7. Cause of action as asset or liability of estate

A cause of action that survives under this Act and a judgment or order on it or relating to the costs of it is an asset or liability, as the case may be, of the estate to which the cause of action relates. 1978, c.21, s.7; 2020, c.84, 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, the person 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; 2020, c.84, 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, the personal representative 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; 2020, c.84, 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. Appointment of litigation administrator**

- (1) Where there is no personal representative of the estate of a deceased person, on the application of a person entitled to bring or continue a proceeding against the estate of the deceased person and on the notice that the court considers proper, the court may appoint a litigation administrator.

**Notice to Public Trustee**

- (2) The court shall not hear an application made under subsection (1) unless the Public Trustee is served with notice of the application at least ten clear days prior to the hearing of the application, upon which the Public Trustee may intervene and be made a party to the application and, with the consent of the Public Trustee, be appointed the litigation administrator.

**Stay of proceedings or extension of time**

- (3) On application, the court shall grant to a litigation administrator a stay of proceedings or an extension of time to give any notice ordered by the court or to prepare and file a defence.



**No personal representative, proof**

- (4) For the purpose of subsection (1), an affidavit of a member of the Law Society of Prince Edward Island confirming the following is proof, until the contrary is proved, that no personal representative exists:
- (a) that the records of the Estates Section have been searched to the date of the application and no record has been found of a personal representative;
  - (b) that the member does not know of any person who might be or apply to be the personal representative, except as stated in the affidavit. *1978,c.21,s.12; 1994,c.52,s.79; 2020,c.84,s.10.*

**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 a 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 brought or continued against a litigation administrator, on the application of the litigation administrator, the personal representative or a person claiming an interest in the estate, the court may order the substitution of the personal representative or any other person who consents as the defendant or plaintiff by counterclaim in the proceeding, subject to any terms the court imposes. *1978,c.21,s.13; 1994,c.52,s.79; 2020,c.84,s.11.*

**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 a personal capacity unless it is expressly stated to have that effect. *1978,c.21,s.14; 2020,c.84,s.12.*

**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 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; 2020, c.84, s.13.*

**16. Public Trustee as litigation administrator**

Repealed by 2020, c.84, s.14. *1978, c.21, s.16; 1994, s.52, s.79; 2020, c.84, s.14.*

**17. Settlement or compromise with leave**

- (1) No person shall settle or compromise a cause of action that survives or a proceeding that is brought or continued pursuant to this Act except with leave of the court or the Estates Section.

**Not binding**

- (2) A settlement or compromise made in contravention of subsection (1) is not binding against the personal representative until the settlement or compromise is confirmed by the court or the Estates Section. *1978, c.21, s.17; 2020, c.84, s.15.*

**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.

**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 the personal representative 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; 2020, c.84, s.16.*

**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**

Repealed by 2020,c.84,s.17. 1978,c.21,s.22; 2020,c.84,s.17.