

STEWART MCKELVEY

When results count.



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Executors Accounts and Taxation of Costs
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Introduction

- Executors Accounts
- Passing of Accounts
- Taxation of Costs



Executors Accounts

- *Probate Act* requires accounting within 18 months from the date of Grant.
- No prescribed form but content is prescribed in Regulation 57.
- Often professionally prepared by accountant.
- Tracks activities of personal representative in administering estate.



Executors Accounts – Cont'd

- Starts with inventory value, then tracks increases or decreases in inventory value through realization on assets, income earned in estate, expenses paid in estate and distributions to beneficiaries.
- Should reconcile with assets remaining at the time of accounting.
- See Regulation 57 for details.



Passing of Accounts

- Formerly referred to as “closing” an estate.
- Personal representatives are required to pass accounts within 18 months of the date of the grant (Section 69 of the *Act*).
- NB: Registrar’s policy is not to enforce the *Act* unless a person interested in the estate requests it.
- If passing accounts, can be with or without a hearing.



Passing of Accounts – Cont'd

- Process for passing accounts:
 1. Call court to obtain date (not less than 45 days from date of receipt of application).
 2. Application in Form 39 (with hearing) or 40 (without a hearing).
 3. File personal representative's accounts with supporting vouchers and receipts (one copy only) with respect to the transactions on the accounts.
 4. File any signed releases (Form 36).
 5. File proposed form of order (Form 41).
 6. File final solicitor's bill of costs (may be delayed to closer to hearing to pick up additional disbursements and time).
 7. File statement of personal representative's commission sought – see Regulations 57(2)(g) and 62(3) for the content of the statement.
 8. Practice point – file the same number of copies of the accounts and the application as there are persons interested in the estate (see Regulation 52 for list) and serve a stamped copy of the documents on each person.



Passing of Accounts – Cont'd

- Serve on each person interested in the estate at least 30 days prior to the hearing by registered mail or personal service the following documentation:
 - Copy of the accounts.
 - Copy of the application.
 - Blank notice of objection (Form 42)
 - Statement of commission sought.
 - Solicitor's bill of costs (if filed with court).
- No advertisement in Royal Gazette required.



Passing of Accounts – Cont'd

- Not less than 10 days before the date set for the hearing file with the court:
 - Final solicitor's bill of costs (if not previously filed)
 - Affidavit of the personal representative (Form 43)
 - Practice point – Form 43 affidavit can be split into two affidavits - one for personal representative and one for solicitor.



Passing of Accounts – Cont'd

- If an interested party wants to object, a notice of objection (Form 42) is filed.
- If application was set without a hearing and objection arises, hearing will be held.
- Once Registrar is satisfied, order in Form 41 will be issued.
- Final distribution of estate can then occur.



Taxation of Cost

- Interim taxation of costs is permitted (Regulation 61) but rarely used.
- If done, requires notice of taxation (Form 44).
- New *Probate Act* created concern that interim payment of solicitor's accounts was not permitted.
- Interim billing is now still appropriate after Justice Goodfellow's decision in *Rustig Estate*, 2002 NSSC 210.



Taxation of Cost – Cont'd

- NB - Only applies to pre-payment of solicitor's accounts, not executor commission.
- Registrar's role on taxation of account is to assess the appropriateness of the bill in regard to the services rendered and the fee charged.
- Registrar's decision may be reviewed by a Judge of the Court of Probate.
- Taxation of a bill of costs typically occurs on the passing of accounts (if at all).



Taxation of Cost – Cont'd

- Tariffs for proctor fees in some counties (such as Lunenburg) are still applied.
- No prescribed form for a solicitor's account, but typically should provide detail on the date each service was performed, a description of the service performed, the amount of time required to perform each service, the lawyer who provided the service and the hourly rate of the lawyer who performed the service.



Taxation of Cost – Cont'd

- Final account can (and should) include a pre-billed amount of time to effect final distribution of the estate and attend on the passing of accounts.
- Final solicitor's bill is typically provided to the Registrar at least 10 days before the hearing with the Form 43 affidavit(s).



Taxation of Cost – Cont'd

- Interim bills will have been included as part of the personal representative's accounts.
- Costs on contested matters are beyond the scope of this presentation.



Questions?

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