
LAW AND EQUITY ACT

CHAPTER 253

- 1 *Section 21 (2) (b) of the Law and Equity Act is amended by striking out* “at any registry located in the judicial district in which the land is located,” *and substituting* “at the nearest registry of the Supreme Court that can be conveniently reached from the land that is the subject of the proceeding.”

1989-64-9.

- 2 *Sections 46, 49, 50 and 51 are repealed and the following substituted:*

Retirement plans beneficiary designation

- 49 (1) In this section:

“**participant**” means a person on whose behalf a plan provides for the receipt by another person of a benefit in the event of the person’s death;

“**plan**” means

- (a) a pension, retirement, welfare or profit sharing fund, trust, scheme, contract or arrangement for the benefit of employees, former employees, agents or former agents of an employer or their dependants or beneficiaries,
- (b) a fund, trust, scheme, contract or arrangement for the payment of an annuity for life or for a fixed or variable term,
- (c) a retirement savings plan or retirement income fund registered under the *Income Tax Act* (Canada), or
- (d) other arrangement designated by the Lieutenant Governor in Council created on, before or after this section comes into force;

“**will**” has the same meaning as in the *Wills Act*.

- (2) A participant may designate by

- (a) an instrument signed by the participant or signed on the participant’s behalf by another person in the participant’s presence and by the participant’s direction, or
- (b) a will

that a person is to receive a benefit payable under a plan on the participant’s death, and the participant may revoke a designation, however made, by a method described in paragraph (a) or (b).

- (3) A designation in a will is effective only if it relates expressly to a plan, either generally or specifically.
- (4) A revocation in a will is effective to revoke a designation made by instrument only if the revocation relates expressly to the designation, either generally or specifically.

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- (5) Despite the *Wills Act*, a later designation, however made, revokes an earlier designation to the extent of any inconsistency.
 - (6) The revocation of a will is effective to revoke a designation in the will.
 - (7) A designation or revocation contained in an instrument purporting to be a will is not invalid merely because the instrument is invalid as a will.
 - (8) A designation in an instrument that purports to be, but is not, a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.
 - (9) Revocation of a designation does not revive an earlier designation.
 - (10) Republication of a will by codicil is not effective to revive a revoked designation in a will unless the codicil expressly provides.
 - (11) Despite the *Wills Act*, a designation or revocation in a will is effective from the time the will is signed.
 - (12) After the death of a participant, if a designation is in effect at the time of the death, the person designated may enforce payment of the benefit payable to him or her under the plan, but the person against whom payment is sought to be enforced may set up any defence that he or she could have set up against the participant or the participant's personal representative.
 - (13) If a person is to receive a benefit in accordance with the terms of a plan in the event of the participant's death, the benefit is not part of the participant's estate.
 - (14) If this section is inconsistent with a plan, this section applies unless the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment if the benefit payment would have been different if the designation had been made before the benefit payment, in which case the plan applies.
 - (15) If an administrator of a plan transfers a benefit in accordance with the plan to a beneficiary of record, the administrator is discharged in respect of that benefit even if the administrator later receives a notice of change of beneficiary.
 - (16) Section 49 of the *Insurance Act* applies for the purpose of an irrevocable designation of a beneficiary under a plan.
 - (17) This section does not apply to a contract or to a designation of a beneficiary to which the *Insurance Act* applies.

1990-34-9.

3 *The following sections are added:*

Order for periodic payments

- 65** (1) Subject to subsections (2) and (3), in an action for damages for personal injuries or under the *Family Compensation Act*, the court may, in respect of any amount

of damages that relate to the loss of future earning capacity or the cost of future care, make a periodic payment order.

- (2) Before making an order under subsection (1), the court
 - (a) must advise the plaintiff of the provisions of this section and sections 66 and 67 and give the plaintiff the opportunity to make submissions why an order should not be made,
 - (b) may direct that inquiries be made or that the report of an expert be obtained, and
 - (c) must give reasons to the plaintiff why the order is being made.
- (3) The court may only make a periodic payment order if the court considers that the plaintiff
 - (a) will not, due to the plaintiff's physical or mental condition, be able to support himself or herself adequately and provide for his or her needs, and
 - (b) would probably be unwilling or unable to preserve a fund intended to provide for his or her future care and support.
- (4) A periodic payment order must
 - (a) provide that the amount of damages to which the order applies be paid to the Public Trustee to be managed in accordance with the directions that the court may give under subsection (5) and, subject to those directions, in the manner provided for in section 66, and
 - (b) set the remuneration of the Public Trustee and, in determining the amount of damages payable to the plaintiff, may make provision for the remuneration of the Public Trustee.
- (5) The court may, at the time it makes the order under subsection (1), and afterwards from time to time, give the Public Trustee directions respecting the management of the fund and the manner and amount of payments to be made out of the fund.
- (6) Unless the court otherwise directs,
 - (a) an order under this section has priority over any assignment, garnishment, execution or charging order, whether issued or made before or after this section comes into force, and
 - (b) the fund is not subject to the claims of the plaintiff's creditors.

Management of the fund

- 66** (1) The Public Trustee may, out of the fund and any interest earned on it, and subject to directions of the court made under section 65,
- (a) make payments to the plaintiff or for the plaintiff's benefit, in amounts that the Public Trustee considers appropriate,
 - (b) purchase property in the name of the Public Trustee for the use of the plaintiff, or

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- (c) pay to the plaintiff's solicitor, or any other person to whom the plaintiff is under a legal obligation, costs, expenses and disbursements arising out of the conduct of the action or any other debt or obligation owed by the plaintiff.
 - (2) The Public Trustee may be paid his or her remuneration and expenses out of the fund, subject to the direction of the court.

Plaintiff or Public Trustee may apply for variation or discharge of order

- 67** (1) While an order under section 65 is in effect, the court may, on the application of the plaintiff or the Public Trustee, make an order
- (a) varying the directions that the court has made under that section,
 - (b) adding new directions, or
 - (c) discharging an order under that section.
- (2) If the court makes an order under subsection (1) (c), the Public Trustee must pay the balance of the money in the fund to the plaintiff or to the plaintiff's trustee, committee or personal representative.

1989-64-10.

Commencement

- 4** Sections 1 to 3 come into force by regulation of the Lieutenant Governor in Council.

1989-64-35 (1); 1990-34-14.