

PROVINCE OF NOVA SCOTIA
COUNTY OF LUNENBURG SS

IN THE COURT OF PROBATE
Cite as: Jones Estate, 2011 NSPB 3

IN THE MATTER OF THE ESTATE OF RHETA ISABEL JONES

Executor: Christopher Jones
Proctor: Derek M. Wells, Q.C.

DECISION

A closing of the above noted estate was scheduled for November 22, 2010 at 10:00 in the forenoon. A number of issues were raised at that time and the closing was adjourned to January 24, 2011 and then to May 10, 2011 at 2:00 pm.

Present at the hearing scheduled for November 22, 2010 were Christopher Jones, Executor and Derek M. Wells, Q.C., Proctor for the Estate.

Rheta Isabel Jones died May 22, 2007 leaving a will naming her son, Christopher Jones as Executor. By Mrs. Jones' Last Will she directed the Executor to pay her just debts and all taxes. She then gave all of her estate to the Executor upon trust to sell and convert into cash all of her estate. She directs the Executor to pay a number of specific bequests and to give personal and household goods and furniture to specific legatees and the rest and residue to be divided equally among her three children, namely Colleen Diane Jones, John Brennan Jones and Christopher Lee Jones. A Grant of Probate was granted on November 16, 2007 and an Inventory was filed on October 6, 2008. An application was made to pass the accounts of the Personal Representative was filed on July 12, 2010. Notice was served on the residual legatees. Colleen Diane Jones filed with the Court a Notice of Objection to Accounts on December 8, 2010.

The first issue raised in the Notice of Objection was concerning Schedule "D" - Expenses of the final account. The objections was to question the disbursements to the Executor for the following:

Fuel for Executor's car	\$ 56.41
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Fuel for Executor's car	54.87
Linda MacDonald	100.00
Mileage reimbursements	500.00
Mileage reimbursements	600.00

Mileage reimbursements	1,000.00
Mileage reimbursements	1,000.00

Mr. Jones advised the court that the expense to Linda MacDonald was to reimburse her for dry cleaning, packing and delivering various items. This expense is allowed.

Mr. Jones informed the court that he did not have an itemized list for his fuel and mileage reimbursements. He advised the court that he had made numerous trips to Rosedale Home for Special Care, meetings with the pharmacy in New Germany, meetings with the accountants and lawyer. Since Mr. Jones was not able to provide the court with an itemized listing, I find that Mr. Jones appears to have charged an excessive amount in that he charged for both fuel and mileage. Mr. Jones is to reimburse the estate \$2,167.69.

The second issue raised in the Notice of Objection concerns the commission being claimed by the Executor. Section 76 of the Probate states:

“On the settlement of an estate, the personal representative may be allowed, over and above all actual and necessary expenses as appears just and reasonable, a commission not exceeding five percent of the amount received by the personal representative...”

Upon determining the commission, the Court is guided by the size of the estate; if there were investments; if the Executor invested monies during the administration of the estate; if there were personal items to be delivered or sold; if there was real property to be transferred or sold; the skill and ability displayed and the time it took in performing his duties.

In this case Mrs. Jones died in May of 2007; a grant of Probate was issued in November 2007; Notices to the Beneficiaries were served on the beneficiaries and an Affidavit of Service was filed with the Court. In October 2008 an Inventory was filed and on July 12, 2010 an application was made to the Court to pass the accounts without a hearing.

Under the Probate Regulations there are specific time periods in which documents are to be filed. The Inventory is to be filed within 90 days of the Grant of Probate. Mr. Wells made a request to the Court that the Inventory be granted an extension of an additional three months to file the Inventory and this was granted until May 16, 2007. The Inventory was not filed until October of 2008. Section 53(1) of the Probate Act states:

“A personal representative of an estate shall give the court an accounting of the administration of the estate by applying in accordance with Section 55 for an order passing the accounts of the estate

(a) Within 18 months of the date of the grant unless the court orders an extended period;”

On March 1, 2010, Colleen Dianne Jones filed with the Court a Notice of Application requesting a hearing to have the estate closed and monies distributed and a date of May 12, 2010 was set for this hearing. The Court was contacted by Mr. Wells requesting a date to closing the estate and an application to pass accounts without a hearing was filed with the Court on July 12, 2010 setting a closing date of November 22, 2010. A hearing was held on November 22, 2010 and the Court was advised that numerous items still remained in the hands of the Personal Representative. He still had numerous personal effects and furniture stored in his basement and shares in Telus Corporation and Bell Aliant had not been sold. The estate consisted of a bank account, shares and personal/household effects. The Court instructed the Personal Representative to sell the shares and the personal/household effects and the hearing was adjourned until February 24, 2011. The Court was then contacted by the Proctor of the estate on February 23rd, 2011 advising that the shares had not yet been sold and the personal/household effects had not been dealt with. The closing was again adjourned until May 10, 2011 at which time the Court was advised that the personal/household effects have been distributed and/or sold. The shares are to be transferred to two of the residual beneficiaries as of the date of closing.

At the time the Application for a Grant of Probate was signed, Mr. Jones sworn on oath stating that he would render an accounting to the Court as required by law. The Probate Act sets out that this should be within 18 months from the date of the grant, being somewhere around November 2008. In fact 48 months have passed since the Grant of Probate was issued. In Mr. Jones' commission statement he is seeking a commission of \$5,000.00 for the duties that he performed. This calculates to be approximately 4.4% of the total assets of the estate. The Executor's commission should bear some relevance to the work he performed. Mr. Jones did not attempt to sell the shares nor contacted the beneficiaries to enquire if they were interested in having the shares transferred until after February 24, 2011 nor did he attempt to dispose of the personal/household effects until after that date. Personal Representatives must perform their duties efficiently and promptly. In this estate it certainly was not promptly. I am setting the commission at 2% which is equal to \$2,268.62.

The third item in the Notice of Objection was the disbursement from the VON Canada for \$1,069.42. Mr. Jones provided me with the explanation that the VON were contacted by Rosedale Home to provide a service that was not provided by care givers at the nursing home. He did provide me with copies of the invoices and I will allow this disbursement.

Dated this 16th day of May, A.D., 2011.

Registrar of Probate