

WILLS AND ESTATES WORKSHOP

Presented by the Department of Indian Affairs



Indian and Northern Affairs
Canada

Affaires Indiennes et du Nord
Canada

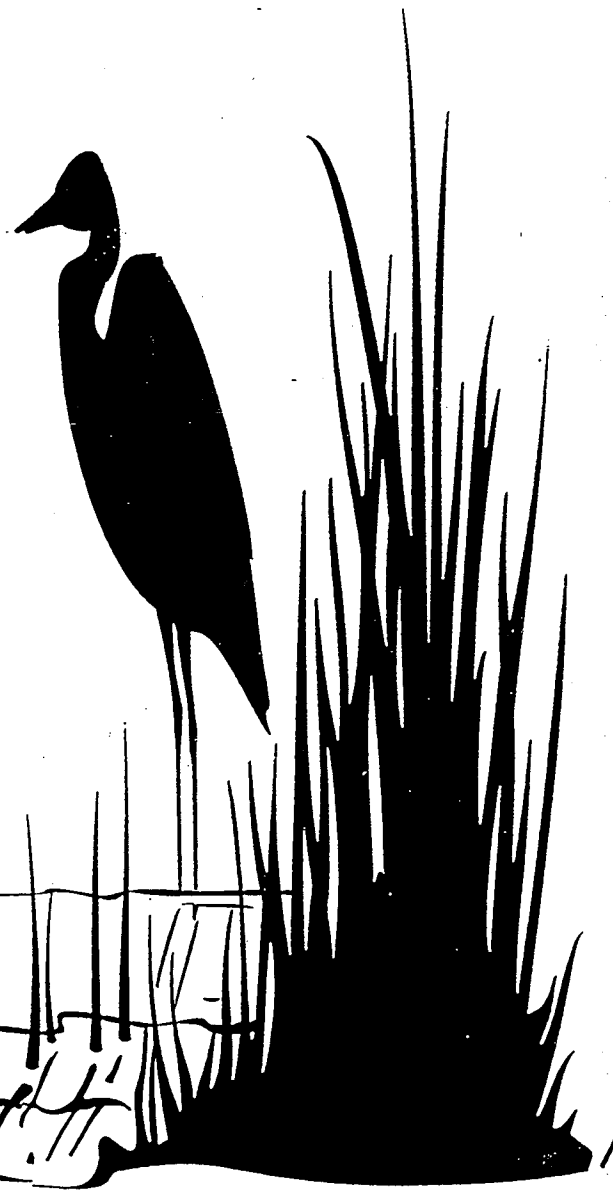
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Frequently Asked Questions - Estates

The following is intended to provide general information only and should not form the basis for legal advice of any kind.

1. **What is an estate?**

An estate consists of the property a deceased individual owned or possessed at their death. There are two types of property, real property (land located on or off reserve) and personal property such as money, motor vehicles, jewellery, etc.

2. **Under what circumstances does the Minister of Indian Affairs become involved with the estates of deceased Indians?**

Sections 4(3) and 42(1) of the *Indian Act* give the Minister of Indian Affairs exclusive jurisdiction and authority over the estates of deceased registered (status) Indians provided they were ordinarily resident on a reserve or Crown lands when they passed away.

3. **What powers does the Minister of Indian Affairs have with regard to the administration of the estates of deceased Indians?**

Under section 43 of the *Indian Act* the Minister of Indian Affairs may: appoint or remove executors of wills and administrators of estates, authorize executors to carry out the terms of deceased Indians' wills and authorize administrators to administer the property of Indians who die intestate; carry out the terms of wills of deceased Indians; administer the property of Indians who die intestate; and make or give any order, direction or finding that in his opinion is necessary or desirable to make regarding the estates of deceased Indians. The Minister also has the power to approve wills (Section 45) and to void wills (Section 46).

4. **Can the Minister of Indian Affairs assume jurisdiction over the estates of deceased Indians who were not ordinarily resident on an Indian Reserve or reserve or Crown land prior to death?**

Under certain limited circumstances, under section 4(3) of the *Indian Act* the Minister of Indian Affairs may assume jurisdiction over the estate of a deceased Indian who was not ordinarily resident on reserve or Crown lands at the time of his or her death. The estate must satisfy the following criteria:

- ▶ The heirs must provide the Minister with a written request to assume jurisdiction;
- ▶ The value of the estate is minimal;
- ▶ The estate does not have any land located off reserve;
- ▶ The only significant asset is land located on reserve;
- ▶ There are no complicated legal issues;

Section 48 of the *Indian Act* outlines how property is distributed on intestacy. The following is a summary of Section 48:

- a. Where the net value of an estate is \$75,000 or less the entire estate goes to the deceased's "survivor" as defined in section 2 of the *Indian Act*.
NOTE: Some of the *Indian Act's* provisions were changed in September, 2001. In particular, section 2 of the *Indian Act* now contains the following definition:

"survivor"

"survivor", in relation to a deceased individual, means their surviving spouse or common-law partner.

- b. Where the net value of an estate is more than \$75,000 and the deceased is also survived by a child or children the first \$75,000 goes to the deceased's survivor; and, if the intestate left one child, one half of the remainder would go to the deceased's survivor and one half would go to the deceased's child, or if the intestate left more than one child, one third of the remainder would go to the deceased's survivor and two-thirds of the remainder would be shared equally by the deceased's children. The children of a child who has died before the deceased are entitled to inherit their parent's share.
- c. Where an intestate dies leaving no survivor, children, or children of a deceased child, the estate would go to the deceased's father and mother in equal shares, but if either of them is dead the estate would go to the surviving parent.
- d. Where an intestate dies leaving no survivor, children, children of a deceased child, mother or father, the estate would go to the deceased's brothers and sisters, and where any brother or sister is dead, the children of the deceased brother or sister would take the share their parent would have taken if living.

11. What if there are no assets to administer?

Even if it seems as if there is nothing in the estate to administer, it is still important to have a personal representative appointed. There may be land interests to transfer or other property or tax refunds, etc. that the family may not be aware of. Appointing a personal representative ensures that there is a legal process in place to deal with the rights of heirs, creditors and others.

- e. The terms of the will are against the public interest. You cannot give property to someone on the condition that they do something that is normally or legally wrong. For example, you cannot leave your estate to your daughter on the condition that she divorce her husband.

15. What happens when an individual who is not a member of the deceased's band inherits an interest in reserve land?

A non-band member is not entitled to inherit land (Section 50 of the *Indian Act*). The interest is offered for sale to the highest bidder among members of the deceased's band and the proceeds of the sale is paid to the heir or beneficiary. If there are no bids the land interest goes to the band. As a matter of policy the Department first gives the individual the opportunity to transfer membership to the deceased's band or transfer his interest to the other heir(s), another band member(s), or the band itself.

16. What are the requirements for posting Notices to Creditors?

In the course of administering an estate, the administrator or executor must post a Notice to Creditors, Heirs and other Claimants form in the local post office, band office and wherever notices are usually posted or given to the band to which the deceased belonged (for example community paper, tribal council offices). The notices must remain posted for a minimum of eight (8) weeks and estate assets should not be distributed before the end of that time (Section 8 of the *Indian Estates Regulations*). This gives creditors and other interested parties the chance to submit a claim against the estate.

17. Under the *Indian Act*, who is recognized as a child of a deceased Indian?

Under Section 2 of the *Indian Act* a child includes a biological child of the deceased, a legally adopted child and a child adopted in accordance with Indian custom. Proof of the relationship is required. Prior to April 17, 1985 an illegitimate child could only inherit from his/her mother's estate but not inherit from his/her father's estate. Similarly, a father could not inherit from his illegitimate children's estates. This has now changed so that there is no distinction made between inheriting from the mother's or father's estate, however proof of the relationship is required.

18. Are Indian estates subject to inheritance taxes?

No. Currently there are no succession duties, death duties, inheritance taxes etc. However, the personal representative may be required to file certain income tax returns on behalf of the estate and should request an income tax clearance certificate before distributing the estate assets.

- ▶ Application for Administration
- ▶ Application for Administration with Will Annexed
- ▶ Application for Approval of Will
- ▶ Release and Assignment of Rights
- ▶ Relinquishment of Interest in or Right to an Estate
- ▶ Renunciation by Personal Representative
- ▶ Request for Consent to a Transfer of Jurisdiction
- ▶ Transfer of Land by Personal Representative

The Indian Lands Registration Manual is also available online, at:
www.ainc-inac.gc.ca/pr/pub/man/ilrm98_e.html

Duties of A Personal Representative (Executor or Administrator)

Please note that this pamphlet is meant for information purposes only and is not intended to be an exhaustive list. In addition, it is recommended that you seek legal advice. This pamphlet discusses the role and duties of the Personal Representative who is a Non-Departmental Administrator (not employed by the department).

The Non-Departmental Administrator is responsible for all the decisions and determinations required in the course of the administration of the estate. He/she is also responsible for all the administrative tasks involved in the estate administration. "Personal Representative" is a general term and when a personal representative is appointed he/she is called an Executor (Executrix) when there is a will, or an Administrator (Administratrix) when there is no will.

What are the tasks of a Non-Departmental Administrator? You must find out:

- (1) What is the deceased's property (list of assets) - for example, what land, money, pensions, wages, personal property and personal belongings did the deceased have?
- (2) What debts and other liabilities (legal obligations) the deceased had - debts may include:
 - ▶ funeral or burial expenses
 - ▶ medical expenses
 - ▶ income tax liabilities
 - ▶ utility bills; it is important to continue service, if necessary
 - ▶ mortgage liabilities
 - ▶ car loans/lease payments
- (3) Who the heirs or beneficiaries of the estate are; and who is entitled to share in the estate.
- (4) How to distribute the estate to the heirs or beneficiaries.

In order to find out what the debts and liabilities are and who the heirs or beneficiaries are, a **Notice to Creditors, Heirs and Other Claimants** must be given (Posted). The Notice tell the public that a death has occurred. It must be placed in certain areas:

- (1) The local Post Office;
- (2) The band office;
- (3) Common meeting places of the band where band notices are usually posted; and
- (4) Any other place that may be appropriate - for example, if the deceased did business off reserve.

If the deceased had land holdings on reserve, they may be recorded in the Indian Lands Registry at Indian Affairs or they may also be recorded at the band office. When checking for land you should verify if the deceased owned C.P. land (Certificate of Possession).

If a survey of the land is required, please note that it could take six to eight months to complete. Therefore, arrangements for a survey should be made as soon as possible.

You must also list any leases held by the deceased at the time of death. You must be able to identify:

- (1) the person who is leasing the property;
- (2) how long the lease is for;
- (3) how much the rent is; and
- (4) what land or interest in land is covered by the lease.

If there are rents due, you should make sure the rental money is paid to the estate.

When you have completed a list (inventory) of the estate property (assets) and debts (liabilities), you should begin to:

- (1) have the estate valued;
- (2) arrange for the payment of the debts owed by the estate. The funeral expenses are generally paid right away; and
- (3) distribute the estate among the heirs or beneficiaries. If there is a will, you should distribute the estate according to the will. If there is no will, the estate should be distributed in accordance with the intestacy (without a will) provisions under the *Indian Act*, section 48.

Distribution of estate assets

The Administrator or the Executor usually tries to gather, settle and distribute the assets of the estate within a year of the date of death.

When distributing the estate assets, the Administrator should get a release from the heirs or beneficiaries. The release is like a receipt and is your record of the goods, cash or land the heirs received from the estate.

Account to heirs and close the file

Once all of the assets have been transferred to the heirs or beneficiaries, the Administrator should give them a full accounting of the estate administration.



CHAPTER I-5

An Act respecting Indians

SHORT TITLE

Short title

1. This Act may be cited as the *Indian Act*.
R.S., c. I-6, s. 1.

INTERPRETATION

Definitions

"band"
«bande»

2. (1) In this Act,
"band" means a body of Indians
(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,
(b) for whose use and benefit in common, moneys are held by Her Majesty, or
(c) declared by the Governor in Council to be a band for the purposes of this Act;

"Band List"
«liste de bande»

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

"child"
«enfant»

"child" includes a legally adopted child and a child adopted in accordance with Indian custom;

"common-law partner"
«conjoint de fait»

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

"council of the band"
«conseil de la bande»

"council of the band" means
(a) in the case of a band to which section 74 applies, the council established pursuant to that section,
(b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

CHAPITRE I-5

Loi concernant les Indiens

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur les Indiens*.
S.R., ch. I-6, art. 1.

DÉFINITIONS

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

«argent des Indiens» Les sommes d'argent perçues, reçues ou détenues par Sa Majesté à l'usage et au profit des Indiens ou des bandes.

«argent des Indiens»
"Indian moneys"

«bande» Groupe d'Indiens, selon le cas :

«bande»
"band"

a) à l'usage et au profit communs desquels des terres appartenant à Sa Majesté ont été mises de côté avant ou après le 4 septembre 1951;

b) à l'usage et au profit communs desquels, Sa Majesté détient des sommes d'argent;

c) que le gouverneur en conseil a déclaré être une bande pour l'application de la présente loi.

«biens» Tout bien meuble ou immeuble, y compris un droit sur des terres.

«biens»
"estate"

«boisson alcoolisée» Tout liquide — alcoolisé ou non — mélange ou préparation ayant des propriétés enivrantes et susceptible de consommation humaine.

«boisson alcoolisée»
"intoxicant"

«conjoint de fait» La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an.

«conjoint de fait»
"common-law partner"

«conseil de la bande»

«conseil de la bande»
"council of the band"

a) Dans le cas d'une bande à laquelle s'applique l'article 74, le conseil constitué conformément à cet article;

b) dans le cas d'une bande à laquelle l'article 74 n'est pas applicable, le conseil choisi selon la coutume de la bande ou, en

"reserve"
« réserve »

"reserve"

(a) means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band, and

(b) except in subsection 18(2), sections 20 to 25, 28, 36 to 38, 42, 44, 46, 48 to 51, 58 to 60 and the regulations made under any of those provisions, includes designated lands;

"superintendent"
« surintendant »

"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;

"surrendered lands"
« terres cédées »

"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart;

"survivor"
« survivant »

"survivor", in relation to a deceased individual, means their surviving spouse or common-law partner.

Definition of
"band"

(2) The expression "band", with reference to a reserve or surrendered lands, means the band for whose use and benefit the reserve or the surrendered lands were set apart.

Exercise of
powers conferred on band
or council

(3) Unless the context otherwise requires or this Act otherwise provides,

(a) a power conferred on a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band; and

(b) a power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

R.S., 1985, c. I-5, s. 2; R.S., 1985, c. 32 (1st Supp.), s. 1, c. 17 (4th Supp.), s. 1; 2000, c. 12, s. 148.

ADMINISTRATION

Minister to
administer Act

3. (1) This Act shall be administered by the Minister, who shall be the superintendent general of Indian affairs.

l'application de la présente loi; relativement à une bande ou une réserve, le surintendant de cette bande ou réserve.

« survivant » L'époux ou conjoint de fait survivant d'une personne décédée. « survivant » "survivor"

« terres cédées » Réserve ou partie d'une réserve, ou tout droit sur celle-ci, propriété de Sa Majesté et que la bande à l'usage et au profit de laquelle il avait été mis de côté a abandonné ou cédé. « terres cédées » "surrendered lands"

« terres désignées » Parcelle de terrain, ou tout droit sur celle-ci, propriété de Sa Majesté et relativement à laquelle la bande à l'usage et au profit de laquelle elle a été mise de côté à titre de réserve a cédé, avant ou après l'entrée en vigueur de la présente définition, ses droits autrement qu'à titre absolu. « terres désignées » "designated lands"

(2) En ce qui concerne une réserve ou des terres cédées, « bande » désigne la bande à l'usage et au profit de laquelle la réserve ou les terres cédées ont été mises de côté. Définition de « bande »

(3) Sauf indication contraire du contexte ou disposition expresse de la présente loi : Exercice des pouvoirs conférés à une bande ou un conseil

a) un pouvoir conféré à une bande est censé ne pas être exercé, à moins de l'être en vertu du consentement donné par une majorité des électeurs de la bande;

b) un pouvoir conféré au conseil d'une bande est censé ne pas être exercé à moins de l'être en vertu du consentement donné par une majorité des conseillers de la bande présents à une réunion du conseil dûment convoquée.

L.R. (1985), ch. I-5, art. 2; L.R. (1985), ch. 32 (1^{er} suppl.), art. 1, ch. 17 (4^e suppl.), art. 1; 2000, ch. 12, art. 148.

ADMINISTRATION

3. (1) Le ministre est chargé de l'application de la présente loi; il est le surintendant général des affaires indiennes. Le ministre est chargé de l'application de la loi

Regulations

(2) The Governor in Council may make regulations providing that a deceased Indian who at the time of his death was in possession of land in a reserve shall, in such circumstances and for such purposes as the regulations prescribe, be deemed to have been at the time of his death lawfully in possession of that land.

(2) Le gouverneur en conseil peut prendre des règlements stipulant qu'un Indien décédé qui, au moment de son décès, était en possession de terres dans une réserve, sera réputé, en telles circonstances et à telles fins que prescrivent les règlements, avoir été légalement en possession de ces terres au moment de son décès.

Règlements

Application of regulations

(3) Regulations made under subsection (2) may be made applicable to estates of Indians who died before, on or after September 4, 1951. R.S., c. I-6, s. 42.

(3) Les règlements prévus par le paragraphe (2) peuvent être rendus applicables aux successions des Indiens morts avant ou après le 4 septembre 1951 ou à cette date.

Application des règlements

Particular powers

43. Without restricting the generality of section 42, the Minister may

- (a) appoint executors of wills and administrators of estates of deceased Indians, remove them and appoint others in their stead;
- (b) authorize executors to carry out the terms of the wills of deceased Indians;
- (c) authorize administrators to administer the property of Indians who die intestate;
- (d) carry out the terms of wills of deceased Indians and administer the property of Indians who die intestate; and
- (e) make or give any order, direction or finding that in his opinion it is necessary or desirable to make or give with respect to any matter referred to in section 42.

R.S., c. I-6, s. 43.

43. Sans que soit limitée la portée générale de l'article 42, le ministre peut :

- a) nommer des exécuteurs testamentaires et des administrateurs de successions d'Indiens décédés, révoquer ces exécuteurs et administrateurs et les remplacer;
- b) autoriser des exécuteurs à donner suite aux termes des testaments d'Indiens décédés;
- c) autoriser des administrateurs à gérer les biens d'Indiens morts intestats;
- d) donner effet aux testaments d'Indiens décédés et administrer les biens d'Indiens morts intestats;
- e) prendre les arrêtés et donner les directives qu'il juge utiles à l'égard de quelque question mentionnée à l'article 42.

S.R., ch. I-6, art. 43.

Pouvoirs particuliers

Courts may exercise jurisdiction with consent of Minister

44. (1) The court that would have jurisdiction if a deceased were not an Indian may, with the consent of the Minister, exercise, in accordance with this Act, the jurisdiction and authority conferred on the Minister by this Act in relation to testamentary matters and causes and any other powers, jurisdiction and authority ordinarily vested in that court.

44. (1) Avec le consentement du ministre, le tribunal qui aurait compétence si la personne décédée n'était pas un Indien peut exercer, en conformité avec la présente loi, la compétence que la présente loi confère au ministre à l'égard des questions testamentaires, ainsi que tous autres pouvoirs et compétence ordinairement dévolus à ce tribunal.

Les tribunaux peuvent exercer leur compétence, avec le consentement du ministre

Minister may refer a matter to the court

(2) The Minister may direct in any particular case that an application for the grant of probate of the will or letters of administration of a deceased shall be made to the court that would have jurisdiction if the deceased were not an Indian, and the Minister may refer to that court any question arising out of any will or the administration of any estate.

(2) Dans tout cas particulier, le ministre peut ordonner qu'une demande en vue d'obtenir l'homologation d'un testament ou l'émission de lettres d'administration soit présentée au tribunal qui aurait compétence si la personne décédée n'était pas un Indien. Il a la faculté de soumettre à ce tribunal toute question que peut faire surgir un testament ou l'administration d'une succession.

Le ministre peut déférer des questions au tribunal

Orders relating to lands

(3) A court that is exercising any jurisdiction or authority under this section shall not without

(3) Un tribunal qui exerce sa compétence sous le régime du présent article ne peut, sans le consentement écrit du ministre, faire exécuter

Ordonnances visant des terres

intention appears in the will, shall be deemed to have lapsed.

R.S., c. I-6, s. 46.

contraire y énoncée, tout legs de biens meubles ou immeubles visé de la sorte est réputé caduc.

S.R., ch. I-6, art. 46.

APPEALS

APPELS

Appeal to Federal Court

47. A decision of the Minister made in the exercise of the jurisdiction or authority conferred on him by section 42, 43 or 46 may, within two months from the date thereof, be appealed by any person affected thereby to the Federal Court, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal.

R.S., c. I-6, s. 47; R.S., c. 10(2nd Supp.), ss. 64, 65.

47. Une décision rendue par le ministre dans l'exercice de la compétence que lui confère l'article 42, 43 ou 46 peut être portée en appel devant la Cour fédérale dans les deux mois de cette décision, par toute personne y intéressée, si la somme en litige dans l'appel dépasse cinq cents dollars ou si le ministre y consent.

S.R., ch. I-6, art. 47; S.R., ch. 10(2^e suppl.), art. 64 et 65.

Appels à la Cour fédérale

DISTRIBUTION OF PROPERTY ON INTESTACY

DISTRIBUTION DES BIENS AB INTESTAT

Surviving spouse's share

48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed seventy-five thousand dollars or such other amount as may be fixed by order of the Governor in Council, the estate shall go to the survivor.

48. (1) Lorsque, de l'avis du ministre, la valeur nette de la succession d'un intestat n'exécède pas soixante-quinze mille dollars ou tout autre montant fixé par décret du gouverneur en conseil, la succession est dévolue au survivant.

Part du survivant

Idem

(2) Where the net value of the estate of an intestate, in the opinion of the Minister, exceeds seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, shall go to the survivor, and

(2) Lorsque la valeur nette de la succession d'un intestat excède, de l'avis du ministre, soixante-quinze mille dollars ou tout autre montant fixé par décret du gouverneur en conseil, une somme de soixante-quinze mille dollars ou toute autre somme fixée par décret du gouverneur en conseil est dévolue au survivant et le reste est attribué de la façon suivante:

Idem

(a) if the intestate left no issue, the remainder shall go to the survivor;

a) si l'intestat n'a pas laissé de descendant, le solde est dévolu au survivant;

(b) if the intestate left one child, one-half of the remainder shall go to the survivor, and

b) si l'intestat a laissé un enfant, la moitié du solde est dévolue au survivant;

(c) if the intestate left more than one child, one-third of the remainder shall go to the survivor,

c) si l'intestat a laissé plus d'un enfant, le tiers du solde est dévolu au survivant,

and where a child has died leaving issue and that issue is alive at the date of the intestate's death, the survivor shall take the same share of the estate as if the child had been living at that date.

et lorsqu'un enfant est décédé laissant des descendants et que ceux-ci sont vivants à la date du décès de l'intestat, le survivant reçoit la même partie de la succession que si l'enfant avait vécu à cette date.

Where children not provided for

(3) Notwithstanding subsections (1) and (2),

(3) Par dérogation aux paragraphes (1) et (2):

Cas où il n'est pas pourvu aux besoins des enfants

(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the survivor shall go to the children; and

a) si, dans un cas particulier, le ministre est convaincu qu'il ne sera pas suffisamment pourvu aux besoins de tout enfant du défunt, il peut ordonner que la totalité ou toute partie de la succession qui autrement irait au survivant soit dévolue à l'enfant;

(b) the Minister may direct that the survivor shall have the right to occupy any lands in a

b) le ministre peut ordonner que le survivant ait le droit d'occuper toutes terres situées dans

Estate not disposed of by will

(11) All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

(11) Tous les biens dont il n'est pas disposé par testament sont distribués comme si le testateur était mort intestat et n'avait laissé aucun autre bien.

Biens non aliénés par testament

No community of property

(12) There is no community of real or personal property situated in a reserve.

(12) Il n'y a aucune communauté de biens meubles ou immeubles situés dans une réserve.

Absence de communauté de biens

(13) and (14) [Repealed, R.S., 1985, c. 32 (1st Suppl.), s. 9]

(13) et (14) [Abrogés, L.R. (1985), ch. 32 (1^{er} suppl.), art. 9]

Equal application to men and women

(15) This section applies in respect of an intestate woman as it applies in respect of an intestate man.

(15) Le présent article s'applique à l'égard d'une femme intestat de la même manière qu'à l'égard d'un homme intestat.

Application aux personnes des deux sexes

(16) [Repealed, R.S., 1985, c. 32 (1st Suppl.), s. 9]

(16) [Abrogé, L.R. (1985), ch. 32 (1^{er} suppl.), art. 9]

R.S., 1985, c. I-5, s. 48; R.S., 1985, c. 32 (1st Suppl.), s. 9, c. 48 (4th Suppl.), s. 2; 2000, c. 12, ss. 149, 151.

L.R. (1985), ch. I-5, art. 48; L.R. (1985), ch. 32 (1^{er} suppl.), art. 9, ch. 48 (4^e suppl.), art. 2; 2000, ch. 12, art. 149 et 151.

Devisee's entitlement

49. A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of those lands until the possession is approved by the Minister. R.S., c. I-6, s. 49.

49. Une personne qui prétend avoir droit à la possession ou à l'occupation de terres situées dans une réserve en raison d'un legs ou d'une transmission par droit de succession est censée ne pas en avoir la possession ou l'occupation légitime tant que le ministre n'a pas approuvé cette possession.

Droit du légataire

S.R., ch. I-6, art. 49.

Non-resident of reserve

50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

50. (1) Une personne non autorisée à résider dans une réserve n'acquiert pas, par legs ou transmission sous forme de succession, le droit de posséder ou d'occuper une terre dans cette réserve.

Non-résident d'une réserve

Sale by superintendent

(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

(2) Lorsqu'un droit à la possession ou à l'occupation de terres dans une réserve est dévolu, par legs ou transmission sous forme de succession, à une personne non autorisée à y résider, ce droit doit être offert en vente par le surintendant au plus haut enchérisseur entre les personnes habiles à résider dans la réserve et le produit de la vente doit être versé au légataire ou au descendant, selon le cas.

Vente par le surintendant

Unsold lands revert to band

(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation of land is offered for sale under subsection (2), the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

(3) Si, dans les six mois ou tout délai supplémentaire que peut déterminer le ministre, à compter de la mise en vente du droit à la possession ou occupation d'une terre, en vertu du paragraphe (2), il n'est reçu aucune soumission, le droit retourne à la bande, libre de toute réclamation de la part du légataire ou descendant, sous réserve du versement, à la discrétion du ministre, au légataire ou descendant, sur les fonds de la bande, de l'indemnité

Les terres non vendues retournent à la bande

CHAPTER 954

INDIAN ACT

Indian Estates Regulations

REGULATIONS RESPECTING INDIAN ESTATES

Short Title

1. These Regulations may be cited as the *Indian Estates Regulations*.

Interpretation

2. In these Regulations,

“Act” means the *Indian Act*;

“administrator” means a person appointed by the Minister to administer the property of deceased Indians and includes a person who, by reason of his office, is instructed to initiate or conclude the administration of an estate;

“Minister” means the Minister of Indian Affairs and Northern Development;

“prescribed” means prescribed by the Minister.

Notice of Death

3. (1) As soon as feasible after the death of an Indian, the superintendent shall forward a notice of the death, in the form prescribed, to the Minister.

(2) Except when otherwise ordered by the Minister for the purposes of these Regulations, the presumption of death shall arise and be determined in the manner it arises and is determined where persons other than Indians are concerned.

Inventory

4. (1) When he receives notice of the death of an Indian, or as soon thereafter as possible, the superintendent shall forward an itemized statement of inventory in the form prescribed, to the Minister, showing all the real and personal property of the deceased, the value of each item estimated as closely as possible, as well as all debts of or claims against the estate known at such time, and he shall also state therein whether the deceased left a will and give the names of all persons entitled to share in the estate and all such other information as may be required by the Minister.

(2) For the purposes of this section, the superintendent shall act in the capacity of an administrator and shall take all necessary steps for the proper safekeeping or safeguarding of the assets of the deceased and for the collection of moneys due or owing to the deceased and shall dispose of the moneys so collected or held as the Minister may direct.

(3) Where the deceased had been in receipt of any pension, gratuity or allowance, any cheque or money order received by

CHAPITRE 954

LOI SUR LES INDIENS

Règlement sur les successions d'Indiens

RÈGLEMENT SUR LES SUCCESSIONS D'INDIENS

Titre abrégé

1. Le présent règlement peut être cité sous le titre: *Règlement sur les successions d'Indiens*.

Interprétation

2. Dans le présent règlement,

«administrateur» signifie une personne nommée par le Ministre pour gérer les biens des Indiens décédés et comprend une personne qui, en raison de ses fonctions, est chargée de commencer ou de terminer l'administration d'une succession;

«Loi» signifie la *Loi sur les Indiens*;

«Ministre» signifie le ministre des Affaires indiennes et du Nord canadien;

«prescrit» signifie prescrit par le Ministre.

Avis de décès

3. (1) Aussitôt que possible après le décès d'un Indien, le surintendant doit faire parvenir au Ministre un avis du décès, en la forme prescrite.

(2) Sauf instructions contraires du Ministre pour les fins du présent règlement, la présomption de décès se pose et doit être établie ainsi qu'elle se pose et s'établit lorsqu'il s'agit de personnes autres que des Indiens.

Inventaire

4. (1) Dès notification du décès ou le plus tôt possible après le reçu de cet avis, le surintendant doit faire parvenir au Ministre un état détaillé de l'inventaire en la forme prescrite, qui doit indiquer les biens meubles et immeubles du défunt, la valeur de chaque article appréciée aussi exactement que possible, et toutes les dettes de la succession et les réclamations des créanciers connues à ce moment-là et le surintendant doit aussi déclarer dans cet état si le défunt a fait un testament et donner les noms de toutes les personnes ayant droit à une part de la succession et toute autre information pertinente que peut exiger le Ministre.

(2) Aux fins du présent article, le surintendant doit agir en qualité d'administrateur et prendre toutes les mesures qui s'imposent pour assurer la bonne garde ou protection des biens du défunt et le recouvrement des sommes dues ou exigibles et disposer des deniers recouvrés ou détenus, de la manière que détermine le Ministre.

(3) Si le défunt était le bénéficiaire d'une pension, prime ou allocation quelconque, tout chèque ou mandat d'argent reçu

Executors

9. Where an executor or executors have been named in a will and the will has been approved in whole by the Minister, or where an executor has been appointed by the Minister, the executor shall thereupon be considered the personal representative of the deceased and, where so ordered by the Minister, he shall act under the instructions of the administrator.

Sureties

10. The Minister may, in his discretion, order that an executor or an administrator give sureties as he deems necessary to ensure that the executor or the administrator will carry out his duties in accordance with these Regulations and his instructions.

Powers and Duties of Administrators

11. (1) The Minister may appoint an officer of the Indian and Eskimo Affairs Branch to be the administrator of estates and to supervise the administration of estates and of all the assets of deceased Indians, and may provide that for the purposes of closing an estate the administration thereof be transferred to the superintendent of the reserve to which the deceased belonged.

(2) The administrator appointed pursuant to this section or the person acting as administrator in accordance with section 4 shall be responsible to the Minister for the proper preparation of the inventory, the giving of all notices and the carrying out of all inquiries and duties that may be necessary or be ordered with respect to any matter referred to in these Regulations.

(3) Where a claim is made against an estate, the administrator may provide for payment thereof out of the assets of the estate when it appears that it is well founded; where in the opinion of the administrator the claim is doubtful or is not of the nature of a cause or matter testamentary, he shall refer it to the Minister for decision.

(4) An administrator may pay all debts owing by the estate and shall obtain receipts therefor or releases, as the case may be, and where the debt is in the nature of a loan, he may pay the balance owing or, with the consent of the heirs, transfer ownership of the security given for the loan or, with the consent of the band or of the Minister, as the case may be, sell the property upon which a lien exists to guarantee payment of the loan; he may also sell any asset real or personal for the purpose of paying debts owing by the estate, under such conditions as may be prescribed.

(5) No proceedings to establish or enforce a claim against an estate shall be valid unless the administrator is made a party thereto.

(6) The administrator may cause partial distribution to be made from the net assets of the estate to ensure the expedient administration thereof.

(7) Where a partial distribution cannot be made, or where the heirs cannot agree as to distribution, the administrator may, with the approval of the Minister, convert the net assets into cash and pay those assets to the Receiver General to be

Exécuteurs

9. Lorsque dans un testament il a été désigné un ou plusieurs exécuteurs et que le testament a été approuvé en entier par le Ministre, ou lorsqu'un exécuteur est nommé par le Ministre, cet exécuteur doit alors être considéré comme représentant personnel du défunt et, si le Ministre l'ordonne, doit agir selon les instructions de l'administrateur.

Garanties

10. Le Ministre peut ordonner, à sa discrétion, qu'un exécuteur ou un administrateur verse les garanties que le Ministre juge nécessaires pour assurer que l'exécuteur ou l'administrateur s'acquitte de ses fonctions conformément au présent règlement et à ses instructions.

Pouvoirs et devoirs des administrateurs

11. (1) Le Ministre peut nommer un fonctionnaire de la Division des affaires indiennes et esquimaudes comme administrateur des successions et pour surveiller l'administration des successions et de tous les biens des Indiens décédés; afin de régler une succession, il peut autoriser que l'administration en soit transférée au surintendant de la réserve à laquelle appartenait la personne décédée.

(2) L'administrateur nommé conformément au présent article ou la personne qui agit en qualité d'administrateur en vertu de l'article 4 doit rendre compte au Ministre de la préparation adéquate de l'inventaire, de la signification de tous les avis et de l'exécution de toutes les enquêtes et fonctions qui peuvent s'imposer ou être ordonnées à l'égard de toute question mentionnée dans le présent règlement.

(3) Lorsqu'une réclamation est faite à l'égard d'une succession, l'administrateur peut en assurer le paiement à même les biens de la succession si la réclamation semble bien fondée; si, de l'avis de l'administrateur, la créance est douteuse ou n'a rien d'une matière ou cause testamentaire, il doit s'en remettre à la décision du Ministre.

(4) Un administrateur peut acquitter toutes les dettes à recouvrer de la succession et doit obtenir, à l'égard de ces paiements, des reçus ou des quittances, selon le cas: lorsque la dette est de la nature d'un prêt, il peut acquitter le solde dû, ou, du consentement des héritiers, transférer la propriété de la garantie donnée à l'égard du prêt, ou, du consentement de la bande ou du Ministre, selon le cas, vendre le bien nanti pour garantir le paiement du prêt; il peut aussi vendre tout bien meuble ou immeuble afin de payer les créances exigibles de la succession, selon les conditions qui peuvent être prescrites.

(5) Les poursuites intentées aux fins d'établir ou d'appuyer une réclamation à l'égard d'une succession ne sont pas valides, à moins que l'administrateur n'y donne son consentement.

(6) L'administrateur peut faire faire la distribution partielle des valeurs nettes de la succession afin d'en assurer la prompt administration.

(7) Lorsqu'il est impossible d'effectuer une distribution partielle ou lorsque les héritiers ne peuvent tomber d'accord quant à la distribution, l'administrateur peut, avec l'approbation du Ministre, convertir les valeurs nettes en espèces et les verser au

Absent or Missing Heirs

13. Where heirs are found upon due inquiry to be absent or missing and notices or advertisements have been given or published in accordance with these Regulations, the moneys or assets in an estate to which they might be entitled shall be held in a special account, without interest, and unless evidence of death satisfactory to the Minister is filed or obtained, shall be held for a period of seven years after which the absent or missing heirs who have not reported by such time shall be presumed to be dead and the moneys or assets distributed accordingly to the remaining heirs or persons entitled thereto.

Héritiers absents ou disparus

13. Si, après une enquête en bonne et due forme, il est constaté que des héritiers sont absents ou disparus et que les avis ou annonces ont été donnés ou publiés conformément au présent règlement, les deniers ou biens d'une succession auxquels ils pourraient avoir droit seront portés à un compte spécial sans intérêt. A moins qu'une preuve du décès ne soit produite ou obtenue à la satisfaction du Ministre, ces deniers ou biens seront gardés pendant une période de sept ans, après laquelle les héritiers absents ou disparus qui ne se sont pas encore présentés doivent être présumés décédés et les deniers ou biens distribués en conséquence aux autres héritiers ou aux ayants droit.

Femme considérée comme la veuve

14. Le Ministre peut ordonner qu'une femme soit réputée la veuve d'un Indien décédé et, s'il y a des enfants provenus de ladite femme et de l'Indien décédé, qu'ils soient réputés leurs enfants, aux fins du présent règlement.

a) lorsqu'il est établi, à la satisfaction du Ministre, que cette femme a, pendant une période d'au moins sept ans immédiatement antérieure au décès de l'Indien avec qui elle a habité et qu'elle n'a pu épouser légalement à cause d'un mariage précédent du défunt ou d'elle-même à une autre personne, ou à qui elle était mariée en une forme non reconnue par la loi, été entretenue et représentée publiquement par l'Indien décédé comme son épouse; ou

b) s'il n'y a pas eu de mariage préalable de l'Indien décédé ou d'elle-même à une autre personne, la femme établit qu'elle a, pendant un nombre d'années immédiatement antérieures au décès de l'Indien avec qui elle a habité, été entretenue et représentée publiquement par lui comme son épouse, que des enfants soient nés ou non de cette cohabitation.

Will

15. Any written instrument signed by an Indian may be accepted as a will by the Minister whether or not it conforms with the requirements of the laws of general application in force in any province at the time of the death of the Indian.

Testament

15. Le Ministre peut accepter comme testament tout document écrit et signé par un Indien, qu'il soit conforme ou non aux lois d'application générale en vigueur dans une province à l'époque du décès de l'Indien.

Other Forms

16. The Minister may prescribe further and other notices and forms as he deems necessary for the purposes of section 42 of the Act and these Regulations.

Autres formules

16. Le Ministre peut prescrire tous autres avis et formules qu'il juge nécessaires pour les fins de l'article 42 de la Loi, et du présent règlement.

GUIDE FOR MAKING A WILL

Completing the following information should help you in planning your will.

A. PERSONAL AND FAMILY INFORMATION

1. YOUR FULL NAME

also known as

Band Name & No.

ADDRESS

TELEPHONE NO.

(Home)

(Business)

OCCUPATION

DATE OF BIRTH

PLACE OF BIRTH

SOCIAL INSURANCE NO.

2. YOUR SPOUSE'S FULL NAME

Also known as

Band Name & No.

SPOUSE'S ADDRESS

TELEPHONE NO.

(Home)

(Business)

DATE OF BIRTH

PLACE OF BIRTH

3. DATE OF MARRIAGE

DO YOU HAVE A MARRIAGE CONTRACT?

IS THIS YOUR FIRST MARRIAGE?

IF NOT, IS YOUR PRIOR SPOUSE STILL ALIVE AND IF SO REMARRIED?

IS THERE A SEPARATION AGREEMENT?

IS THIS A COMMON LAW RELATIONSHIP?

IF SO, FOR HOW MANY YEARS?

IF SO, ARE YOU LEGALLY MARRIED TO ANYONE ELSE?

4. CHILDREN

FULL NAME OF CHILD	PLACE OF BIRTH	DATE OF BIRTH	BAND NO.

B. ASSETS

1. CASH AND OTHER LIQUID ASSETS

(a) BANK/CREDIT UNION ACCOUNTS

INSTITUTION	ACCOUNT NO.	AMOUNT	SOLE/JOINT

(b) STOCKS/BONDS, TERM DEPOSITS, GIC'S (LIST)

(c) PENSION PLAN(S)

(d) ANNUITIES

(e) RRSP'S

2. PERSONAL EFFECTS

Give brief description and approximate value

HOUSEHOLD GOODS, FURNITURE, JEWELRY, ETC.

CARVINGS, ARTWORK, ETC.

VEHICLES

MOTOR VESSELS

FISHING LICENCES

FISHING GEAR

OTHER

3. LIFE INSURANCE

Insurance Co.	Amount	Policy No.	Beneficiary
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GLOSSARY OF TERMS

ADMINISTRATOR -	Individual appointed by the Minister to administer the estate of a person who dies without a will (feminine form is "administratrix")
BENEFICIARY -	Name given to a person who receives some benefit, whether money or property, from the will of a deceased person
EXECUTOR -	Individual appointed in a will to administer the estate of the deceased (feminine form is "executrix")
HEIRS-AT-LAW -	Blood relatives of a person dying intestate who inherit by reason of Section 48 of the Indian Act
PERSONAL PROPERTY -	All property with the exception of real estate and buildings (also known as "personalty")
PERSONAL REPRESENTATIVE -	Name given to the individual administering an estate, whether he/she be an executor/trix or administrator/trix
REAL PROPERTY -	Land and buildings (also known as "real estate" and "realty")
RESIDUE -	That portion of an estate remaining after all specific bequests and specific devises have been made
RESIDUARY BENEFICIARY -	Beneficiary to whom the residue of the estate is left
SPECIFIC BEQUEST -	Gift under a will of a specific item of real property
TESTATE -	Either the act of dying with a will or the name given to a person who dies leaving a will
TESTATOR -	The name given to a man who makes a will (feminine form is "testatrix")

NOTICE TO CREDITORS, HEIRS & OTHER CLAIMANTS

Blank forms attached: (3 in English and 1 in French)

It is our usual practice to post these notices for an eight-week period, according to Section 8 of the Indian Estates Regulations.

The English version of the Notice could be posted as follows:

1. *In the Band Office or Tribal Council Office*
2. *Or in a meeting place where notices are usually posted*
3. *And forward one copy to:*
Department of Indian Affairs and Northern Development
600 - 1138 Melville Street, Vancouver BC V6E 4S3
Attention: Heather Yan, Funding Services

NOTE: PLEASE DO NOT SEND THIS NOTICE TO THE ESTATES OFFICER; YOU HAVE BEEN APPOINTED AS THE ADMINISTRATOR/ EXECUTOR AND ITS YOUR RESPONSIBILITY TO FORWARD THIS FORM TO THE APPROPRIATE PERSON.

Both the English & French versions could be posted in the

4. *The Post Office, being a Crown corporation, will not post any notice unless it is in both official languages.*

[Please complete the form with your address and an expiry date for making a claim against the estate; then sign and date it before posting. After it has been posted for 8 weeks it should be returned to you.]

Duties of A Personal Representative (Executor or Administrator)

Please note that this pamphlet is meant for information purposes only and is not intended to be an exhaustive list. In addition, it is recommended that you seek legal advice. This pamphlet discusses the role and duties of the Personal Representative who is a Non-Departmental Administrator (not employed by the department).

The Non-Departmental Administrator is responsible for all the decisions and determinations required in the course of the administration of the estate. He/she is also responsible for all the administrative tasks involved in the estate administration. "Personal Representative" is a general term and when a personal representative is appointed he/she is called an Executor (Executrix) when there is a will, or an Administrator (Administratrix) when there is no will.

What are the tasks of a Non-Departmental Administrator? You must find out:

- (1) What is the deceased's property (list of assets) - for example, what land, money, pensions, wages, personal property and personal belongings did the deceased have?
- (2) What debts and other liabilities (legal obligations) the deceased had - debts may include:
 - ▶ funeral or burial expenses
 - ▶ medical expenses
 - ▶ income tax liabilities
 - ▶ utility bills; it is important to continue service, if necessary
 - ▶ mortgage liabilities
 - ▶ car loans/lease payments
- (3) Who the heirs or beneficiaries of the estate are; and who is entitled to share in the estate.
- (4) How to distribute the estate to the heirs or beneficiaries.

In order to find out what the debts and liabilities are and who the heirs or beneficiaries are, a **Notice to Creditors, Heirs and Other Claimants** must be given (Posted). The Notice tell the public that a death has occurred. It must be placed in certain areas:

- (1) The local Post Office;
- (2) The band office;
- (3) Common meeting places of the band where band notices are usually posted; and
- (4) Any other place that may be appropriate - for example, if the deceased did business off reserve.

If the deceased had land holdings on reserve, they may be recorded in the Indian Lands Registry at Indian Affairs or they may also be recorded at the band office. When checking for land you should verify if the deceased owned C.P. land (Certificate of Possession).

If a survey of the land is required, please note that it could take six to eight months to complete. Therefore, arrangements for a survey should be made as soon as possible.

You must also list any leases held by the deceased at the time of death. You must be able to identify:

- (1) the person who is leasing the property;
- (2) how long the lease is for;
- (3) how much the rent is; and
- (4) what land or interest in land is covered by the lease.

If there are rents due, you should make sure the rental money is paid to the estate.

When you have completed a list (inventory) of the estate property (assets) and debts (liabilities), you should begin to:

- (1) have the estate valued;
- (2) arrange for the payment of the debts owed by the estate. The funeral expenses are generally paid right away; and
- (3) distribute the estate among the heirs or beneficiaries. If there is a will, you should distribute the estate according to the will. If there is no will, the estate should be distributed in accordance with the intestacy (without a will) provisions under the *Indian Act*, section 48.

Distribution of estate assets

The Administrator or the Executor usually tries to gather, settle and distribute the assets of the estate within a year of the date of death.

When distributing the estate assets, the Administrator should get a release from the heirs or beneficiaries. The release is like a receipt and is your record of the goods, cash or land the heirs received from the estate.

Account to heirs and close the file

Once all of the assets have been transferred to the heirs or beneficiaries, the Administrator should give them a full accounting of the estate administration.

TRANSFER OF LAND BY PERSONAL REPRESENTATIVE

I, _____ **1** _____, the personal representative of the
estate of the late _____ **2** _____, No. _____ **3** _____, _____ **4** _____ Band,
who died on or about _____ **5** _____, registered in lawful possession of land on
_____ **6** _____ Indian Reserve No. _____ **7** _____ in the Province of British
Columbia, more particularly described as:

(Describe only that land held by the deceased which is the subject of this transfer)

8

**DO, SUBJECT TO THE APPROVAL OF THE MINISTER PURSUANT TO SECTION 49 OF THE
INDIAN ACT, R.S.C. 1985, Chapter I-5, AS AMENDED, HEREBY TRANSFER THE ABOVE
INTEREST AS FOLLOWS:**

*(Fill in names and band numbers of transferees and specify way in which land is to be held (either as joint
possession OR as possession in common). In unequal distributions, specify undivided fractional interest.)*

9

_____ **10** _____
date

_____ **11** _____
personal representative

SUPPORTING DOCUMENTATION:

*(eg. Certificate of Possession or other evidence of title, Approval of Will, certified copy of will, or Appointment
of Administrator, proof of band membership of transferees if membership list is controlled by the band.)*

12

<u>Declaration of personal representative</u>	
This is not an intestacy OR this is an intestacy/partial intestacy and I have not transferred land to next-of-kin more remote than nieces or nephews in accordance with the prohibition contained in Subsection 48(8) of the Indian Act.	
_____ 13 _____	_____ 14 _____
date	personal representative

FOR DEPARTMENTAL USE ONLY:	
Dated at Vancouver in the Province of British Columbia on _____	
Date: _____	For the Minister: Area Manager BRITISH COLUMBIA REGION

IF A MEMBER OF YOUR FAMILY DIES

- call an Estates Officer at the Department of Indian Affairs !
- identify which Band that the deceased was a member of
- do you have documentary proof of the deceased's death, such as a Death Certificate, burial permit, etc. ?
- have you searched for a Will left by the deceased ?
- do you know where the deceased was living or the street address of the deceased ?

CALL TOLL FREE (WITHIN B.C.): 1-888-917-9977

CALL LOCAL (IN VANCOUVER AREA): (604) 666-3931

