



Supreme Court  
of Newfoundland and Labrador

**Public Legal  
Information**  
Association of NL

# Wills & Estates: Help! Where do I start? Applying for a Grant of Probate or Letters of Administration



Public Legal Information Association of Newfoundland and Labrador (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the intent of increasing access to justice. PLIAN would like to extend a sincere thank-you to the Newfoundland and Labrador Department of Justice for their financial contribution towards this project.

We hope this booklet will provide readers with general legal information about the processes of probate and administration in Newfoundland and Labrador. The information contained in this document is for general information only, and is not intended as legal advice. In order to discuss your particular situation, we suggest you consult with a lawyer.

PLIAN would like to acknowledge the many who have contributed to this project, especially Christopher Curran, Q.C., Registrar of the Supreme Court of Newfoundland and Labrador. Everyone's contributions are greatly appreciated.

Kristen O'Keefe  
Executive Director

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Research & Writing: Karen Rehner, Kristen O'Keefe  
Design: Tabitha Boland  
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## Frequently Asked Questions:

This guide is meant to provide general information for people who may be applying to have the estate of a deceased person settled. For many people, they do not know where to start or even know what the legal terms mean. So let's begin with some "frequently asked questions" which will hopefully provide some helpful background information before you begin the process of choosing which Court process may or may not be applicable to you.

*This document contains general information only, and is not intended as legal advice. In order to discuss your particular situation, we suggest you consult with a lawyer.*

### **What is a "will"?**

A will is a legal document that explains what a person wants done with the things he/she owns after he/she dies.

### **What is an "estate"?**

An estate is everything owned by the person who has died.

### **What is a "testator/testatrix"?**

A testator is a person who makes a will. If the person is male he is referred to as a "Testator", or a "Testatrix" if she is female.

### **What does "executor/executrix" mean?**

These are terms to describe the person named as being responsible for carrying out the instructions in a will. If the person is male they are referred to as an "Executor", or an "Executrix" if female.

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## What is “probate”?

Probate is the process of proving that a will is valid and gives power to the personal representative (i.e. the executor) of an estate to administer and distribute it.

The procedure of going through probate is governed by a provincial law called the *Judicature Act*, R.S.N.1990, c. J-4 and by Rule 56 of the *Rules of the Supreme Court, 1986* called the *Probate, Administration and Guardianship Rules*. The *Judicature Act* can be accessed online at: <http://assembly.nl.ca/Legislation/sr/statutes/j04.htm>

The *Probate, Administration and Guardianship Rules* can be accessed online at: <http://assembly.nl.ca/Legislation/sr/regulations/RulesSC/Rc86ru56.htm>

## What is a “grant of probate”?

This is the document issued by the Supreme Court certifying that a will has been accepted by the Court as the last will and testament of the deceased and has been registered with the Court. The grant of probate also grants the executor the authority to administer and distribute the estate according to the instructions in the will.

## What are “letters of administration”?

When a person dies without a will, the Court may issue letters of administration. Upon application by next of kin, the Court appoints an administrator to take control of the deceased's property and distribute it according to law. Where there is no will, the estate will be distributed according to a provincial law called the *Intestate Succession Act* which can be accessed online at:

<http://assembly.nl.ca/Legislation/sr/statutes/i21.htm>

## What is a “personal representative”?

This is a person or institution named in a grant of probate or letters of administration who is given the authority to administer and distribute the estate of the deceased person. A personal representative is referred to as an executor or administrator, depending on the type of grant.

**I was told that I have been named as a “beneficiary” in my Dad’s will. What does this mean?**

A beneficiary is a person or organization who is given something in a will or is designated to benefit from a trust.

**My mother made a will, but her mental “capacity” to do so is now being questioned. What does capacity mean?**

A person must have capacity in order to make a valid will. “Capacity” means that the testator/testatrix must understand what he or she is doing, must remember and understand the type and the amount of property being given in the will, and must understand that the will may be benefiting certain people and excluding others.

**My father’s will also includes a “codicil”. What is it?**

A codicil is an addition or amendment to a will. It must comply with the same technical requirements as the making of the original will.

**What is a “holographic will”?**

It is a will entirely in the handwriting of the testator. A holographic will does not need to be witnessed.

**My dad died. Someone called him “intestate”. What does that mean?**

A person who is “intestate” dies without a valid will.

**My ex-spouse has died and left money in trust for our underage son. What does this mean?**

A trust is created when property is held by a person or organization (the trustee) for the benefit of another person. There is a *Trustee Act* in Newfoundland and Labrador which sets out some of the rules which must be followed by a trustee.

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<sup>1</sup>When two people live together in a marriage-like relationship, but are not legally married.

**When my partner died, he & I weren't married but lived in a common-law relationship<sup>1</sup> for 2 years prior to his death. He didn't have a will. Do I automatically have the same rights as a married spouse would under the *Intestate Succession Act* now that he has died?**

No, you do not. A common law spouse, regardless of how long he/she lived with the deceased, is not currently considered a "spouse" under the definition in the *Intestate Succession Act*. In such a case, it is strongly suggested that you seek legal advice regarding your options.

**My husband died and I want to apply to be appointed as sole administrator of his estate. His sister also wants to be appointed as sole administrator and says she trumps me because she is related to him by blood. Is there a rule about who can apply to be appointed as administrator, and who would take priority?**

The *Rules of the Supreme Court* state that where a person dies without a will, there is an order of persons who are entitled to apply for a grant of administration.<sup>2</sup> The wife of the deceased would normally have priority over a sibling of the deceased.

**There is a will, but it doesn't name an executor. What happens now?**

If there is a will but it does not name an executor, the Court can, upon application of next of kin, appoint an administrator through a grant of letters of administration, C.T.A. C.T.A. is the abbreviation of the Latin phrase "cum testamento annexo", which means "with the will annexed".

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<sup>2</sup> This priority list is subject to the discretion of the judge.

**In our case, there is a will and it names an executor, but the person named doesn't want to take on the role. What now?**

The person named as executor would normally have to fill out a renunciation form in which he/she abandons the right to act as personal representative of the estate.

In such a case where there is a will but the named executor is unable or unwilling to act, the Court can appoint an administrator through a grant of letters of administration, C.T.A. referred to in the question immediately above.

**The appointed administrator died before completing their duties of administration. I am told an application for a grant of Letters of Administration, D.B.N. is needed. What does this mean?**

In such a case, an application can be made to the Supreme Court for a grant of Letters of Administration, D.B.N. "D.B.N." is the abbreviation of the Latin words "de bonis non", which refers to "goods not administered". The Court issues Letters of Administration, D.B.N. when an administrator of an estate dies or becomes incapable of continuing with his or her duties prior to the completion of the administration. The grant involves the appointment of a person or institution to complete the administration of the estate.

**What are "Letters of Administration, C.T.A, D.B.N."?**

This application is made when there is a will but the executor or administrator CTA<sup>3</sup> dies or becomes incapacitated and therefore is unable to continue with his or her duties prior to the fulfillment of the administration (and there is no other person to step in to that position according to the terms of any will). The grant involves the appointment of a person or institution to complete the administration of the estate.

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<sup>3</sup> Administrator CTA is the representative appointed when there is a will but the named executor is unable or unwilling to take on that role.

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## **What is an Administration Bond and why is it needed in most cases?**

An Administration Bond is legal document held by the Court. It contains the name of the Administrator and two individuals who have promised to act as sureties. The bond which is signed acts as a guarantee that the appointed personal representative(s) will carry out their duties faithfully and honestly. The value of the bond may be forfeited if the personal representative fails to do so. The named sureties must own property which has a value of least half of the amount of the bond. Therefore, the sureties are guaranteeing that the administrator will do his/her duties honestly and faithfully, and are willing to forfeit money in the event that person fails to do so.

## **Does an estate have to go through probate or administration?**

The type of assets in the estate usually determine whether an estate should be probated or administered and not the value of the estate. If there are property transactions or access to financial institutions of the deceased, the estate normally has to be probated or administered.

An executor who acts without a grant of probate may be liable if the will he or she acted on is later proved to be invalid. A grant of probate acts as a guarantee that the will is valid and that the executor has the rights and bears the responsibilities of distributing the estate. The same applies for a person acting as administrator. Probate and Administration helps protect everyone involved in the process, including the personal representative. The personal representative may want to consider consulting with a lawyer to determine whether probate or administration is necessary.

## **Will I have to go to Court before a judge?**

In many cases you can obtain a grant of probate or letters of administration without going inside of a Courtroom. However, if the judge has questions about the application you may be asked to appear to answer those questions. As well, if a caveat is entered opposing the issuing of a grant of probate or letters of administration you will likely have to go to Court in order to try to obtain the grant.

## **What is a Caveat?**

A caveat is a document filed by any person who wishes to oppose the grant of Probate or Administration or wishes to be heard by the Court before a grant is made. Once a caveat has been filed by an individual, a grant cannot be issued by the Court without the individual being notified and given an opportunity to be heard. A caveat may be withdrawn by the person who filed it by filing a Withdrawal of Caveat.

If a caveat has been posted, in order to proceed with the application for a grant of probate or letters of administration, the person filing the notice and application must commence a Court proceeding within one year to either remove the caveat or, where a grant of probate is sought, to prove the validity of the will.

## **Does it cost anything to go through probate?**

The fees charged when a grant of probate or letters of administration is issued are based on the value of the estate. Ask the Court for a schedule of fees.

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## Checklists

Now that you have reviewed the “Frequently Asked Questions” section, here are some checklists to assist in preparation for the most common types of Court applications in Probate Court. In order to determine which checklist may be relevant to your situation, see below. Since cases are unique, it would be wise to seek legal advice to ensure the proper Court application is indeed being sought. The forms referred to in the checklists are included in Rule 56 of the *Rules of the Supreme Court, 1986*. The forms are available from the probate office or online through the Supreme Court of Newfoundland & Labrador website at:

<http://assembly.nl.ca/legislation/sr/regulations/RulesSC/Rc86ru56.htm>

*This document contains general information only, and is not intended as legal advice. In order to discuss your particular situation, we suggest you consult with a lawyer.*

*Please note:*

- *Cases are unique depending on the circumstances, so none of the lists contained within this document are necessarily exhaustive.*
- *Some of the steps mentioned in the document will not be necessary for all applications.*
- *This list does not address any of the steps you may need to take if the validity of the will or the distribution of the estate in the will is challenged.*

**APPLYING FOR A GRANT OF PROBATE:**

*This is issued to one or more of the executors named in a will  
See Checklist #1 (Pages 13- 18)*

**APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION:**

*This is issued when the deceased has not made a will  
See Checklist #2 (Pages 19- 23)*

**APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION, C.T.A.**

*This is issued where there is a will but there is no executor named or when the executor is unable or unwilling to apply for the grant  
See Checklist #3 (Pages 24- 31)*

**APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION, D.B.N.:**

*This is issued where an administrator of an estate dies or becomes incapable of continuing with his or her duties after a grant is made, but prior to the completion of the administration  
See Checklist #4 (Pages 32- 36)*

**APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION, C.T.A., D.B.N.:**

*This is issued where there is a will but the executor or administrator CTA dies or becomes incapacitated and therefore is unable to continue with his or her duties after a grant is made, but prior to the completion of the administration (and there is no other person to step in to that position according to the terms of any will)  
See Checklist #5 (Pages 37- 42)*

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## **CHECKLIST #1: APPLYING FOR A GRANT OF PROBATE** (pages 13 to 18)

*This is issued to one or more of the executors named in a will*

### **Application**

The application for a grant of probate should include:

- Notice of Application (should be posted a minimum of 5 working days prior to the processing of the application),
- A Petition with supporting affidavit,
- Renunciation (if applicable),
- An Inventory and Valuation of Assets,
- The Will (and Codicil if applicable),
- Proof of the Will,
- An Oath of the Executor, and
- Draft order.

*Each of the above-noted steps are described in detail below.*

### **Notice of Application**

The first step in an application for a grant of probate is to post a “Notice of Application” with the Registry Office of the Supreme Court.

The notice of application must:

Follow Form 56.04A and must contain:

- The name of the deceased,
- The name of the community in which the deceased was resident,
- The deceased’s occupation,
- The deceased’s date of death,

- A statement giving the name of the applicant and stating that five days after the posting of the notice, application will be made to the Supreme Court Trial Division (General) for a grant of probate to be issued to the applicant,
- The address for service, and phone number of applicant (if self-represented), and
- Applicant's solicitor, address for service, and phone number (if represented by a lawyer)

The notice must be dated and signed by the applicant or his/her solicitor.

According to the Court rules, a Notice of Application posted on or after January 1, 2003 will be invalid 6 months after its posting unless the named application is made within that period, or a caveat has been entered and it is still in effect.

**After the 5 day notice period, if no caveats have been entered, a "Central Registry Certificate" can be obtained from the registry. This certificate will allow the applicant to proceed with an application for a grant of probate.**

### **The Petition**

In the petition, the applicant provides important information including information about the applicant, the deceased, the beneficiaries and the will.

The petition must be signed by the applicant or the applicant's solicitor.

The petition should:

Follow form 56.05A and include:

- The name of the petitioner (it is common practice to also give the address of the petitioner),
- The material facts of the application (see below),
- The type of grant (i.e. a grant of probate) being applied for, and
- An affidavit signed by the petitioner verifying the facts of the petition. Where the petitioner has personal knowledge of the facts of the petition, a sworn affidavit by the petitioner is sufficient. Where the petitioner does not have personal knowledge it may be necessary to have another party verify these facts through their own affidavit, or the petitioner must indicate his/her belief and the source of the information and grounds for believing those facts.

**The petition must include the following information:**

- The full name of the deceased as well as any other names the deceased was known by,
- The marital status of the deceased at the time of death,
- The occupation of the deceased at time of death (if the deceased is retired, his or her occupation may be listed as “retired”),
- A statement that the deceased was at least 17 years of age at the time of execution of the will (if not, certain exceptions must apply),
- The names and addresses of every person entitled to benefit in the estate (under the will) as well as a statement as to whether these individuals are under the age of 19,
- A statement that the deceased did not marry after executing the will, or, if the deceased did marry, that there was a declaration in the will that the will was made in contemplation of that marriage,
- A statement as to whether the witnesses to the will are or are not beneficiaries (or spouses of a beneficiary) of the will,
- The address of the deceased,
- The date and place of death of the deceased,
- The approximate value of the estate, and
- Where applicable, a statement that no grant of probate has previously been applied for.

**An Inventory and Valuation of Assets**

An inventory and valuation of assets is required. This inventory is for property and assets located within Newfoundland and Labrador. This inventory will be used to set the amount of probate fees charged.

The inventory should be:

- Completed using form 56.10A,
- Annexed (or attached) to the petition and filed with the petition. It must be marked as an exhibit and initialed by petitioner and person witnessing his/her signature on the affidavit.

### The Will

When applying for a grant of probate, the will must be included in the application.

- The will should be:
  - Annexed (attached) to the application,
  - Marked as an exhibit to the Proof of Will and initialed by petitioner and person witnessing his/her signature on the affidavit.
  
- The back of the will should be signed by the petitioner, witness completing the Proof of Will, and the person(s) taking the affidavit of the witness and applicant.
  
- If the will is not written in English:
  - A translation of the will must be provided, and
  - An affidavit (Form 56.12) from the translator must also be attached which attests to the translator's competency as a translator and to the accuracy of the translation.

### The Proof of Will

A Proof of Will (form 56.11A) is required as proof that the will annexed to the application is a valid will executed by the testator. In most cases, one of the witnesses who was present at the execution of the will must complete the "Proof of Will".

The requirements of this document will vary depending on the type of will, the circumstances of the execution of the will and the availability of witnesses to the will. It should be noted that:

- If there are any codicils to the will, a proof of codicil may also be required as proof that the codicil is valid.
- If a witness relied on to complete this proof of codicil is also a beneficiary of the will the parts of the will making gifts to that person are considered void.

The Proof of Will shall be:

- Completed by a witness to the will or codicil; and
- Completed using form 56.11A including statements that:
  - The testator signed the will in the presence of the witness completing the Proof of Will,
  - A second witness (named) was also present,
  - The two witnesses signed the will in the presence of the

testator, and

- That the testator was, to the belief of the witness, of mental capacity when the will was executed.

If the testator was blind, used his or her mark (as opposed to a signature), or did not fully understand the language in which the will was written:

- A note should be made of this fact in the affidavit, and
- The affidavit must satisfy the Court or judge that the will or codicil was fully explained to the testator and that the testator seemed to understand it completely before it was signed.

If a Proof of Will cannot be obtained from one of the witnesses to the will or codicil (for example, if both witnesses have died):

- An affidavit must be provided by someone else who was present when the will was executed.

If a Proof of Will cannot be provided by a witness or by someone else who was present at the time of the execution of the will an affidavit must be provided that:

- States that no Proof of Will can be provided from a witness or a person present at the time of the execution, and
- Provides evidence of the handwriting of the testator and the signing witnesses, or
- Provides other evidence that would support the presumption that the will is valid.

If the will is a holograph will (an un-witnessed will, signed and written wholly in the handwriting of the testator) the Proof of Will should be:

- An affidavit following form 56.11B signed by someone who either:
  - Was present at the time of the execution of the will, or
  - Knew the handwriting of the deceased well enough to verify the handwriting in the will is the handwriting of the deceased.
- The affidavit must state that the writing in the will is, in the belief of the person making the affidavit, the writing of the testator.

Note: A judge may require proof in another form to satisfy the Court that the will is written and signed in the hand of the testator.

### **Oath of the Executor**

Every application must contain an oath of the executor to faithfully administer the estate.

The oath of an executor must:

- Follow form 56.33B and include statements that:
  - The deceased died with a will,
  - The executor was named as executor in the will,
  - The executor will faithfully administer the estate by:
    - Paying legitimate debts,
    - Distributing legacies contained in the will,
    - Distributing any residue of the estate according to the law,
  - That the executor will provide an accurate and full inventory of the estate,
  - That the executor will provide a fair and accurate accounting of the estate when required by law to do so, and
  - A statement as to the value of the deceased's estate at the time of his or her death.

### **Draft Order of Letters of Probate**

If an application for a grant of probate is successful, letters of probate will be granted confirming the will and granting authority to the executor. The application must include a draft order so that the judge can sign it if granted.

The order of a grant of probate will generally:

- Follow form 56.33E,
- State that the last will and testament of the deceased was proved and registered with the Court,
- Affirm the applicant's authority and duties as executor, and
- Have a copy of the will attached.

## **CHECKLIST #2: APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION**

(pages 19 to 23)

*This is issued when the deceased has not made a will.*

### **Application**

The application for a grant of letters of administration should include:

- Notice of Application (should be posted a minimum of 5 working days prior to the processing of the application),
- A Petition with supporting affidavit,
- Consents (if applicable),
- An Inventory and Valuation of Assets,
- Administration Bond,
- An Oath of the Administrator, and
- Draft order.

Note: The petitioner must be a resident of Newfoundland and Labrador.

*Each of the above-noted steps are described in detail below.*

### **Notice of Application**

The first step in an application for a grant of letters of administration is to post a "Notice of Application" with the Registry Office of the Supreme Court.

*Note: A grant of letters of administration can not be made to more than three persons.*

The notice of application must:

- Follow Form 56.04A and must contain:
  - The name of the deceased,
  - The name of the community in which the deceased was resident,
  - The deceased's occupation,
  - The deceased's date of death,
  - A statement giving the name of the applicant and stating that five days after the posting of the notice, application will be made to the Supreme Court Trial Division (General) for a grant of letters of administration to be issued to the applicant,
  - The address for service, and phone number of applicant (if self-represented), and
  - Applicant's solicitor, address for service, and phone number (if represented by a lawyer).

The notice must be dated and signed by the applicant or his/her solicitor.

According to the Court rules, a Notice of Application posted on or after January 1, 2003 will be invalid 6 months after its posting unless the named application is made within that period, or a caveat has been entered and it is still in effect.

**After the 5 day notice period, if no caveats have been entered, a "Central Registry Certificate" can be obtained from the registry. This certificate will allow the applicant to proceed with an application for letters of administration.**

### **The Petition**

The petition must be signed by the applicant or the applicant's solicitor.

- The petition should:
  - Follow form 56.05A and include:
    - The name of the petitioner (it is common practice to also give the address of the petitioner),
    - The material facts of the application (see below),
    - The type of grant (i.e. letters of administration) being applied for, and

- An affidavit signed by the petitioner verifying the facts of the petition. Where the petitioner has personal knowledge of the facts of the petition a sworn affidavit by the petitioner is sufficient. Where the petitioner does not have personal knowledge it may be necessary to have another party verify these facts through their own affidavit, or the petitioner must indicate his/her belief and the source of the information and grounds for believing those facts.
- The petition must include the following information:
  - The full name of the deceased as well as any other names the deceased was known by,
  - The marital status of the deceased at the time of death,
  - The occupation of the deceased at time of death (if the deceased is retired, his or her occupation may be listed as “retired”),
  - The names and addresses of every person entitled to a share in the estate as a well as a statement as to whether these individuals are under the age of 19,
  - If there are other parties within the jurisdiction with an equal or greater right to apply for the grant as the applicant, the application must contain the names, addresses and relationships to the applicant of each of these individuals. The petition must state that these individuals have renounced their right or agreed that the grant be issued to the applicant (the order of individual’s priority to a grant is set out in Rule 56.02) ,
  - A statement that the applicant(s) is/are a resident of Newfoundland and Labrador,
  - The address of the deceased,
  - The date and place of death of the deceased,
  - The approximate value of the estate, and
  - Where applicable, a statement that no letters of administration have previously been applied for.

### **An Inventory and Valuation of Assets**

An inventory and valuation of assets is required. This inventory is for property and assets located within Newfoundland and Labrador. This inventory will be used to set the amount of Court fees charged, and the amount of the bond.

- The inventory should be :
  - Completed using form 56.10A,
  - Annexed (or attached) to the petition and filed with the petition. It must be marked as an exhibit and initialed by petitioner and person witnessing his/her signature on the affidavit.

### **Bond**

In most cases a person making an application for a grant of letters of administration must provide a bond with two sureties as security for the value of the estate unless the Court orders otherwise. An exception is made to this rule where application is made to appoint the Public Trustee, or a trust company registered in Newfoundland and Labrador. The Court may also accept the bond of a licensed insurer instead of a personal bond and two sureties.

- A security for a grant of letters of administration shall:
  - Follow Form 56.21A
  - or
  - Include affidavits of execution and justification.
- In most cases the security must include:
  - A personal bond, and
  - Two sureties.
- Each surety must:
  - Be at least 19 years old
  - Be a Resident of Newfoundland and Labrador
  - Possess real or personal property equal to one half of the amount of bond.
- An applicant may apply to the Court to dispense with the bond. Usually this is granted where the administrator is the sole beneficiary of the estate. In order to apply for the bond requirement to be dispensed, the applicant or someone else with personal knowledge of the estate, must file an affidavit stating that:
  - The estate has no debts, or
  - The petitioner has made adequate provision for the payment of debts.

- The affidavit must also:
  - Clearly set out the information and inquiries that the statement is based on.

**A request to dispense with a bond is usually set out in the petition.**

### **Oath of the Administrator**

Every application must contain an oath of the personal representative to faithfully administer the estate.

- An oath of Administration must:
  - Follow form 56.33C and include statements that:
    - The deceased died intestate,
    - The administrator will faithfully administer the estate by:
      - Paying legitimate debts,
      - Distributing the remainder of the estate according to law ,
    - That the administrator will provide an accurate and full inventory of the estate,
    - That the Administrator will provide a fair and accurate accounting of the estate when required by law to do so, and
    - A statement as to the value of the deceased's estate at the time of his or her death.

### **The Draft Order**

If an application for a grant of letters of administration is successful, letters of administration will be granted giving authority to the administrator. The application must include a draft order so that the judge can sign it if granted.

The order of a grant of letters of administration will generally:

- Follow form 56.33F,
- Affirm the applicant's authority and duties as administrator.

### **CHECKLIST 3: APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION, C.T.A.**

(pages 24 to 31)

*This is issued where there is a will but there is no executor named or when the executor is unable or unwilling to apply for the grant.*

#### **Application**

The application for a grant of letters of administration, C.T.A. should include:

- Notice of Application (should be posted a minimum of 5 working days prior to the processing of the application),
- A Petition with supporting affidavit,
- Renunciation (if applicable),
- Consents (if applicable),
- The Will (and Codicil if applicable),
- Proof of the Will,
- An Inventory and Valuation of Assets,
- Administration Bond,
- An Oath of the Administrator, and
- Draft order.

Note: The petitioner must be a resident of Newfoundland and Labrador.

*Each of the above-noted steps are described in detail below.*

### Notice of Application

The first step in an application for a grant of letters of administration, C.T.A., is to post a “Notice of Application” with the Registry Office of the Supreme Court.

- The notice of application must:
  - Follow Form 56.04A and must contain:
    - The name of the deceased,
    - The name of the community in which the deceased was resident,
    - The deceased’s occupation,
    - The deceased’s date of death,
    - A statement giving the name of the applicant and stating that five days after the posting of the notice, application will be made to the Supreme Court Trial Division (General) for a grant of administration, C.T.A. to be issued to the applicant,
    - The address for service, and phone number of Applicant (if self-represented),
    - Applicant’s solicitor, address for service, and phone number (if represented by a lawyer).

The notice must be dated and signed by the applicant or his/her solicitor.

According to the Court Rules, a Notice of Application posted on or after January 1, 2003 will be invalid 6 months after its posting unless the named application is made within that period, or a caveat has been entered and it is still in effect.

- **After the 5 day notice period, if no caveats have been entered, a “Central Registry Certificate” can be obtained from the registry. This certificate will allow the applicant to proceed with an application for letters of administration, C.T.A.**

### The Petition

- The petition must be signed by the applicant or the applicant’s solicitor.

- The petition should:
  - Follow form 56.05A and include:
    - The name of the petitioner (it is common practice to also give the address of the petitioner),
    - The material facts of the application (see below),
    - The type of grant (i.e. Letters of Administration, C.T.A) being applied for, and
    - An affidavit signed by the petitioner verifying the facts of the petition. Where the petitioner has personal knowledge of the facts of the petition a sworn affidavit by the petitioner is sufficient. Where the petitioner does not have personal knowledge it may be necessary to have another party verify these facts through their own affidavit, or the petitioner must indicate his/her belief and the source of the information and grounds for believing those facts.

The petition must include the following information:

- The full name of the deceased as well as any other names the deceased was known by,
- The marital status of the deceased,
- The occupation of the deceased at time of death (if the deceased is retired, his or her occupation may be listed as “retired”),
- A statement that the deceased was at least 17 years of age at the time of execution of the will (if not, certain exceptions must apply),
- The names and addresses of every person entitled to a share in the estate as well as a statement as to whether these individuals are under the age of 19,
- A statement that the deceased did not marry after executing the will, or, if the deceased did marry, that there was a declaration in the will that the will was made in contemplation of that marriage,
- If there are other parties within the jurisdiction with an equal or greater right to apply for the grant as the applicant, the application must contain the names, addresses and relationships to the applicant of each of these individuals. The petition must state that these individuals have renounced their right or agreed that the grant be issued to the applicant (the

order of individual's priority to a grant is set out in Rule 56.02). If the named executor(s) has/have chosen to renounce his or her right to administer the estate it is important that the written renunciation is included in this application,

- A statement that the applicant(s) is/are a resident of Newfoundland and Labrador,
- An explanation of why the grant is being sought,
- A statement as to whether the witnesses to the will are or are not beneficiaries (or spouses of a beneficiary) of the will,
- The address of the deceased,
- The date and place of death of the deceased,
- The approximate value of the estate, and
- Where applicable, a statement that no letters of administration or grant of probate has previously been applied for.

### **The Will**

When applying for a grant of letters of administration, C.T.A., the will must be included in the application.

- The will should be:
  - Annexed (attached) to the application,
  - Marked as an exhibit to the Proof of Will and initialed by the petitioner and person witnessing his/her signature on the document.
- The back of the will should be signed by the petitioner, witness completing the Proof of Will, and the person(s) taking the affidavit of the witness and applicant.
- If the will is not written in English:
  - A translation of the will must be provided, and
  - An affidavit (Form 56.12) from the translator must also be attached which attests to the translator's competency as a translator and to the accuracy of the translation.

### **The Proof of Will**

A Proof of Will (form 56.11A) is required as proof that the will annexed to the application is a valid will executed by the testator. In most cases, one of the witnesses who was present at the execution of the will must complete the "Proof of Will".

The requirements of this document will vary depending on the type of will, the circumstances of the execution of the will and the availability of witnesses to the will. It should be noted that:

- If there are any codicils to the will, a proof of codicil may also be required as proof that the codicil is valid.
  - If a witness relied on to complete this proof of codicil is also a beneficiary of the will the parts of the will making gifts to that person are considered void.
- The Proof of Will must be:
- Completed by a witness to the will or codicil, and
  - Completed following form 56.11A including statements that:
    - The testator signed the will in the presence of the witness completing the Proof of Will,
    - A second witness (named) was also present,
    - The two witnesses signed the will in the presence of the testator, and
    - The testator was, to the belief of the witness, of mental capacity when the will was executed.
- If the testator was blind, used his or her mark (as opposed to a signature), or did not fully understand the language in which the will was written:
- A note should be made of this fact in the affidavit, and
  - The affidavit must satisfy the Court or judge that the will or codicil was fully explained to the testator and that the testator seemed to understand it completely before it was signed.
- If a Proof of Will cannot be obtained from one of the witnesses to the will or codicil (for example, if both witnesses have died):
- An affidavit must be provided by someone else who was present when the will was executed.
- If a Proof of Will cannot be provided by a witness or by someone else who was present at the time of the execution of the will an affidavit must be provided that:
- States that no affidavit can be provided from a witness or a person present at the time of the execution, and
  - Provides evidence of the handwriting of the testator and the signing witnesses, or
  - Provides other evidence that would support the presumption

that the will is valid.

- If the will is a holograph will (an un-witnessed will, signed and written wholly in the handwriting of the testator) the Proof of Will should be:
  - An affidavit following form 56.11B signed by someone who either:
    - Was present at the time of the execution of the will, or
    - Knew the handwriting of the deceased well enough to verify that the handwriting in the will is the handwriting of the deceased.
  - The affidavit must state that the writing in the will is, in the belief of the person making the affidavit, the writing of the testator.

Note: A judge may require proof in another form to satisfy the Court that the will is written and signed in the hand of the testator.

### **An Inventory and Valuation of Assets**

An inventory and valuation of assets is required. This inventory is for property and assets located within Newfoundland and Labrador. This inventory will be used to set the amount of administration fees charged, and the amount of bond required.

- The inventory should:
  - Be completed using form 56.10A,
  - Be annexed (or attached) to the petition and filed with the petition. It must be marked as an exhibit and initialed by the petitioner and person witnessing his/her signature.

### **Bond**

In most cases a person making an application for a grant of letters of administration, C.T.A. must provide a bond with two sureties as security for the value of the estate unless the Court orders otherwise. An exception is made to this rule where application is made to appoint the Public Trustee, or a trust company registered in Newfoundland and Labrador. The Court may also accept the bond of a licensed insurer in lieu of a personal bond and two sureties.

- A security for a grant of Letters of Administration, C.T.A. must:
  - Follow Form 56.21Bor

- Include affidavits of execution and justification.
- In most cases the security should include:
  - A personal bond, and
  - Two sureties.
- Each surety must:
  - Be at least 19 years old
  - Be a Resident of Newfoundland and Labrador;
  - Possess real or personal property equal to one half of the amount of bond.
  
- An applicant may apply to the Court to dispense with the bond. Usually this is granted where the administrator is the sole beneficiary of the estate. In order to apply for the bond requirement to be dispensed, the applicant or someone else with personal knowledge of the estate, must file an affidavit stating that:
  - The estate has no debts, or
  - The petitioner has made adequate provision for the payment of debts.
  
- The affidavit must also:
  - Clearly set out the information and inquiries that the statement is based on.

**A request to dispense with a bond is usually set out in the petition.**

### **Oath of the Administrator**

The application must contain an oath of the administrator to faithfully administer the estate.

- An oath of Administration where there is a will must:
  - Follow form 56.33D and include statements that:
    - The deceased died with a will,
    - The administrator will faithfully administer the estate by:
      - Paying legitimate debts,
      - Distributing legacies contained in the will,
      - Distributing any residue of the estate according to the law,
    - That the administrator will provide an accurate and full inventory of the estate,
    - That the administrator will provide a fair and accurate

- account of the estate when required by law to do so, and
- A statement as to the value of the deceased's estate at the time of his or her death.

### **The Draft Order**

If an application for a grant of letters of administration, C.T.A. is successful, letters of administration, C.T.A. will be granted confirming the will and granting authority to the administrator. The application must include a draft order so that the judge can sign it if granted.

The order of a grant of letters of administration, C.T.A. will generally:

- Follow form 56.33G,
- State that the last will and testament of the deceased was proved and registered with the Court,
- Affirm the applicant's authority and duties as administrator, and
- Have a copy of the will attached.

## **CHECKLIST 4: APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION, D.B.N.**

(pages 32 to 36)

*This is issued where an administrator of an estate dies or becomes incapable of continuing with his or her duties after a grant is made, but prior to the completion of the administration*

### **Application**

The application for a grant of letters of administration, D.B.N. should include:

- Notice of Application (should be posted a minimum of 5 working days prior to the processing of the application),
- A Petition with supporting affidavit,
- Consents (if applicable),
- Certified Copy of Previous Grant,
- An Inventory and Valuation of Assets,
- Administration Bond,
- An Oath of the Administrator, and
- Draft order.

Note: The petitioner must be a resident of Newfoundland and Labrador.

*Each of the above-noted steps are described in detail below.*

### **Notice of Application**

The first step in an application for a grant of letters of administration, D.B.N. is to post a "Notice of Application" with the Registry Office of the Supreme Court.

- The notice of application must:
  - Follow Form 56.04A and must contain:
    - The name of the deceased,
    - The name of the community in which the deceased was resident,
    - The deceased's occupation,
    - The deceased's date of death,
    - A statement giving the name of the applicant and stating that five days after the posting of the notice, application will be made to the Supreme Court Trial Division (General) for a grant of administration, D.B.N. to be issued to the applicant,
    - The address for service and phone number of applicant (if self-represented),
    - Applicant's solicitor, address for service, and phone number (if represented by a lawyer)

The notice must be dated and signed by the applicant or his/her solicitor.

According to the Court rules, a Notice of Application posted on or after January 1, 2003 will be invalid 6 months after its posting unless the named application is made within that period, or a caveat has been entered and it is still in effect.

**After the 5 day notice period, if no caveats have been entered, a "Central Registry Certificate" can be obtained from the registry. This certificate will allow the applicant to proceed with an application for letters of administration, D.B.N.**

### The Petition

The petition must be signed by the applicant or the applicant's solicitor.

- The petition should:
  - Follow form 56.05A and include:
    - The name of the petitioner (it is common practice to also give the address of the petitioner),
    - The material facts of the application (see below),
    - The type of grant (i.e. Administration, D.B.N.) being applied for, and

- An affidavit signed by the petitioner verifying the facts of the petition. Where the petitioner has personal knowledge of the facts of the petition a sworn affidavit by the petitioner is sufficient. Where the petitioner does not have personal knowledge it may be necessary to have another party verify these facts through their own affidavit, or the petitioner must indicate his/her belief and the source of the information and grounds for believing those facts.
  
- The petition must include the following information:
  - The full name of the deceased as well as any other names the deceased was known by,
  - The marital status of the deceased,
  - The occupation of the deceased at time of death (if the deceased is retired, his or her occupation may be listed as “retired”),
  - The names and addresses of every person entitled to a share in the estate as well as a statement as to whether these individuals are under the age of 19,
  - If there are other parties within the jurisdiction with an equal or greater right to apply for the grant as the applicant, the application must contain the names, addresses and relationships to the applicant of each of these individuals. The petition must state that these individuals have renounced their right or agreed that the grant be issued to the applicant (the order of individual’s priority to a grant is set out in Rule 56.02)
  - A statement that the applicant(s) is/are a resident of Newfoundland and Labrador,
  - Explanation of why grant is being sought,
  - The address of the deceased,
  - The date and place of death of the deceased,
  - The approximate value of the estate.
  
- Additionally where the application is for letter of Administration, D.B.N. the material facts of the petition should include:
  - The particulars of the first grant of letters of administration,
  - The particulars of the death or incapacity of the previous Administrator,
  - The names of the interested parties, and

- The grounds upon which the applicant is claiming the grant.

### **An Inventory of Assets**

An inventory of assets is required. This inventory is for property and assets located within Newfoundland and Labrador. This inventory will be used to set the amount of Court fees charged and the amount of the bond required. In the case of an application for a grant of letters of administration, D.B.N. the inventory should be only of the property remaining unadministered at the time of the previous administrator's death, but the value given to that property in the inventory should be based on its value at the deceased's time of death.

- The inventory should be :
  - Completed using form 56.10A,
  - Annexed (or attached) to the petition and filed with the petition. It must be marked as an exhibit and initialed by petitioner and person witnessing his/her signature on the affidavit.

### **Bond**

In most cases a person making an application for a grant of letters of Administration D.B.N must provide a bond with two sureties as security for the value of the estate, unless the Court orders otherwise. An exception is made to this rule where application is made to appoint the Public Trustee, or a trust company registered in Newfoundland and Labrador. The Court may also accept the bond of a licensed insurer in lieu of a personal bond and two sureties.

- A security for a grant of letters of administration, D.B.N. shall:
  - Follow Form 56.21A
  - or
  - Include affidavits of execution and justification.
- In most cases the security must include:
  - A personal bond, and
  - Two sureties.
- Each surety must:
  - Be at least 19 years old
  - Be a Resident of Newfoundland and Labrador;
  - Possess property equal to one half of the amount of bond.
- An applicant may apply to the Court to dispense with the bond.

Usually this is granted where the administrator is the sole beneficiary of the estate. In order to apply for the bond requirement to be dispensed, the applicant or someone else with personal knowledge of the estate, must file an affidavit stating that:

- The estate has no debts, or
  - The petitioner has made adequate provision for the payment of debts.
- 
- The affidavit must also:
    - Clearly set out the information and inquiries that the statement is based on.

**A request to dispense with a bond is usually set out in the petition.**

### **Oath of the Administrator**

Every application must contain an oath of the personal representative to faithfully administer the estate.

▪An oath of Administrator must:

- Follow form 56.33C including statements that:
  - The deceased died intestate,
  - The administrator will faithfully administer the estate by:
    - Paying legitimate debts,
    - Distributing the remainder of the estate according to law.
  - That the administrator will provide an accurate and full inventory of the estate,
  - That the administrator will provide a fair and accurate accounting of the estate when required by law to do so, and
  - A statement as to the value of the deceased's estate at the time of his or her death.

### **The Draft Order**

If an application for a grant of letters of administration, D.B.N. is successful, letters of administration, D.B.N. will be granted giving authority to the administrator. The application must include a draft order so that the judge can sign it if granted.

- The order of a grant of letters of administration, D.B.N. will generally:
  - Follow form 56.33F,
  - The applicant's authority and duties as administrator will be affirmed.

## **CHECKLIST 5: APPLYING FOR A GRANT OF LETTERS OF ADMINISTRATION, C.T.A., D.B.N.**

(pages 37 To 42)

*This is issued where there is a will but the executor or administrator C.T.A. dies or becomes incapacitated and therefore is unable to continue with his or her duties after a grant is made, but prior to the completion of the administration (and there is no other person to step in to that position according to the terms of any will).*

### **Application**

The application for a grant of letters of administration, C.T.A., D.B.N. should include:

- Notice of Application (should be posted a minimum of 5 working days prior to the processing of the application),
- A Petition with supporting affidavit,
- Renunciation (if applicable),
- Consents (if applicable),
- Certified Copy of Previous Grant (with certified copy of will),
- An Inventory and Valuation of Assets,
- Administration Bond,
- An Oath of the Administrator, and
- Draft order.

Note: The petitioner must be a resident of Newfoundland and Labrador.

*Each of the above-noted steps are described in detail below.*

### **Notice of Application**

The first step in an application for a grant of letters of administration, C.T.A., D.B.N. is to post a “Notice of Application” with the Registry Office of the Supreme Court.

- The notice of application must:
  - Follow Form 56.04A and shall contain:
    - The name of the deceased,
    - The name of the community in which the deceased was resident,
    - The deceased’s occupation,
    - The deceased’s date of death,
    - A statement giving the name of the applicant and stating that five days after the posting of the notice, application will be made to the Supreme Court Trial Division (General) for a grant of administration, C.T.A., D.B.N. to be issued to the applicant,
    - The address for service, and phone number of applicant (if self-represented),
    - Applicant’s solicitor, address for service, and phone number (if represented by a lawyer),
    - The notice must be dated and signed by the applicant or his or her solicitor.

According to the Court rules, a Notice of Application posted on or after January 1, 2003 will be invalid 6 months after its posting unless the named application is made within that period, or a caveat has been entered and it is still in effect.

- **After the 5 day notice period, if no caveats have been entered, a “Central Registry Certificate” can be obtained from the registry. This certificate will allow the applicant to proceed with an application for letters of administration, C.T.A, D.B.N.**

### **The Petition**

- The petition must be:
  - Signed by the applicant or the applicant’s solicitor.
  
- The petition should:

- Follow form 56.05A including:
  - The name of the petitioner (it is common practice to also give the address of the petitioner),
  - The material facts of the application (see below),
  - The type of grant (i.e. Administration, C.T.A, D.B.N.) being applied for, and
  - An affidavit signed by the petitioner verifying the facts of the petition. Where the petitioner has personal knowledge of the facts of the petition a sworn affidavit by the petitioner is sufficient. Where the petitioner does not have personal knowledge it may be necessary to have another party verify these facts through their own affidavit, or the petitioner must indicate his/her belief and the source of the information and grounds for believing those facts.
  
- The petition must include the following information:
  - The full name of the deceased as well as any other names the deceased was known by,
  - The marital status of the deceased,
  - The occupation of the deceased at time of death (if the deceased is retired, his or her occupation may be listed as “retired”),
  - A statement that the deceased was at least 17 years of age at the time of execution of the will (if not, certain exceptions must apply),
  - The names and addresses of every person entitled to a share in the estate as well as a statement as to whether these individuals are under the age of 19,
  - A statement that the deceased did not marry after executing the will, or, if the deceased did marry, that there was a declaration in the will that the will was made in contemplation of that marriage,
  - If there are other parties within the jurisdiction with an equal or greater right to apply for the grant as the applicant, the application must contain the names, addresses and relationships to the applicant of each of these individuals. The petition must state that these individuals have renounced their right or agreed that the grant be issued to the applicant (the order of individual’s priority to a grant is set out in Rule 56.01),
  - A statement that the applicant(s) is/are a resident of

Newfoundland and Labrador,

- An explanation of why the grant is being sought,
  - A statement as to whether the witnesses to the will are or are not beneficiaries (or spouses of a beneficiary) of the will,
  - The address of the deceased,
  - The date and place of death of the deceased, and
  - The approximate value of the estate.
- Additionally where the application is for letters of Administration, C.T.A., D.B.N. the material facts of the petition should include:
- The particulars of the first grant of probate or administration
  - The particulars of the death or incapacity of the previous executor or administrator, and
  - The grounds upon which the applicant is claiming the grant.

### **Copy of Previous Grant and the Will**

When applying for a grant of letters of Administration C.T.A., D.B.N., a certified copy of the previous grant and will must be included in the application.

- The certified copy of the will should be:
  - Annexed (attached) to the application,
  - Marked as an exhibit to the affidavit of Proof of Will, and
  - Identified by signature(s) of applicant(s).
- If the will is not written in English:
  - A translation of the will must be provided, and
  - An affidavit from the translator must also be attached which attests to the translator's competency as a translator and to the accuracy of the translation.

### **An Inventory of Assets**

An inventory of assets is required. This inventory is for property and assets located within Newfoundland and Labrador. This inventory will be used to set the amount of Court fees charged and the amount of the bond required. In the case of an application for a grant of letters of administration C.T.A., D.B.N. the inventory should be only of the property remaining unadministered at the time of the previous executor's or administrator's death, but the value given to that property in the inventory should be based on its value at the time of the testator's death.

- The Inventory should be:
  - Completed using form 56.10A,
  - Annexed (or attached) to the petition and filed with the petition. It must be marked as an exhibit and initialed by petitioner and person witnessing his/her signature on the affidavit.

### **Bond**

In most cases a person making an application for a grant of letters of administration C.T.A., D.B.N. must provide a bond with two sureties as security for the value of the estate unless the Court orders otherwise. An exception is made to this rule where application is made to appoint the Public Trustee, or a trust company registered in Newfoundland and Labrador. The Court may also accept the bond of a licensed insurer in lieu of a personal bond and two sureties.

- A security for a grant of letters of administration C.T.A., D.B.N shall:
  - Follow Form 56.21B
  - or
  - Include affidavits of execution and justification.
- In most cases the security must include:
  - A personal bond, and
  - Two sureties.
- Each surety must:
  - Be at least 19 years old
  - Be a Resident of Newfoundland and Labrador;
  - possess property equal to one half of the amount of bond.
  
- An applicant may apply to the Court to dispense with the bond. Usually this is granted where the administrator is the sole beneficiary of the estate. In order to apply for the bond requirement to be dispensed, the applicant or someone else with personal knowledge of the estate, must file an affidavit stating that:
  - The estate has no debts, or
  - The petitioner has made adequate provision for the payment of debts.
- The affidavit must also:
  - Clearly set out the information and inquiries that the statement is based on.

A request to dispense with a bond is usually set out in the petition.

### **Oath of the Administrator**

Every application must contain an oath of the personal representative to faithfully administer the estate.

- An oath of administrator where there is a will shall:
  - Follow form 56.33D including statements that:
    - The deceased died with a will,
    - The administrator will faithfully administer the estate by:
      - Paying legitimate debts,
      - Distributing legacies contained in the will,
      - Distributing any residue of the estate according to the law,
    - That the administrator will provide an accurate and full inventory of the estate,
    - That the administrator will provide a fair and accurate accounting of the estate when required by law to do so, and
    - A statement as to the value of the of the deceased's estate at the time of his or her death.

### **The Draft Order**

If an application for a grant of letters of administration, C.T.A., D.B.N. is successful, letters of administration C.T.A., D.B.N. will be granted confirming the will and granting authority to the administrator. The application must include a draft order so that the judge can sign it if granted.

- The order of letters of administration, C.T.A, D.B.N. will generally:
  - Follow form 56.33G,
  - The order will state that the last will and testament of the deceased was proved and registered with the Court,
  - The applicant's authority and duties as administrator will be affirmed, and
  - Have a copy of the will attached.

## Contacts

### *List of Probate Offices*

#### **Supreme Court, Trial Division- St. John's**

Courthouse  
309 Duckworth Street  
P.O. Box 937  
St. John's, NL  
A1C 5M3  
Phone: (709) 729-2569  
Fax: (709) 729-6174

#### **Supreme Court, Trial Division- Corner Brook**

Sir Richard Squires Building, 5th Floor  
Mount Bernard Avenue at O'Connell Drive  
P.O. Box 2006  
Corner Brook, NL  
A2H 6J8  
Phone: (709) 637-2224  
Fax: (709) 637-2569

#### **Supreme Court, Trial Division- Gander**

Law Court Building, 98 Airport Boulevard  
P.O. Box 2222  
Gander, NL  
A1V 2N9  
Phone: (709) 256-1115  
Fax : (709) 256-1120

**Supreme Court, Trial Division- Grand Bank**

T. Alex Hickman Courthouse

P.O. Box 910

Grand Bank, NL

A0E 1W0

Phone: (709) 832-1720

Fax: (709) 832-2755

**Supreme Court, Trial Division- Grand Falls - Windsor**

The Law Courts

55 Cromer Avenue

Grand Falls, NL

A2A 1W9

Phone: (709) 292-4260

Fax: (709) 292-4224

**Supreme Court, Trial Division- Happy Valley - Goose Bay**

214 Hamilton River Road

P.O. Box 1139, Station Building

Happy Valley-Goose Bay, NL

A0P 1E0

Phone: (709) 896-7892

Fax: (709) 896-9212

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