



### **Background and Findings:**

On July 25, 2007, a hearing was held before me as Registrar regarding the passing of the accounts of Roland M. Reeves, as Administrator of the Estate of Roland Clyde Reeves and as Executor of the Estate of Mary Theresa Reeves. A Grant of Administration of the Estate of Roland Clyde Reeves was issued to Roland Michael Reeves on October 21, 2005 and a Grant of Probate on the Estate of Mary Theresa Reeves was issued on January 30, 2003.

A number of objections were filed regarding the administration of both estates by Brenda Tanner, Sandra Reeves, Wanda Reeves, Darlene Reeves-Carr and Susan Touchie, as well as the guardians of the person of David Reeves.

The objections are as follows and I will deal with each of the objections individually:

- Guardianship fees and disbursements paid by the estate to the personal representative;
- Sale of the real property at 37 Parmac Drive by the personal representative;
- Status of the personal property;
- Various expenses and cash withdrawals by the personal representative;
- Judgement against Brenda and John Tanner with the parents, Roland Clyde Reeves and Mary Theresa Reeves as guarantors.
- Compensation of the personal representative - commission;
- The personal representative's expenses for attending the hearing;
- The legal fees and disbursements for the proctor of both estates;
- Miscellaneous issues;
- Application to have the personal representative removed.

### **Guardianship fees and Disbursements paid by the Estate to the personal representative:**

In the proctor's submission, the personal representative has agreed to repay the estate the sum of \$1,997.69. The proctor has suggested this amount be offset against the commission awarded to the personal representative.

Ms. Bowers, in her submission, agrees with the amount of \$1,997.69 being the amount to be repaid to the estate by Mr. Reeves.

Ms. Bowers takes the position that the amount of \$13,211.67 should be repaid to the estate by the personal representative for the costs of the Guardianship application.

With respect to the amount of legal fees and disbursements paid by the estate in connection with the Guardianship application, I am satisfied that the amount of \$7,853.49 represents the legal work and disbursements pertaining to this application and is to be credited to the estate.

**Sale of the real property at 37 Parmac Drive by the Personal Representative:**

Ms. Bowers' clients take the position that the value of this property for the purpose of determining the value of the Estate of Roland Reeves is an issue as the personal representative did not receive full market value on the sale of the property and that the sale was not arms length.

Although I do not condone the actions of the personal representative selling the property to his girlfriend which only increased the acrimony between himself and his siblings, I agree with proctor's submission that the personal representative's obligations with the sale of 37 Parmac Drive were fully set out in the Minutes of Settlement executed by all parties in June of 2004 and filed in Probate Court on December 10, 2004. The Minutes of Settlement established a sale price of not less than \$87,400.00 gross. Mr. Roland Michael Reeves sold the property for \$93,500.00 gross, which meets the requirements set out in the Minutes of Settlement.

**Status of the Personal Property:**

Mr. Reeves passed away in 1998 and a Grant of Administration was issued to Roland Michael Reeves on October 21, 2005. Mrs. Reeves passed away on November 11, 2000 and a Grant of Probate was issued on January 30, 2003. The personal representative did not have the legal authority to make a decision regarding the personal property of Mrs. Reeves until his Grant in 2003. Both Sandra Reeves and Wanda Reeves attended at the property at various times before their brother became the personal representative. If they had wanted their personal belongings removed, in my opinion, they had ample opportunity to retrieve their personal belongings. Brenda Tanner, in her submission states that "family were coming and going during the days prior and after their mother's death, before my brother took possession of the home".

With respect to the inventory prepared by Ms. Wells-Hopey, I do not accept this inventory as being an accurate inventory of the personal assets of the estates. Ms. Wells-Hopey was a co-worker of Sandra Reeves. Sandra Reeves gave evidence that the lists attached to her and Ms. Wells-Hopey's affidavits were not an accurate inventory of the contents of the home. Ms. Wells-Hopey testified she had no independent recollection of the itemized contents. She did not review or confirm the type written list attached to Sandra Reeves' affidavit.

Evidence was given that shortly after the death of Mrs. Reeves, there was flooding in the home and some personal items were damaged.

By the time Roland Reeves became the personal representative of his mother's estate,

more than two years and two months had elapsed. It would be next to impossible to go back and inventory the property and contents.

If the family could have put aside their differences, come together to compile an inventory and then divide the assets equitably, then this would not be an issue. This was not done. Mr. Reeves is not required to compensate the estate for the items he disposed of as these items were ruined in the flood waters.

**Various expenses and cash withdrawals by the personal representative:**

Ms. Bowers has raised objections to the following expenditures that do not have receipts:

- June 19, 2001 - \$14.00 - An explanation provided by Mr. Reeves is that it was a charge from the Kentville Dumpsite to dispose of some of the spoiled goods at 37 Parmac Drive. Although he states that the charge is evidenced in a bank statement, he has not been able to locate the bank statement. There was evidence given by several of the Reeves' that in January of 2001 the house was empty. I am not prepared to allow this expenditure of \$14.00 against the estate.
- June 19, 2002 - \$96.17 - Mr. Reeves explains this expenditure as the cost of furnace motor oil to fill up the tank at 37 Parmac Drive while the property was being rented out. The tenant deducted this amount from her rent cheque as she had paid for the oil. I accept this amount as a valid charge against the estate.
- February 27, 2003 - \$140.00 - According to Mr. Reeves, the personal representative, he withdrew this money from an instant teller machine to pay for property taxes at 37 Parmac. His counsel provided a statement from Lynn Marsh at the Halifax Regional Municipality. This statement shows a payment on January 30, 2003 for \$100.00. I am assuming Mr. Reeves did make this payment of \$100.00 on January 30, 2003 as there is no other withdrawal indicated on the final accounts at this time and for this charge, and he reimbursed himself on February 23<sup>rd</sup> I will allow \$100.00 as a valid charge against the estate and the amount of \$40.00 to be paid back to the estate by the personal representative.
- July 12, 2004 - \$84.13 - Mr. Reeves explains this was the cost of purchasing some hardware and miscellaneous lumber to board up the basement windows and to haul away trash. In Brenda Tanner's submission, she states her brother used interior doors from the home to board up the windows and doors. The other windows, basement, patio and bathroom had been previously boarded up by Brenda's husband and a neighbor. I am not allowing this amount as a charge against the estate and it will need to be reimbursed to the estate by the personal representative.
- July 21, 2004 - \$12.74 - Again, this is a charge to Valley Waste as indicated on a copy of

a bank statement from the CIBC personal account statement for the estate. As I referred to earlier, there was evidence given by several members of the Reeves family that the property was empty in January of 2001. I am not convinced this expense was related to removing trash from 37 Parmac; therefore I am not accepting this charge as a valid charge against the estate and it is to be reimbursed by the personal representative to the estate.

With regards to Mr. Reeves being compensated for the numerous attempts to the sell the property. I accept the fact that Mr. Reeves received legal advice that was incorrect regarding the sale of the real property. I do not feel Mr. Reeves should personally bear the costs of these legal fees.

I do however have concerns over the amount he has charged and reimbursed himself from the estate for mileage, labour and lost wages and gas charges. I have calculated that Mr. Reeves has reimbursed himself \$4,002.50 in mileage; \$1,689.00 in labour; \$369.10 in lost wages and gas charges of \$60.00. \$2,072.00 in mileage expense was incurred by him before he was issued a Grant of Probate in his mother's estate. He has charged the estate \$989.00 in labour prior to his appointment as personal representative and the \$60.00 was incurred by him for gas prior to his appointment. An executor has the right to deal with the assets in the estate immediately upon death; however, I am not convinced that the executor has the right to charge labour prior to his appointment by the Court. This bothers me that he would reimburse himself without the approval of the Court and in this situation where there were debts still outstanding against the property; the largest debt being property taxes. From the materials provided to me, the property taxes were outstanding and in January of 2004 the Halifax Regional Municipality was preparing to have the property sold for outstanding taxes. Two title searches were conducted on the property, each costing the estate \$258.75 in preparation for a tax sale and it was not until the house was sold in January of 2006 that the property taxes were paid.

It is normal for a personal representative to receive reimbursement for out of pocket expenses when these expenses are reasonable. I am prepared to allow Mr. Reeves the sum of \$1,700.00 in mileage expense. I am not prepared to allow him the \$60.00 in gas expense as he has been compensated in charging mileage. With respect to his labour, I will allow Mr. Reeves \$10.00 an hour for labour (he charged \$25.00 an hour labour). I calculate that at \$25.00 an hour, Mr. Reeves is indicating that he put in 67.56 hours in labour. When I calculate \$10.00 an hour times 67.56 hours, I arrive at a total of \$675.60 and allow him this amount for his labour. With respect to his charge for lost wages - I note from the legal account of Boyne Clarke, there was an entry on October 30, 2003 for an office conference with Mr. Reeves. I will allow this charge of \$184.55. According to the legal account, there are charges for exchange of emails with Mr. Reeves in preparation of his affidavit on November 3<sup>rd</sup>, 2003. Also, on November 4<sup>th</sup>, 2003, there is a charge for email exchanges between the law firm and Mr. Reeves, but no office conference with Mr. Reeves, therefore, I am not allowing the expense of \$184.55 in lost wages and Mr. Reeves is to reimburse the estate for this amount.

**Judgement against Brenda and John Tanner with the parents, Roland and Mary Reeves as guarantors:**

The estates are subject to a judgment in favour of the Bank of Montreal in the apparent amount of \$9,212.57. This judgment arises from a guarantee given on a loan to Mr. And Mrs. Tanner.

The Reeves beneficiaries submit that the judgment should be dealt with in such a way that it “does not negatively impact upon the beneficiaries...”. They suggest a hold back sufficient to satisfy the judgment, until such time as the entire sum is paid through garnishment. This would, they suggest, require the Bank’s consent. Any proceeds of the estates to which Ms. Tanner would otherwise be entitled would be paid directly to the Bank. In the event that payment of the debt does have a negative impact upon the distribution of assets, they suggest that the personal representative should be required to reimburse the beneficiaries for the amount lost, as it was allegedly his responsibility to seek an order against Mr. And Mrs. Tanner for the amount paid by the estates, in order “to ensure that the remaining beneficiaries were not called upon to pay a debt not properly part of the estates.” No legal authority is provided for the suggestion that the debt arising from the guarantee is not properly an estate debt.

Counsel for the personal representative submits that the debt is properly an estate debt, given that the testators “chose to co-sign for their daughter and son-in-law during their lifetimes”. Because the Tanners defaulted, it is argued, the testators “would have been required to make good the debt whether they were alive or deceased”. The personal representative agrees; however, any proceeds due to Ms. Tanner should be paid directly to the Bank in order to reduce the outstanding balance, with the remainder held back. The remainder could then be distributed to the beneficiaries once the debt had been paid by garnishment. Once again, no legal authorities are cited. Ms. Tanner’s own submission is that she agrees to “applying my inheritance if any to [the] BMO order” against “John and Brenda Tanner and the estates of Mary and Roland Reeves...”

There is authority supporting the view that where a testator was a guarantor of a loan, the resulting debt is legitimately a debt of the estate. For instance, in *Frolick Estate v. Frolick* (1994), 1994 CarswellOnt 3863 (Ont. C.J. - Gen. Div.), the testator had guaranteed a line of credit for her son, who periodically defaulted, required her to make payments. After her death, with the loan in default, the creditor (Royal Trust, which was also the executor), demanded payment from the son and the estate. After paying the debt to itself as a debt to the estate, in its capacity as executor Royal Trust applied to be indemnified by the son for the amount paid by the state to satisfy the debt. The Court held that the guarantee was a valid debt of the estate and that the estate was entitled to be indemnified by the son, who was the principal debtor. On the evidence, the Court concluded that the testator did not intend her estate to be burdened with the debt, and that she died believing her son would pay it off. Similarly, in *Re Massie*, [1969] C.T.C. 384; 1969 CarswellOnt 116 (Ont. S.C.), the deceased had guaranteed a loan to a theatrical company that subsequently went bankrupt, requiring the estate to pay the debt. The Court found the debt to be a valid debt of the estate for the purpose of determining succession duties.

The principle to be taken from these decisions is that a valid guarantee will be a valid debt of an estate, but the estate is entitled to be indemnified by the principal debtor where the

evidence establishes that the testator did not intend the estate to be responsible for the debt. As for the suggestion that the personal representative should be made personally responsible for the debt, it seems to me that this would only be an issue if the facts established that the personal representative had failed to meet the requisite standard of care in his duties. If that were the case, there might be an argument to be made; I have not seen any cases where this occurred in circumstances similar to this.

The Estates of Roland and Mary Reeves are equally responsible for the debt to the Bank of Montreal in the amount of \$9,212.57 as the law respecting rights and obligations between co-sureties (i.e. co-guarantors) is succinctly reviewed in Mc Guinness's *Law of Guarantee*, 2d edn. (1996). There does not appear to be any basis to treat estates that are co-sureties any differently from living co-sureties. Each estate will be responsible for the creditor's claim, in proportion to the limits of their respective guarantees. As such, the content of the respective guarantees will be relevant.

### **Compensation of the personal representative - commission:**

The Reeves beneficiaries take the position the personal representative should not receive any commission from the estates as they believe the evidence demonstrates the personal representative has wasted the estates; has intermingled the Estate of Roland Clyde Reeves, the Estate of Mary Theresa Reeves and the application for the appointment of a Guardian of the person and estate of David Anthony Reeves, pursuant to the *Incompetent Persons Act*; has neglected to finalize the estates in a timely manner; has failed to provide a complete and accurate inventory of the estates; has unnecessarily charged expenses to the estates; has withdrawn funds from the estates bank account without providing receipts or an accounting of the money spent; has intentionally exhausted the assets of the estates to defeat the interests of the beneficiaries of the estates; has destroyed the personal property of the beneficiaries of the estates; has failed to appropriately deal with the assets of the estates, including obtaining fair market value for the real or purchase of the property; and has delegated the whole of his responsibilities to the Solicitor retained by the personal representative.

Counsel for the personal representative submits the personal representative has conscientiously and pro-actively moved these estates forward to the best of his ability for over at least six years. The personal representative, in counsel's opinion, was forced to engage the court system repeatedly and the costs in this estate has consequently been exorbitant. The personal representative takes the position that he has taken every step possible and necessary to obtain probate and administration and to deal with both the personal and real property of both of the estates. The personal representative admits to the accounts of the estates being intermingled as it was not possible to maintain accurate separate files with respect to these two estates given the fact that all actions taken with respect to Mr. Reeve's estate related to the obligations of Roland Michael Reeves as executor of his mother's estate. I find I do not agree with this reasoning as I believe Mr. Reeves could easily have maintained separate accounts for each estate.

Mr. Reeves denies he has unnecessarily charged expenses to the estates or that he has withdrawn funds from the bank account without providing an accounting of monies spent. He denies the suggestion that he intentionally exhausted the assets of the estate. Mr. Reeves takes the position that he has provided the beneficiaries with the appropriate opportunity to acquire the personal property that they wished to have and any disposal of personal property was done out of necessity for the timely administration of the estate. He also denies that he has in any way delegated any of his responsibilities to the solicitor retained.

Brenda Tanner is of the opinion the personal representative should receive a commission respecting his executor ship of Mary Reeves' estate as 'he did execute with good intent, no malice'. With regards to his entitlement to commission as Administrator of Roland Clyde Reeves' estate, Mrs. Tanner states he 'acted in bad faith'. 'Considering his only real duty, as administrator, was the selling of 37 Parmac Drive, which was the main asset of both estates. ...he did not perform his duties as administrator in good faith and did not act on behalf of all beneficiaries.'

When deciding the amount of commission to allow to a personal representative pursuant to Section 76 of the *Probate Act*, Section 62(3) of the *Probate Court Practice, Procedure and Forms Regulations* sets out the following factors to be considered by the court:

- '(a) the size of the estate;
- (b) the care and responsibility involved in administering the estate;
- © the time the personal representative was occupied in performing their duties;
- (d) the skill and abilities shown by the personal representative;
- (e) the success resulting from the personal representative's administration of the estate.

The size of both of these estates is small. The principal asset was the real property located at 37 Parmac Drive, Lower Sackville. The title to the property was in the name of Roland Clyde Reeves and a Housing Cooperative. Upon the death of Mary Theresa Reeves in November of 2000, the family gathered at the property, took some personal belongings and Mr. Roland Michael Reeves assumed control of the property and was paying himself for mileage and labor. It is my understanding that Roland Michael Reeves was aware he was the named executor in his mother's Will; however he did not file an application for a Grant of Probate until January 29, 2003.

I do not understand why it took Mr. Reeves in excess of five years to clean up the property at 37 Parmac Drive. When reviewing the disbursements listed in the accounts of the Estate of Roland Clyde Reeves, the personal representative performed some labour on the property beginning on November 16, 2000 and off an on until he sold the property in early 2006. Mr. Reeves was paying himself for mileage on a consistent basis and some of these entries do not explain what the trips were for. For example, between November 14 and November 16, 2000, Mr. Reeves charged the estate for 3 trips between Kentville and Sackville - each trip at \$56.00; however, only on November 16, 2000 did he perform labor on the property by installing new locks.

The personal representative allowed the property taxes to fall into arrears whereby the Halifax Regional Municipality was commencing proceedings for a tax sale. Yet, Mr. Reeves was reimbursing himself for his mileage, his labour, his missed wages throughout the administration of the estate. There are also several creditors of the estate that have yet to be paid.

Some of the family members were not willing to renounce in favour of Roland Reeves applying for a Grant of Administration of Roland Clyde Reeves' estate and a hearing had to be held to deal with the objections raised by some of Mr. Reeves' siblings. One of the main concerns of the siblings was that Mr. Reeves traveled around a lot and would not be able to oversee the real property. Mr. Reeves assured the Court at that time, he would have no difficulty in administering the estate, even though he may not always be resident in the Province.

The care and responsibility of the personal representative in administering the estate is, at times, questionable. I do acknowledge Mr. Reeves did receive incorrect legal advice regarding the sale of the real property. I also acknowledge that family members were not cooperating with him throughout the process. In my opinion, one of the main priorities in administering an estate is to collect in the assets and pay the debts within a reasonable time frame. I find Mr. Reeves paid himself regularly, but was not paying all of the debts against the estate.

The time the personal representative was occupied in performing his duties was excessive. I do not believe it should have taken Mr. Reeves the time it did to administer these estates.

The skill and abilities shown by the personal representative has been demonstrated by the amount of the legal fees incurred in this estate. Mr. Reeves was not a professional executor and relied on his solicitor throughout the process.

The success resulting from the personal representative's administration of the estate is minimal. Although the proctor has reduced her legal fees and disbursements substantially, it was the proctor for the estate who prepared the final accounts and had to go back to the personal representative on a number of occasions to obtain receipts. As stated in Ms. Bowers' submission, at the closing hearing, the personal representative was asked to provide receipts in his possession for items claimed in the accounts that had not previously been provided. The personal representative also stated at the hearing that he had not reviewed the accounts with his counsel prior to the submission of the accounts to the Court.

As personal representative of the estate of Mary Theresa Reeves, I award commission to the personal representative in the amount of 1%. With regards to commission on the estate of Roland Clyde Reeves, I award commission to the personal representative in the amount of 1%.

**The legal fees and disbursements for the proctor of both estates:**

The Reeves beneficiaries object that the proctor's legal account, which they say amounts to 65 per cent of the value of the estates, is excessive. The beneficiaries give the total as "approximately \$72,000.00" after recent deductions, on a total estate value of \$112,600.00. They ask that the account be taxed, taking into account the specific items set out in the Notice of Objection filed in the Roland Reeves Estate. The Reeves beneficiaries submit that "there was no special skill required and indeed these estates could have been resolved quite simply, if not for the actions of the personal representative both when dealing with his siblings and in the steps taken to administer the estates".

Ms. Watson, as proctor, submits the current bill contains the actual time expended (as opposed to estimated time), resulting in total fees, disbursements and HST of \$55,179.00. She submits that she has reduced her fees portion by about 50 percent "in an effort to assist both the Court and other parties" by eliminating the need for taxation of the account. She suggest that the reduction in fees should satisfy any concerns respecting duplication of work or particular disbursements. She agrees that the legal fees are "grossly disproportionate to the value of the estate". She submits, however, that this occurred on account of the acrimony between the parties, which consistently forced the personal representative "to take the most expensive route possible because of the lack of cooperation from the other parties". She notes that there were two previous counsel on the file, but suggests that real progress was only achieved when Boyne Clarke took over, after which any delays "were due to inaction or a lack of co-operation from the other beneficiaries, who now complain about how long things took".

Ms. Tanner supports the proctor's view that "a lot of work done was due to the acrimony that existed between the parties," and goes on to cite examples. She says this conduct "made Skip realize he was going to need experienced counsel," prompting him to retain Boyne, Clarke.

The Reeves beneficiaries do not go into detail on any suggested legal basis for their objections. Their stated concerns are that "the accounts are excessive, involve a significant duplication of work; unnecessary and duplicitous research of ordinary and usual issues, excessive disbursements and interest charges". They refer to case law that supports the principle that proctor's fees and executor's commission should generally not be taken prior to closing. In my opinion, and it is generally the practice in probate that proctors will interim bill the estate with all accounts being subject to taxation at the closing of the estate. Commission is not to be taken prior to the closing as it is set by the Registrar at the time of the closing and based on factors already set out in this decision.

Generally speaking the factors to be considered on taxation of a solicitor's account are those set out by Justice Gruchy in *Faye Estate, Re* (2002), 209 N.S.R. (2d) 56 (SC), where in referred to *Re MacNeil* (1982), 43 N.B.R. (2d) 1 (N.B.Q.B.): - time and effort required and spent; the difficulty and importance of the matter; whether special skill was required; whether the charge compared favourably with other lawyers of similar standing; the value of the claim, the results obtained; the tariff; and any other special circumstances.

It is my opinion that the proctor is entitled to reasonable fees. The fact that Boyne Clarke

has already substantially reduced their fees is to be taken into consideration. I do not find that the Reeves' submission by Ms. Bowers has set out any particular legal basis for a further reduction. Given the contentious nature of both of these estates, I am satisfied that the proctor has taken a proactive approach to the legal fees and disbursements and HST and I am prepared to tax and allow the legal accounts in the amount of \$55,179.00.

**Miscellaneous Issues:**

- **The Reeves beneficiaries object to the personal representative being reimbursed by the estates for lost wages and travel in attending the closing hearing.** They take the position that it is inappropriate for the personal representative to make this kind of profit from the estate. By the personal representative not providing this information prior to the hearing, there was no opportunity to cross-examine the personal representative.

The personal representative takes the position he was required to attend the closing hearing and it would have been more costly for him to fly, given the boxes of material he had to bring with him. Mr. Reeves is seeking the sum of \$2,300.00 for his travel to Nova Scotia to attend the hearing.

The personal representative was required to attend the closing hearing of these estates, especially in view of the fact there were a number of objections raised that he had to respond to. The personal representative did have ample notice of the closing hearing whereby he could have made arrangements regarding his employment and he did take on the responsibility as personal representative of these estates. I am allowing the sum of \$1,200.00 as reimbursement to the personal representative for his expenses in attending the hearing.

- **Lochaber Property** - The Reeves beneficiaries submit that due to the acrimony between the siblings, it would be appropriate for the property to continue to be listed for sale and the first reasonable offer accepted by the personal representative.

Counsel for the personal representative agrees it would be problematic to transfer the property to all the siblings. The personal representative has been unsuccessful to date in finding a buyer and given the minimal value of the property, it would not be in the best interests of the beneficiaries to keep the estate open until the property is sold.

According to the Inventory on file for the Estate of Roland Clyde Reeves, this property is valued at \$2,400.00. The real property vested in Roland Clyde Reeves at the date of his death, which was August 24, 1998.

Section 44(3) of the *Probate Act* states: -  
“Sections 50-64 of Chapter 359 of the Revised Statutes, 1989, the Probate Act, apply with respect to  
....(b) real property that devolves in an intestacy where the intestate dies, before Sections 45-55 come into force.”

Upon the death of Roland Clyde Reeves, the real property becomes vested in his heirs and all of his heirs will be required to execute a deed when the property does sell. Mary Theresa Reeve's interest in the property will pass in accordance with the terms of her Will; therefore the Estate of Roland Clyde Reeves does not have to remain open, but Mary Theresa Reeves's estate may need to remain open in order to have the personal representative of her estate sign off on her interest.

With respect to the **payment to Shaw, McLellan & Ironside for notarizing an Affidavit** on July 13, 2007, I accept this payment was for notarizing the Affidavit of the Personal Representative, form 43.

**Atlantic Funeral Homes** - A cheque in the amount of \$581.75 was forwarded to the personal representative who has testified that he cashed the cheque, took his and his sister, Brenda's share and gave the remaining monies to his sister, Wanda Reeves to distribute amongst the remaining siblings.

Wanda Reeves has testified she did not receive any of this money from the personal representative. Counsel for the personal representative submit that this issue can only be resolved by finding either Wanda Reeves or the personal representative more credible than the other. This is difficult to do.

I find it is the responsibility of the personal representative to deposit these monies into the estate account, as part of his responsibility to collect in the assets, pay the debts and distribute remaining assets among those entitled. Mr. Reeves did not do this. The personal representative is required to return these funds to the estate account.

**Monies drawn from Mrs. Reeves' bank accounts after her death by Darlene Reeves-Carr** -

Darlene Reeves-Carr explains, to the best of her recollection, in her Affidavit, (Exhibit #4) at paragraph 7 what she did with the monies she withdrew from her mother's bank accounts. Counsel for the personal representative does not go into detail for objecting to this explanation other than to say the monies have not been satisfactorily accounted for. I accept the explanation of Ms. Reeves-Carr respecting the use of these monies.

**Nova Collection (N. S. Power & MTT) - \$452.73** - Counsel for the personal representative explains these charges relate to the property at 37 Parmac Drive. When reviewing the list of disbursements under tab # 2 in both estate accounts, there are no disbursements relating to the power and telephone for this property. I understand the property was rented for a period time in 2002 and I am not certain when the power and phone were disconnected. This collection notice is dated in July of 2001. I accept these charges to be related to property at 37 Parmac Drive and are a valid debt against the estate.

**Application to remove the personal representative** - Two of the Reeves beneficiaries have

filed an application pursuant to Section 61 of the *Probate Act* to have the personal representative removed on the grounds he defaulted on his obligations under the Minutes of Settlement. Sandra Reeves and Wanda Reeves are requesting to be appointed as administrators of both estates. They have indicated they will take the appropriate steps to rectify the actions of the personal representatives, to deal with the Lochaber property and to gather their parent's medical and financial records that may be required for David's ongoing care.

In my opinion, this decision has addressed the actions of the personal representative and I have dealt with the Lochaber property in this decision. With respect to the burial plots for David, I direct the personal representative to transfer title of these plots from the estates to the Guardians of David on or before February 1, 2008. I suggest the Guardians advise the personal representative as to what financial and medical records they will require for David's on-going care and the personal representative can obtain this information before I issue the Orders on Passing the Accounts of both estates.

Once the proctor for the estates has amended the final accounts to reflect the adjustments on monies being paid into the estate and monies available to pay the outstanding debts of the estate, I will meet with the proctor to finalize the estates.

December 19, 2007

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REGISTRAR OF PROBATE