

Case No.

Vol No.

**IN THE MATTER OF THE ESTATE OF
JOACHIM WOLFGANG RUSTIG and THE
ESTATE OF EVELINE LISELOTTE RUSTIG**

Justice Walter R. E. Goodfellow Halifax, Nova Scotia File Nos. P50758 and P50311
[Cite as:Rustig Estate (Re), 2002 NSSC 210]

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DATE HEARD: April 2nd, 2002 (Numerous further written submissions, last dated August 12th, 2002.)

DECISION: September 12th, 2002

SUBJECT: PROBATE - LEGAL FEES, PROCTOR'S FEES, EXECUTOR'S COMMISSION

SUMMARY: Mr. Rustig died 10th of July, 1999 and his will was admitted to probate and Mrs. Rustig acted as executrix, however, she died 27th of March, 2000 and her will was admitted to probate 3rd of April, 2000 with Mr. Grant as her executor and executor/successor in Mr. Rustig's estate.

CONCLUSION:

	Sought	Allowed
1. Mr. Grant sought legal fees for the estate of Mr. Rustig in the amount of \$4,000.	\$4,000.00	\$3,018.75
2. Legal fees relating to Mrs. Rustig's estate - Real Estate -	\$9,387.50	\$9,387.50
Administration of tenants -	\$4,000.00	\$4,000.00
Estate -	\$20,591.21	\$20,591.21
HST -		\$5,096.80
3. Commission as executor on Mr. Rustig's estate	\$5,300.00	\$475.00
4. Commission re Mrs. Rustig's estate	\$37,357.60	\$16,444.56
TOTAL LEGAL FEES AND COMMISSION		\$59,013.82

Paid by Mr. Grant in 57 invoices totalling	-	\$43,669.17
BALANCE DUE TO MR. GRANT	-	\$15,344.65

The estate of Mr. Rustig was, for commission purposes, reduced by direct devise of real property amounting to \$106,000. and similarly, with respect to Mrs. Rustig's estate for direct devise of real property valued at \$193,000. S. 76 of the *Probate Act* governs remuneration threshold requires that the property be "amount received" by executor before consideration of commission. Commission on Mr. Rustig's estate fixed at 2.5% as initial duties performed by Mrs. Rustig as executrix. In addition, in both Mr. Rustig's estate and Mrs. Rustig's estate Mr. Grant was authorized by their respective wills to charge his rates for full legal services on all duties including carrying out administrative duties as executor, such as collecting and depositing rents, etc. This resulted in substantial legal fees and remuneration to Mr. Grant for virtually all of the duties he performed as executor other than the overall responsibility of handling the estates. Court listed considerations to be established for determination of executor's commission and noted that s. 76 commences "in the settlement of any estate the executors and administrators may be allowed" so that unless there is expressed authority within a will, advances of commission as executor are not permitted without approval of the court. Court acknowledged it was in error in *Re Estate of Blanche Meagher* in expressing the same prohibition applied with respect to interim billing of proctor's fees and confirmed that there is no such prohibition as relates to interim billing of proctor's fees.

Court reviewed a number of authorities dealing with proctor's fees and executor's commission.

Re Estate of Blanche Meagher, Estate No. 50018, 2001 NSSC 39

Bruhm v. Feindel, [1999] N.S.J. No. 57 (S.C.)

Re Yuill Estate, [1994] N.S.J. No. 575

Re MacDonald, [2001] N.S.J. No. 378

Re McIntosh (1964), 46 D.L.R. (2d) 416

MacDonnell, Sheard & Hull, *Probate Practice, 4th Edition, 1996*

Re Toronto General Trusts Corporation and Central Ontario R. W. Co. (1905), 6 O.W.R. 350

Sampson v. Sampson Estate, [1999] N.S.J. No. 89

Re Atkinson, [1952] O. R. 685

Feeney's Canadian Law of Wills, 4th Edition