

IN THE PROBATE COURT OF NOVA SCOTIA

Citation: MacQuarrie Estate (Re), 2008 NSSC 108

Date: 20080416

Docket: Probate No. 4495

Registry: Port Hawkesbury

IN THE MATTER OF: the Estate of Daniel Angus MacQuarrie,
late of Hays River, in the County of
Inverness and Province of Nova Scotia

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Judge: The Honourable Justice C. Richard Coughlan

Heard: December 7, 2007 (in Chambers), Port Hawkesbury,
Nova Scotia

**Amended Affidavit
of Service Received:** February 8, 2008

Written Decision: April 16, 2008

Subject: Courts - Jurisdiction of Probate Court re claims pursuant
to s. 63 of the *Probate Act*, S.N.S. 2000, c. 31

Summary: Testator died November 11, 1976, having made a will
dated July 10, 1973. A Grant of Probate with Will
Annexed was granted on June 8, 2005. All of the
testator's estate was left to one of his sons. Another son
filed a claim pursuant to s. 63 of the *Probate Act*, S.N.S.

2000, c. 31. The claim was for a declaration the claimant was owner of certain real property by reason of unjust enrichment and/or *quantum meruit* or a constructive trust, or for damages on the basis of *quantum meruit* and/or unjust enrichment. The claim appears to be based on events occurring subsequent to the testator's death.

Issue: Does the Probate Court have jurisdiction to deal with the claim?

Result: The claim of Martin MacQuarrie is not a claim properly brought pursuant to s. 63 of the *Probate Act*, S.N.S. 2000, c. 31. It does not effect or carry out the judicial administration of the Estate of Daniel Angus MacQuarrie. It is a claim to certain real property which may involve persons other than the Estate. The claim does not come within the jurisdiction of the Probate Court; rather, it is within the jurisdiction of the Supreme Court.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***