

Estates of Missing Persons Act

People may disappear in circumstances where a presumption of death is not yet available because of lack of evidence or insufficient passage of time. In such circumstances, it is important to consider the *Estates of Missing Persons Act*.

Section 1 of the Act permits such an urgent application to be made within three months of the disappearance to preserve the estate or support the dependants of the missing person.

This section essentially defines a missing person as one whose close relatives or associates have not heard from him or her for at least three months and have been unable to ascertain his or her whereabouts.

Section 2 requires that the missing person have an interest in property in British Columbia for the BC courts to have jurisdiction.

From a practical standpoint, the curator will usually be the Official Administrator. Section 2(3) of the Act specifies that the court *must* appoint the Official Administrator, unless it is satisfied that some other fit and proper person would be a more desirable curator by reason of business or personal relationship or any other fact or circumstance.

If another curator is named, the court will likely order a bond be posted for the full value of the estate to ensure security for the assets of the missing person.

Powers of a Curator

Section 3(1) stipulates that the curator has the same powers of dealing with property as the missing person would have if that person were present. In spite of this broad wording, however, in reality other sections impose many restrictions on that power, such as the ability to mortgage, to sue or be sued, and the ability to dispose of any monies.

Practitioners should be careful to ensure the order granted is worded so as to enable the curator to effectively deal with assets and manage any legal actions without repeated court applications to obtain further approvals for each step required.

Section 9 provides for discharge of the curator where the missing person is found

or where he or she is declared dead and probate or letters of administration granted for the estate.

Should the missing person neither be found nor yet determined to be dead, the curator may nevertheless wind up the affairs of the missing person and seek an order for the payment into court of the missing person's estate.

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Fees for the Curator

In the case of *Re Hoch* (1977) 2 B.C.L.R. 398, the court ruled that a curator is a trustee and thus its fees are subject to Section 89 of the *Trustee Act*, with a maximum fee of 5 percent of both capital and revenue.

Conclusion

The estate lawyer dealing with the affairs of a missing person must make diligent and reasonable enquiries to try to locate him or her. Where the evidence, including any inferences that may be drawn from the circumstances of the disappearance, is sufficient, counsel will likely wish to apply for an order of presumption of death.

Where, however, there is insufficient evidence or time elapsed such as would justify a presumption of death, then a curatorship may be appropriate. Where a curator is appointed to deal with the affairs of the missing person, that curator will likely be the Official Administrator. ▲

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Breton® Brittle

INGREDIENTS

- 28 Breton® crackers – Original flavour
- 1 cup packed brown sugar
- 1 cup butter
- 1 pkg chocolate chips, semi-sweet
- ²/₃ cup chopped nuts (*I used pecan halves—just to make it pretty*)

Preheat oven to 400° F.

Completely line a 9" x 13" baking pan with foil.

Arrange a single layer of Breton® crackers over the bottom; arrange a second layer to completely cover any open spaces. Break crackers to fill in spaces where necessary.

In a medium saucepan, combine butter and sugar. Cook and stir over medium heat until it comes to a boil and begins to look fudgy—about 5 minutes. Stir the whole time!

Pour fudge mixture over crackers, as evenly as possible.

Place in oven for 5 minutes, remove.

Sprinkle with chocolate chips. When melted, use the back of a spoon to spread them out.

Top with nuts and store in fridge.

When solid, cut into pieces.

Makes about 40 pieces.

Marilyn MacDonald