

# 2024 estate planning

## Province/territory probate taxes

(current to January 2024)

Probate is the process of having a will validated by the courts. Probate taxes vary considerably between provinces and territories, but in most cases these taxes are a percentage of the value of the estate being probated.

Province/territory	Estate value	Probate fee/tax
Alberta	\$10,000 or under	\$35
	\$10,001 – \$25,000	\$135
	\$25,001 – \$125,000	\$275
	\$125,001 – \$250,000	\$400
	\$250,001 and over	\$525 (Maximum)
British Columbia	\$25,000 or under	Nil
	\$25,001 – \$50,000	\$6 per \$1,000 (0.6%)
	\$50,001 and over	\$14 per \$1,000 (1.4%)
Manitoba	Probate tax eliminated in MB as of November 6, 2020	
New Brunswick	\$5,000 or under	\$25
	\$5,001 – \$10,000	\$50
	\$10,001 – \$15,000	\$75
	\$15,001 – \$20,000	\$100
	\$20,001 and over	\$5 per \$1,000 (0.5%)
Newfoundland & Labrador	\$1,000 or under	\$60
	\$1,001 and over	\$0.6 per \$100 (0.6%)
Northwest Territories	\$10,000 or under	\$30
	\$10,001 – \$25,000	\$110
	\$25,001 – \$125,000	\$215
	\$125,001 – \$250,000	\$325
	\$250,001 and over	\$435
Nova Scotia	\$10,000 or under	\$85.60
	\$10,001 – \$25,000	\$215.20
	\$25,001 – \$50,000	\$358.15
	\$50,001 – \$100,000	\$1,002.65
	\$100,001 and over	\$16.95 per \$1,000 (1.695%)
Nunavut	\$10,000 or under	\$30
	\$10,001 – \$25,000	\$110
	\$25,001 – \$125,000	\$215
	\$125,001 – \$250,000	\$325
	\$250,001 and over	\$425
Ontario	\$50,000 or under	Nil
	\$50,001 and over	\$15 per \$1,000 (1.5%)
Prince Edward Island	\$10,000 or under	\$50
	\$10,001 – \$25,000	\$100
	\$25,001 – \$50,000	\$200
	\$50,001 – \$100,000	\$400
	\$100,001 and over	\$4 per \$1,000 (0.4%)
Quebec	No probate fees	Nominal registration fees apply
Saskatchewan	All estates	\$7 per \$1,000 (0.7%)
Yukon	\$25,000 and under	Nil
	\$25,001 and over	\$140

## Due date for final returns and balance owing for deceased individuals

Period when death occurred	Due date for the return
January 1 to October 31	April 30 of the following year
November 1 to December 31	Six months after the date of death

If the deceased or the deceased's spouse or common-law partner was self-employed, the following due dates for final returns are as follows:

Period when death occurred	Due date for the return
January 1 to December 15	June 15 of the following year
December 16 to December 31	Six months after the date of death

\* Any balance owing would still be due April 30th of the year after death or six months after death if death occurred between November 1 and December 31.

## RRSP and RRIF at death

The deceased is deemed to have received the fair market value of all property held in a Registered Retirement Savings Plan (RRSP) or Registered Retirement Income Fund (RRIF) at the date of death. No amount is included in the deceased's income if the designated beneficiary or heir is an "eligible beneficiary" and certain conditions are met. An eligible beneficiary who acquires rights in an RRSP or an RRIF has several options for deferring the income tax on those amounts.

The following table summarizes the rules:

Heir/beneficiary	Amount taxable at death	Transferable to: <sup>1</sup>	
		RRSP/RRIF	Annuity
Spouse	Nil <sup>1</sup>	Yes	Yes
Child or grandchild financially dependent because of an infirmity	Nil <sup>1</sup>	Yes	Yes
Child or grandchild financially dependent not because of an infirmity	Nil <sup>1</sup>	No <sup>3</sup>	Yes <sup>2</sup>
Other	FMV	No	No

- Certain terms and conditions may apply.
- The annuity may provide for payments for a period of not more than 18 years, less the age of the child or grandchild when the annuity is purchased. Annuity payments must start no later than one year after the purchase.
- If the child or grandchild is not infirm, the funds cannot be rolled over to their RRSP/RRIF.

## Transfer from an RRSP or RRIF to an RDSP

It is possible to transfer funds held in RRSP or an RRIF at the time of death to a Registered Disability Savings Plan (RDSP) of a child or grandchild who was financially dependent on the deceased because of a mental or physical disability. However, the amount transferred must not exceed the beneficiary's RDSP contribution room of \$200,000, and is not eligible for the Canadian Disability Savings Grant/Bond.

## Transfer from RRSP or RRIF to a Lifetime Benefit Trust

### Lifetime Benefit Trust

Section 60.011 of the Income Tax Act ("ITA") of Canada provides for the creation of a Lifetime Benefit Trust (LBT), which is a discretionary testamentary trust that is funded by the tax deferred proceeds of a registered plan (RRSP, RRIF, PRPP, RPP or SPP). The LBT is required by the ITA to use the registered plan proceeds to purchase a Qualifying Trust Annuity ("QTA") for the sole benefit of a mentally infirm spouse/common law Partner of the deceased or the mentally infirm and dependent child or grandchild of the deceased. The QTA must either be for the lifetime of the beneficiary of the trust or for a fixed term equal to 90 years minus the age of the sole beneficiary of the LBT.

## Province/territory intestacy rules

- “Intestate” is the term used when an individual dies without a will.
- Each province/territory has its own laws as to how assets are to be divided when someone dies without a will.

Province/territory	Spouse and one child	Spouse and children
Alberta <sup>(1a)</sup>	If all children are also children of surviving spouse, entire estate goes to spouse; if any of the children are not also children of the surviving spouse, the spouse gets 50% of the value of the estate, and the children receive the remainder of the estate.	
British Columbia <sup>(1b)</sup>	If all children are also children of the surviving spouse, first \$300,000 <sup>(6)</sup> + ½ of the remainder goes to spouse; if any of the children are not also children of the surviving spouse, the first \$150,000 go to the spouse <sup>(6)</sup> , ½ of the balance goes to the spouse, ½ of the balance to the children.	
Manitoba <sup>(1g)</sup>	If all children are also children of surviving spouse, entire estate goes to spouse; if any of the children are not also children of surviving spouse, greater of \$50,000 and half of estate goes to spouse <sup>(5)</sup> . Remainder of estate is split ½ and ½ between spouse and children.	
New Brunswick	Marital property of deceased and spouse, to spouse; balance split equally <sup>(1)</sup>	Marital property of deceased and spouse, to spouse; ½ of the balance to spouse; ⅔ of the balance to children <sup>(1)</sup>
Nfld and Labrador	Split equally <sup>(1)</sup>	½ to spouse; ⅔ to children <sup>(1)</sup>
NWT/Nunavut <sup>(1e)</sup>	First \$50,000 to spouse, balance split equally <sup>(1, 2)</sup>	First \$50,000 to spouse; ½ balance to spouse, ⅔ balance to children <sup>(1, 2)</sup>
Nova Scotia <sup>(1c)</sup>	First \$50,000 to spouse; balance split equally <sup>(1)</sup>	First \$50,000 to spouse <sup>(2)</sup> ; ½ of the balance to spouse; ⅔ of the balance to children <sup>(1)</sup>
Ontario	First \$350,000 to spouse; balance split equally <sup>(1, 4, 7)</sup>	First \$350,000 to spouse; ½ of the balance to spouse; ⅔ of the balance to children <sup>(1, 4)</sup>
Prince Edward Island	Split equally <sup>(1)</sup>	½ to spouse; ⅔ to children <sup>(1)</sup>
Quebec <sup>(1d)</sup>	½ to spouse; ⅔ to child <sup>(1)</sup>	½ to spouse; ⅔ to children <sup>(1)</sup>
Saskatchewan <sup>(1b)</sup>	First \$200,000 to spouse; balance split equally <sup>(1, 7)</sup>	First \$200,000 to spouse; ½ of the balance to spouse; ⅔ of the balance to children <sup>(1, 7)</sup>
	If all children are also children of surviving spouse, entire estate goes to spouse; if any of the children are not also children of the surviving spouse, the spouse gets 50% of the value of the estate, and the children receive the remainder of the estate.	
Yukon <sup>(1f)</sup>	First \$75,000 to spouse, balance split equally <sup>(1)</sup>	First \$75,000 to spouse; ½ balance to spouse, ⅔ balance to children <sup>(1)</sup>

### Note:

In some cases, provincial Family Law Acts can override these distribution formulas.

(1) Issue of a deceased child (i.e., grandchildren, great-grandchildren) takes that child's share.

(1a) In addition to “spouse”, the Alberta Will and Succession Act refers to and accords equal rights to an “adult interdependent partner” or AIP.

(1b) “Spouse” in British Columbia and Saskatchewan includes common-law same-sex partners.

(1c) Domestic partners (common-law partners of any sex registered as such in Nova Scotia) will have the same rights and obligations as spouses under the Intestate Succession Act.

(1d) A civil union spouse has the same rights to inherit as a spouse. A civil union is a new legal institution in Quebec which entitles couples, whether of the same or opposite sex, to similar legal rights and obligations as married spouses.

(1e) Includes common-law partners.

(1f) If an intestate dies leaving a common-law spouse, under the Estate Administration Act, the court may order that whatever portion of the intestate's property that it deems appropriate be retained and allotted to the common-law spouse for support and maintenance.

(1g) The Intestate Succession Act of Manitoba, provides common-law opposite-sex or same sex partners with equal rights to those of a married spouse upon intestacy.

(2) Spouse may elect to receive house and contents in lieu of \$50,000.

(3) Plus household furniture and life interest in family home.

(4) Subject to possible equalization claim under Family Law Act.

(5) Plus, life interest in the home (Homestead Act) and a possible equalization payment under the Family Property Act.

(6) Plus, household furniture.

(7) Ontario - based on Ontario Regulation 54/95 “preferential share” equals \$350,000 as of March 1, 2021. Saskatchewan – based on I-13.2 Reg 1 “prescribed amount” equals \$200,000.

## Commonly used CRA guides

<b>P105</b>	Students and Income Tax
<b>P113</b>	Gifts and Income Tax
<b>RC4110</b>	Employee or Self-employed?
<b>RC4112</b>	Lifelong Learning Plan (LLP)
<b>RC4169</b>	Tax Treatment of Mutual Funds for Individuals
<b>RC4177</b>	Death of an RRSP Annuitant
<b>RC4178</b>	Death of a RRIF Annuitant
<b>T4002</b>	Self-employed Business, Professional, Commission, Farming, and Fishing Income

<b>T4011</b>	Preparing Returns for Deceased Persons
<b>T4036</b>	Rental Income
<b>T4037</b>	Capital Gains
<b>T4040</b>	RRSPs and Other Registered Plans for Retirement
<b>T4055</b>	Newcomers to Canada
<b>T4058</b>	Non-Residents and Income Tax

## Mackenzie tax brochures

- Income Splitting
- Mackenzie Charitable Giving Program Guide
- Strategies for Trusts in Tax and Estate Planning
- TFSA Investor Guide
- Guide to Registered Disability Savings Plans
- Tax + Estate Business Owners Kit
- RRSP or TFSA
- RRSP Guide
- RESP Guide
- RDSP, Henson Trust or TFSA
- Individual pensions plans (IPP) and retirement compensation agreements (RCA)



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