

**CONTRIBUTION MADE BY THE MEMBER FOR NORTH ABACO, THE RT. HON.
HUBERT INGRAHAM ON THE PROBATE AND ADMINISTRATION OF ESTATE
ACT, 2011
WEDNESDAY DECEMBER 1, 2010**

MEMBER FOR NORTH ABACO (THE RT. HON. HUBERT INGRAHAM):

Mr. Speaker, I beg leave to move for the Second Reading of a Bill for an Act to Consolidate the Law and the Procedures for obtaining a Grant of Representation in respect to the Estate of a Deceased Person and for the Administration for a Deceased Person's Property and for the matters related thereto.

This Bill is a non-contentious Bill, I presume, but I've learnt in Parliament over the years, that to presume is an error. But I do want to say, Mr. Speaker, that the Bill is a part of an ongoing effort to modernize and bring up to date outdated laws and procedures which exist in The Bahamas and which contributes to the inefficiencies, costliness and time-consuming nuisance processes, to the annoyance and the disadvantage of the people and businesses in The Bahamas.

Most things, Mr. Speaker, sells virtually everything that exist somebody benefits from it remaining as it is; and so every time there is change, someone is disadvantaged and not in the position to get or to do what they did before. I have no doubt, Mr. Speaker, that there will be a minority of persons who would like to cling to what we now have in the process for administering an estate; but the current system has no place in a modern society.

We in the Government of The Bahamas, Mr. Speaker, are doing as much as we can, as fast as we can, to remove as many of these outdated laws from our Statute books as we can. Change agents, as we think we are, ought never be deterred from proceeding because a few may object.

This Bill follows the footsteps of many others with which my party has brought to this Parliament and which were brought to this Parliament by members opposite from time to time themselves, for worker's rights, children's rights, to the end of the eldest son taking over the deceased father's estate to the exclusion of his other brothers and sisters, the end of dowry, to the end of monopoly of the airwaves, to the removal of red tape and the issuance of driver's license and licensing of cars, a long list of things.

In The Bahamas, Mr. Speaker, I think it is fair to say, certainly when I practiced law, that the administering of an estate is as near to a nightmare as one could get and this ought to be a very simple, straight forward undertaking. Regrettably, it ain't so though. Hopefully, it will become so upon the passage of this Bill, its coming into force and the promulgation of rules by the Rules Committee of the Supreme Court.

Now, Mr. Speaker, let me say that I would've preferred to have the Regulations that will govern this process for administering an estate drafted and tabled in Parliament at the same time as the Bill is being debated, but I have been persuaded that I would be usurping authority usually reserved to the Supreme Court of The Bahamas, and that the rules should be made by the Chief Justice and the Rules Committee of the Supreme Court; and so I was so persuaded. A man persuaded can maintain his opinion still. Having been persuaded, Mr. Speaker, and I pray earnestly, quite frankly, that the Committee, chaired by the Chief Justice will see its way clear, to make clear, simple, transparent rules, so the statement with respect to which there is no legal challenge maybe administered speedily.

This Bill, Mr. Speaker, seeks to consolidate into one statute, the laws relating to the Administration of Estate. Separate and apart from the Inheritance Act, the Will's Act and the Administration of Estates Act, which is being repealed, the law with respect to obtaining a grant

of probate and letters of administration, is scattered and contained in a number of different pieces of legislation and/or sections of an Act.

For instance, the substantive provisions for the grant of probate is contained in Part 5 of the Supreme Court Act, which became law on 1st January, 1997, and even that Act saved the English probate practice and rules. So that an independent Bahamas is still operating under rules that are outdated British rules that we cling to, even though the British have long ago abandoned them.

I say this all the time that we in The Bahamas love what the colonial masters handed to us and then they themselves changed. When they changed we still said we love what you gave us, because clearly they don't know what they are doing; they knew what they were doing when they gave us this the first time. That's why when the British changed their laws on property back in 1925, we have still got in The Bahamas the Law of Conveyance and Property Act of 1881, and when we did try to change some of them in 2001/2002, there was hollering galore all over the land because we love this thing the British gave us long, long time ago.

The probate rules, Mr. Speaker, for non-contentious probate are now in the subsidiary legislation which have been in existence.....these rules have been in existence since the year 1917; and for the provisions governing the contentious ones that means where people are contending, they have been in existence since 1978. And where the laws in The Bahamas are silent the English probate rules is extended to The Bahamas so that laws are binded. We must look for the British own.

Let me say, Mr. Speaker, that this Bill began to be conceived while Members opposite were in office back in 2006. It was the Deputy Registrar at the time, Mrs. Cumberbatch, and the Law Reform Commission and others who were the lead persons in drafting or putting together

the proposals. The Bill will now repeal Part 5 of the Supreme Court Act and consolidate and modernize the law relating to the grant of probate or letters of administration or the resealing of a grant by a foreign court.

The existing provisions of the Supreme Court Act are all now contained in this Bill before us. To a large extent, the provisions have been rearranged and in some instances reworded for easier reading.

The Bill also seeks to put in the law provisions that are not now presently in any written law in The Bahamas, but which have been a part of the probate practice of The Bahamas for some time, and I refer members to Section 7, 8, 11, 13 14, 15, 17, 18 and 19.

The Bill claims to introduce a concept of a depositary for Wills, and I say claim because courts in The Bahamas have been assuming that such a power exists, even though there is no specific legal position to do so. And so it is not an entirely new concept insofar as The Bahamas is concerned but it is new in terms of our written law.

And so, it therefore seeks to establish a depositary, a place you can deposit a Will for a living person, thus enabling a person upon the payment of a subscribed fee to deposit their Will or other testamentary deposition in this depositary for safe custody, preservation under the control and direction of the Chief Justice, and the Bill makes provisions for the Registrar to cause Wills so deposited to be recorded.

A Will deposited under those circumstances will be opened for inspection by the testator, that is the person who making the Will, during his lifetime. And, of course, Mr. Speaker, for the benefit of the public, one can always change one's Will. A Will is not a permanent document until the person dies, and so you can as often as you like change your Will, tear it up and decide, listen, I was going to leave for Jack, he made me mad today so let me tear this up, let me make a

new Will, and you can always amend your Will to be what they call a The Bill also makes provision to be able to withdraw the Will, etc.

The Bill, in Section 4, Mr. Speaker, deals with the question of eligibility of persons who will be entitled to obtain a grant of representation with respect of an estate. Section 5 deals with the procedure for making application to obtain a grant of representation with respect to the estate. It specifically provides, Mr. Speaker, for application to be made to a probate division of the Supreme Court which includes any sub-registry of the Supreme Court, probate division. This is a new concept which will permit a sub-registry and will reduce the burdensome number of applications having to be made to the main Registry. At present, this feature will only be available in New Providence and in Grand Bahama, but it is the intention of the Government for this procedure to be available in other islands of The Bahamas without persons having to come to Nassau to do so. As in other islands, I don't each and every island. I would suggest that it be the more developed islands at the very beginning of the delegation of authority.

The Bill will allow for special administration, where a personal representative is abroad or in respect of a grant to a minority of an executor; minority meaning someone who is a child under the age of 18; and where somebody has made a child a co-executor. We will permit grants in the case of mental incapacity and to grant to attorneys, and grant where persons died outside of The Bahamas.

The Bill deals with removing some of the requirements for all the forms one has to sign and fill out to administer an estate. It provides for the resealing of grants of administration granted by foreign courts. It contains a number of miscellaneous provisions like, for instance under Section 53 where a bank manager is permitted without the production of probate or letters of administration to pay any person who provides satisfactory evidence of proof of death and any

other information the bank may require any sum (voice is inaudible) ... of someone who died provides any person seeking to access that fund makes a delivers a statutory declaration to effect. In addition, it permits for funds standing in (voice is inaudible)...of somebody's bank account be accessed under certain circumstance without having to go through the lengthy of procedure of having to advertise in the gazette, etc.

All and all, Mr. Speaker, the Bill will advance the administration of estate for our laws in relation to that. They are two minor amendments which need to be made to the Bill in Section 42, deletion of Sub-section clause 2 and 3, where the amendments which were made to the Supreme Court rules earlier allows for the non-payment of fees to estate and to fix the matters under \$50,000, non-payment of stamp duty. When this Bill was originally drafted they were requirements under the law and so they need to be deleted from the Bill.

Mr. Speaker, it is a good effort on the part of the Law Reform Commission and I commend the Bill to House and would therefore wish to move for the Second Reading and Passing of A Bill for an Act to Consolidate the Law on the Procedures for obtaining a grant of Representation in respect of the Estate of a Deceased Person and for the Administration of a Deceased Person's Property and for other matters related thereto.