

NEW LEGISLATION CHANGES PROBATE RULES

Being an Executor can be Taxing

Michael J. Prsa

The executor of an estate has many duties. One of them is to ensure that debts and taxes are paid before the estate is distributed to the beneficiaries.

In Ontario, there are two main types of taxes on death: income tax and probate tax (which is formally known as 'estate administration tax'). Although probate tax was tripled in 1992 from 0.5% to 1.5% of an estate's value, the Ontario government has not seen a corresponding increase in taxes collected. In May, 2011, the Ontario government passed legislation giving the Ontario Minister of Revenue the power to audit and reassess an estate within four years of the tax being payable. This legislation is to take effect **January 1, 2013.**

Executors will be under more pressure to verify the value of assets disclosed for probate purposes. Some speculate that the Minister of Revenue may even question or hold an executor accountable for assets that are usually not included in the probate tax calculation. The new legislation will also require executors to give the auditor reasonable assistance and to answer all questions in respect of an audit. The Minister will also have power to access third party premises and review third party records. It will be an offence for any person to assist the executor in making false or misleading statements: the minimum fine will be \$1,000 and the maximum, twice the amount of estate tax payable.

These changes will likely cause families to work harder at excluding assets from the probate tax calculation. There are many strategies for doing this, but each strategy must be assessed based on the facts of each case: not all strategies apply in all cases. It is dangerous to restructure how assets pass on death without understanding all the implications.

For example, a common probate tax minimization strategy involves the transfer of assets into joint



names with family members, or naming specific beneficiaries on certain plans. These strategies are not always appropriate; they can lead to complications and unexpected consequences. In some cases, transfers into joint names may create an income tax problem far greater than the probate tax that would be saved. Care should be taken to obtain proper advice from an estates lawyer.

At Lawrences, we have extensive experience in all aspects of estate planning and administration. We have helped many families minimize estate taxes payable and arrange their financial affairs to ensure that parental wishes can be carried out. Call us to determine how we can help you arrange your estate in a tax-efficient way.



Michael Prsa chairs Lawrences' Wills, Estates, and Trusts Group. A member of the Society of Trusts and Estate Practitioners, Mike focuses his practice on estate planning, estate administration and estate litigation. He can be reached at (905) 452-6880 or mjprsa@lawrences.com.

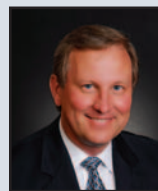
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Choosing the Right Lawyer

Expropriations are a highly specialized area of the law. The expropriating authority usually has a team of negotiators, lawyers, appraisers, and other experts, all of whom have extensive experience. Your legal counsel must be a match for this. Your lawyer must know the specialized area and the right experts. Your lawyer must have credibility with the opposing negotiator's lawyers, appraisers and experts. At Lawrences, we have had experience in all these steps, and have assembled a roster of appraisers and other experts whom we retain as required. We have represented clients in a wide range of expropriations

from simple road widenings up to multiple properties, multiple businesses, and varied damage claims. If your land is going to be expropriated, call us immediately.



Edwin G. Upenieks is a member of Lawrences' Litigation Group. Certified by the Law Society of Upper Canada as a Specialist in Civil Litigation, Ed has 28 years' experience as a litigator and has represented clients in many expropriations throughout southern Ontario. Ed can be reached at (905)

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