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Your First Estate Administration – May 29, 2014

To Probate or Not to Probate?

– That is the Question

by Chris Markou

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Introduction

You have probably heard of the term “probate”. Perhaps a prospective client has called and told you that a relative has died and he or she needs you to help them “get probate”. What are they referring to, and how can you assist?

The term “probate” is a throwback to the old term “Letters Probate”. Under the current legislative scheme in Ontario, the proper terminology is “Certificate of Appointment of Estate Trustee With (or Without) a Will”. Under the old system, if a person died testate (with a Will), the executor may need to apply for Letters Probate, and if a person died intestate (without a Will), in order to administer the estate, it may have been necessary for someone to apply for Letters of Administration. Rather than having Letters Probate in some instances and Letters of Administration in other circumstances, under the current regime, regardless of whether the person died testate or intestate, the executor would be applying for a Certificate of Appointment of Estate Trustee. It appears that one of the reasons for the change may have been to have a uniform name for the official document to be provided by the court. However, in practice it appears that most practitioners still refer to the old term “probate”.

Besides being easier to say (“probate” rolls off the tongue a lot easier than “Certificate of Appointment of Estate Trustee with a Will”), clients generally seem to be familiar with the term “probate”. From my experience, financial institutions will generally

advise their clients that they need to apply for “probate”, rather than a “Certificate of Appointment”. I generally use the term “probate” in dealing with my clients. It is prudent, however, to advise your clients of the proper terminology, as the Certificate of Appointment that will be received from the court will not have the word “probate” on it. In portions of this paper, I will use the term “probate” for ease of reference.

Pursuant to the *Rules of Civil Procedure*[1] (hereinafter referred to as the Rules, or individually as a Rule), Rule 74.01 defines an “estate trustee”, in part, as an “executor” or “administrator”, meaning the personal representative who is going to administer the estate. In practice, however, you may find that many people use the term “Executor”, which is the term that was formerly used to describe the personal representative of an estate with a Will. For the purposes of this paper, I have used both terms interchangeably, although there may be some technical differences between the role of an estate trustee and the role of an executor.

The following is a basic overview of probate procedure and practice in a simple estate administration, and is not an exhaustive determination of the issues involved. Indeed, every file has specific nuances that need to be addressed. This paper addresses the common issues encountered in a typical probate application. This paper will not explore complicating factors, such as applying to be an estate trustee during litigation, applications for a Certificate of Appointment of Succeeding Estate Trustee,

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[1] R.R.O. 1990, Regulation 194 under the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43.

administering an estate where there are multiple Wills of the deceased, or other such issues that will arise from time to time in an estate administration practice.

Background

The decision as to whether or not to apply for probate is usually out of your client's hands. Applying for probate involves substantial costs, typically in the thousands of dollars. In addition to legal fees, part of the application process involves payment of estate administration tax (sometimes referred to as "probate fees" or "probate tax") to the court. The quantum of the fees is described further below. There are limited circumstances where someone would voluntarily (i.e. when not required by a third party) apply for probate. A probate application is typically required as a result of the requirement of same by a financial institution or the requirements of a Land Registry Office.

There are some limited circumstances, however, under which an executor may voluntarily decide to apply for probate. Pursuant to subsection 61(1) of the *Succession Law Reform Act*[2] (hereinafter referred to as the SLRA), the limitation period for a dependent to make a claim against an estate does not start to run until the Certificate of Appointment is issued. Such person must bring such claim within 6 months of the granting of the Certificate of Appointment, although the court may extend such time

[2] R.S.O. 1990, Chapter S.26

period. An executor may choose to apply for probate for the purpose of triggering the commencement of this limitation period.

Nature of the Assets

Real Estate

The general rule under the Land Titles system in Ontario is that if a person dies owning real estate in his or her sole name, a probate application is required in order to permit the executor to deal with the property. There are limited exceptions that apply, such as if the total value of the estate is less than $50,000 or if the property may be dealt with pursuant to the "First Dealings" exemption. The "First Dealings" exemption may apply to certain properties that were purchased under the old Registry system and have not been dealt with since conversion to the Land Titles system. Note that this exemption does not apply if a probate application is otherwise necessary for the estate, and the value of the property would need to be included in the probate application.

Bank Accounts and Investments

If the deceased had substantial assets in his or her sole name with a financial institution, the financial institution may require a probate application in order to provide the executor with access to the funds. This depends on the policy of the particular institution. It appears that the reason for this policy is to protect the institution from the possibility of someone later alleging that the Will provided to the institution was not the

Last Will and Testament of the deceased. Pursuant to section 460 of the *Bank Act*[3], a bank is permitted wide latitude in determining what evidence it will require before releasing funds to an executor.

If the deceased held assets in joint names with right of survivorship, financial institutions generally appear to be content to remove the name of the deceased person from the account, thereby transferring legal ownership of the asset to the surviving joint owner. It may be the case that the deceased had added an adult child as a joint owner for the purposes of convenience, with the intention that the funds would fall into the estate on the death of the deceased. The Supreme Court of Canada case of *Pecore*[4] confirmed the law in such situations. There is a rebuttable presumption in such circumstances that the assets are held on a resulting trust, such that the assets will fall into the estate of the deceased on his or her death. There may be evidence that the intention of the deceased was to have the funds pass by right of survivorship to the joint owner. In the absence of such evidence, it is good practice to include the value of such assets in the value of the estate if a probate application is otherwise required, notwithstanding that the particular financial institution may not be requiring a probate application. Note that this is not the case with assets jointly owned by spouses.

Corporate Interests

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[3] S.C. 1991, c. 46

[4] Pecore v. Pecore, [2007] 1 S.C.R. 795, 2007 SCC 17

If there are corporate interests involved, and the executor is contemplating selling the corporate interests, a prospective purchaser may require a Certificate of Appointment in order to complete the purchase and sale.

Lack of Beneficiary Designation

Certain assets may pass, outside of the estate, directly to named beneficiaries. Such assets include registered investments such as RRSP's and RRIF's, Tax Free Savings Accounts, life insurance proceeds and pensions. If there is no beneficiary designation made on the plan or policy, the proceeds will be payable to the estate of the deceased. It is also possible that the deceased may have specifically named the estate as the beneficiary. In such cases, the financial institution may require a probate application in order to release the proceeds to the Executor.

Intestacy

Intestacy refers to the situation where a person dies without a valid Will. The person is said to have died "intestate". Without a Will, there is nobody legally entitled to act on behalf of the estate. Accordingly, in order for someone to access the deceased person's assets, it may be necessary to apply for probate.

Testacy

If a person dies having executed a valid Will, the person is said to have died "testate". Unlike an intestacy, the executor appointed in the Will has authority to act on behalf of the estate by virtue of the appointment in the Will. From a legal standpoint, the

executor does not need to apply for probate in order to obtain the legal authority to deal with the deceased person's assets. However, depending on the policies of a particular financial institution or the Land Registry Office, a third party may require that a Certificate of Appointment be received prior to permitting the executor to deal with the particular asset.

Who May Apply for Probate?

Intestacy

If the deceased died intestate, section 29 of the *Estates Act*[5] determines to whom the court will grant a Certificate of Appointment of Estate Trustee Without a Will. That section provides that administration of the property of the deceased may be committed by the Superior Court of Justice to:

> (a) the person to whom the deceased was married immediately before the death of the deceased or person with whom the deceased was living in a conjugal relationship outside marriage immediately before the death;
>
> (b) the next of kin of the deceased; or
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> (c) the person mentioned in clause (a) and the next of kin,
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> *as in the discretion of the court seems best* [emphasis added].

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[5] R.S.O. 1990, Chapter E.21

Generally, the only persons entitled to apply for probate in an intestacy are the spouse or common-law partner of the deceased or the next of kin. The order of next of kin in Ontario is laid out in sections 44-49 of the SLRA as follows:

1. Spouse;
2. Children;
3. Grandchildren;
4. Great-grandchildren;
5. Father or mother;
6. Siblings;
7. Nieces and nephews;
8. Other next of kin.

Note, however, that it is possible, pursuant to section 13 of the *Estates Act*, to obtain an order of the court that would permit someone other than the next of kin of the deceased to be appointed executor. Pursuant to section 5 of the *Estates Act*, probate shall not be granted in an intestacy to a person not residing in Ontario.

Testacy

If the deceased person died with a valid Will, the persons named as executors are entitled to apply for a Certificate of Appointment of Estate Trustee With a Will. If someone named as executor in the Will is not applying, an explanation must be provided to the court. Similarly, if someone not named as executor in the Will is applying, an explanation must be provided to the court. Further, if the spouse of the

deceased person is applying to be executor, and the spouse has elected to receive his or her entitlement under section 5 of the *Family Law Act*[6], an explanation must be provided to the court.

Where to Apply

Subsection 7(1) of the *Estates Act* states that, if the deceased resided in Ontario, a probate application shall be filed in the office for the county or district in which the deceased had at the time of death a fixed place of abode. If the deceased did not have a permanent residence in Ontario at the time of death, subsection 7(2) states that the probate application shall be filed in the office for the county or district in which the deceased had property at the time of death. If the deceased died owning property in more than one county, the probate application may be filed in any of the counties where the property is located. In all other cases, the probate application may be brought in any court office pursuant to subsection 7(3).

Materials Required

Note that pursuant to recent amendments to the *Estate Administration Tax Act, 1998*[7] (hereinafter referred to as "EATA"), it will be necessary to provide additional information on probate applications in the future. Please refer to the discussion below

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[6] R.S.O. 1990, Chapter F.3

[7] S.O. 1998, Chapter 34

under “Recent Amendments to the Estate Administration Tax Act, 1998”. The following sections reflect the current practice.

Application for Certificate of Appointment of Estate Trustee Without a Will

Pursuant to the Rule 74.05(1), the following documents must be filed:

1. Application for Certificate of Appointment of Estate Trustee Without a Will (Form 74.14 if an individual applicant, or Form 74.15 if a corporate applicant);
2. Affidavit of Service of Notice (Form 74.16) attesting that notice of the application (Form 74.17) has been served in accordance with subrules 74.05(2) to (5), with the Notice of Application marked as an exhibit to the Affidavit;
3. Renunciation (Form 74.18) from every person who is entitled in priority to be named as estate trustee and who has not joined in the application;
4. A consent to the applicant’s appointment (Form 74.19) by persons who are entitled to share in the distribution of the estate and who together have a majority interest in the value of the assets of the estate at the date of death;
5. The security (i.e. Bond) required by the *Estates Act*; and
6. Such additional or other material as the court directs.

Along with the above materials, an application for a Certificate of Appointment of Estate Trustee Without a Will must include Form 74.20 (the Certificate of Appointment of Estate Trustee Without a Will form itself), the backsheet for the Certificate of Appointment (Form 4C), and a payment of the Estate Administration Tax.

Application for Certificate of Appointment of Estate Trustee With a Will

Pursuant to the Rule 74.04(1), the following documents must be filed:

1. Application for Certificate of Appointment of Estate Trustee With a Will (Form 74.4 if an individual applicant, or Form 74.5 if a corporate applicant);
2. Original Will (and Codicil(s), if applicable) marked as an exhibit to the applicant's affidavit that is included on the application form, and a clean photocopy of the Will;
3. Affidavit of Service of Notice (Form 74.6) attesting that notice of the application (Form 74.7) has been served in accordance with subrules 74.04(2) to (7), with the Notice of Application marked as an exhibit to the Affidavit;
4. Affidavit of Execution (Form 74.8) of the Will and of every Codicil, with the Will/Codicil marked as an exhibit on the back of the signature page of the Will/Codicil, or if neither of the witnesses to the Will or the Codicil can be found, or both have died, such other evidence of due execution as the court may require;
5. If the Will or a Codicil is in holograph form, an Affidavit (Form 74.9) attesting that the handwriting and signature in the Will or Codicil are those of the deceased;
6. If the Will or a Codicil is not in holograph form but contains an alteration, erasure, obliteration or interlineation that has not been attested, an affidavit as to the condition of the Will or Codicil at the time of execution (Form 74.10);

7. Renunciation (Form 74.11) from every living person who is named in the Will or Codicil as estate trustee who has not joined in the application and is entitled to do so;
8. If the applicant is not named as an estate trustee in the Will or Codicil, a consent to the applicant's appointment (Form 74.12) by persons who are entitled to share in the distribution of the estate and who together have a majority interest in the value of the assets of the estate at the date of death;
9. In the case of an application for a Certificate of Appointment of Estate Trustee With a Will limited to the assets referred to in the Will, a draft order (Form 74.13.2) granting the Certificate of Appointment;
10. The security (i.e. Bond) required by the *Estates Act*; and
11. Such additional or other material as the court directs.

Along with the above materials, an application for a Certificate of Appointment of Estate Trustee With a Will must include Form 74.13 (the Certificate of Appointment of Estate Trustee With a Will form itself), the backsheet for the Certificate of Appointment (Form 4C), and a payment of the Estate Administration Tax. Note that if the Will refers to a memorandum that is incorporated into the Will by reference, the memorandum must be included with the application.

Marital Status

Note that the marital status of the deceased must be addressed in the probate application, regardless of whether or not the deceased had a Will. There are several

questions on the application form with respect to marital status. Depending on the answer provided, a schedule may need to be attached to provide additional details to the court. For example, in a probate application with a Will, if the deceased was married after the date of the Will, a schedule must be attached explaining why the Certificate of Appointment of Estate Trustee With a Will is being sought. The general rule in section 16 of the SLRA is that the Will of the deceased would have been revoked by the subsequent marriage, subject to limited exceptions.

Bonding

As part of the application process, it may be necessary to address the bonding requirement pursuant to section 35 of the *Estates Act*.

When a Bond Is Not Required

A bond is not required if the Executor is a resident of Canada or a country that is a member of the Commonwealth[8]. A bond is also not required if the Executor is a government agency (for example, the Public Guardian and Trustee) or a trust company authorized to do business in Ontario (subsection 36(1) of *Estates Act*). Pursuant to subsection 36(2) of the *Estates Act*, a bond shall not be required where the administration on an intestacy is granted to the surviving spouse of the deceased and where (a) the net value of the estate as computed for the purposes of section 45 of the

[8] http://thecommonwealth.org/member-countries

SLRA does not exceed the preferential share prescribed under subsection 45(6) of that Act (currently $200,000) and (b) there is filed with the application for administration an affidavit setting forth the debts of the estate. Note that “surviving spouse” does not include a person with whom the deceased was living in a conjugal relationship outside marriage.

When a Bond May Be Required

Section 35 of the *Estates Act* states, in part, that: “ Except where otherwise provided by law, every person to whom a grant of [*a Certificate of Appointment*] is committed shall give a bond to the judge of the court by which the grant is made […] with a surety or sureties as may be required by the judge […] and the bond shall be in the form prescribed by the rules of court, and in cases not provided for by the rules, the bond shall be in such form as the judge by special order may direct.” [Note: Italicized terms were inserted by the author for clarity].

Some of the situations where a bond must be addressed are as follows:

1. A Certificate of Appointment of Estate Trustee Without a Will is being applied for;
2. A Certificate of Appointment of Estate Trustee Without a Will is being applied for by the person with whom the deceased was living in a conjugal relationship outside marriage;
3. A Certificate of Appointment of Estate Trustee With a Will is being applied for and the estate trustee is not resident in Canada or in a country that is a member of the Commonwealth; and

4. The estate trustee with a will is not named in the Will as estate trustee.

If a bond is required, it is to be made in favour of the Accountant of the Superior Court of Justice and, pursuant to subsection 37(1) of the *Estates Act*, "shall be in a penalty of double the amount under which the property of the deceased has been sworn, and the judge may direct that more than one bond be given so as to limit the liability of any surety to such amount as the judge considers proper." In practice, however, the court may be willing to accept a bond amount equal to the sworn value of the estate were a licensed insurer is providing the bond.

Rule 74.11 provides that the bond may be received from either an insurer or personal surety. Unless the court orders otherwise,

(a) the bond must be of an insurer licensed under the *Insurance Act*[9] to write surety and fidelity insurance in Ontario (Form 74.32) or of one or more personal sureties (Form 74.33);

(b) a registrar of the court or a lawyer shall not be a personal surety;

(c) a personal surety must be a resident of Ontario who is not a minor;

(d) one personal surety is sufficient where the value of the assets of the estate does not exceed $100,000;

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[9] R.S.O. 1990, Chapter I.8

(e) the security required for a succeeding estate trustee shall be based on the value of the assets of the estate remaining to be administered at the time the application for a certificate of appointment as succeeding estate trustee is made; and

(f) the security required for confirmation by resealing of the appointment of an estate trustee, or for an ancillary appointment of an estate trustee, shall be based on the value of the assets of the estate over which the estate trustee seeks jurisdiction in Ontario.

Pursuant to subsection 74.11(2) any person, including a creditor, who has a contingent or vested interest in an estate may at any time, on notice to the estate trustee or applicant for appointment, move for an order to have a bond filed or the amount of an existing bond increased or reduced.

Applying to Dispense With the Bond

Pursuant to subsection 37(2) of the *Estates Act*, a judge has the authority, under special circumstances, to reduce the amount of the bond or dispense with the bonding requirement entirely.

The applicant must file an affidavit in support of his or her request for an order dispensing of the requirement to post a bond. The affidavit must confirm that the debts of the estate have been paid, and that the consent of the beneficiaries to the order dispensing with the bond has been filed. The affidavit may also indicate whether a

notice to creditors has been published, but this may not be required. The applicant must also file a draft order dispensing with the bond.

Order to Release a Bond

In situations where the court has required a bond to be posted, a motion must be made to the court in order to have the bond released.

Service of Notice of Application

Intestacy

Pursuant to Rule 74.05(2), notice of the application (Form 74.17) must be served on all persons entitled to share in the distribution of the estate (other than the applicant).

If a person who is entitled to share in the distribution of the estate is less than 18 years of age, notice of the application shall not be served on the person, despite subrule (2), but shall be served on a parent or guardian and on the Children's Lawyer (Rule 74.05(3)).

Pursuant to Rule 74.05(4), if a person who is entitled to share in the distribution of the estate is mentally incapable within the meaning of section 6 of the *Substitute*

Decisions Act, 1992[10] (hereinafter referred to as the SDA) in respect of an issue in the proceeding, notice of the application shall also be served,

(a) if there is a guardian with authority to act in the proceeding, on the guardian;

(b) if there is no guardian with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, on the attorney;

(c) if there is neither a guardian nor an attorney with authority to act in the proceeding, on the Public Guardian and Trustee.

Notice under Rule 74.05 shall be served on all persons, including the Children's Lawyer and the Public Guardian and Trustee, by regular lettermail sent to the person's last known address.

Testacy

Pursuant to Rule 74.04(2), notice of the application (Form 74.7) must be served on all persons entitled to share in the distribution of the estate (other than the applicant), including charities and contingent beneficiaries.

If a person who is entitled to share in the distribution of the estate is less than 18 years of age, notice of the application shall not be served on the person, despite subrule

[10] S.O. 1992, Chapter 30

(2), but shall be served on a parent or guardian and on the Children's Lawyer (Rule 74.04(4)). If there may be unborn or unascertained beneficiaries, notice of the application shall be served on the Children's Lawyer (74.04(5)).

Pursuant to Rule 74.04(6), if a person who is entitled to share in the distribution of the estate is mentally incapable within the meaning of section 6 of the SDA in respect of an issue in the proceeding, notice of the application shall also be served,

(a) if there is a guardian with authority to act in the proceeding, on the guardian;

(b) if there is no guardian with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, on the attorney;

(c) if there is neither a guardian nor an attorney with authority to act in the proceeding, on the Public Guardian and Trustee.

Notice under Rule 74.04 shall be served on all persons, including charities, the Children's Lawyer and the Public Guardian and Trustee, by regular lettermail sent to the person's last known address.

Who Are the Beneficiaries?

The above section indicates that all persons entitled to share in the distribution of the estate are entitled to receive notice of the application. Accordingly, it is necessary to determine who may be entitled to receive a portion of the estate.

Intestacy

If the deceased died intestate, sections 44-49 of the SLRA provide the rules for intestate succession. The order is the same as that indicated above in the section on intestacy under the heading “Who May Apply for Probate?”. Note that who the beneficiaries are may depend on the size of the estate. For example, if the intestate deceased died leaving a surviving spouse and children, and the value of the estate was $100,000, the surviving spouse would be entitled to receive the entire estate. However, if the value of the estate was $300,000, the spouse would be entitled to the preferential share (which is currently $200,000). The remaining portion would be divided in a certain proportion, depending on the circumstances, among the spouse and children. Note that if a child had predeceased the deceased leaving issue surviving, the issue of such child may be entitled to a portion of the estate. A careful examination of the forgoing sections of the SLRA is vital to ensuring that the beneficiaries are properly identified.

Testacy

It may be relatively easy to determine who are the beneficiaries of an estate where the deceased left a valid Will. However, in some cases there will be contingent beneficiaries (beneficiaries who will only be entitled to receive a portion of the estate if a certain condition is fulfilled). For example, the child of the deceased will receive the residue of the estate only if the spouse of the deceased is not alive 30 days after the death of the testator. There may also be unborn or unascertained beneficiaries of the

estate (persons who may benefit from the estate in the future, but who are not yet born or cannot yet be identified). For example, a portion of the estate has been left in a testamentary trust for an adult child ("A") of the deceased. The trust provisions indicate that if there is still a portion of the estate remaining in A's trust at the time of A's death, the portion remaining shall be equally divided among A's children then alive. Even if A has one or more children at the time of the testator's death, it is not possible to identify all of A's children that may be entitled to receive a portion of the estate at that time, as A may have additional children after the death of the testator. Pursuant to the above, the Office of the Children's Lawyer must be notified of the probate application in such cases.

Estate Administration Tax

Pursuant to section 2 of EATA, probate fees are payable by the estate of a deceased person immediately upon the issuance of a Certificate of Appointment. Subsection 2(6) indicates that the amount of the tax currently is $5 for each $1,000 or part thereof of the first $50,000 of the value of the estate, and $15 for each $1,000 or part thereof by which the value of the estate exceeds $50,000. This translates into roughly 1.5% of the value of the estate (which is to be determined as of the date of death, not as of the date of the application). There is no tax payable if the value of the estate is $1,000 or less (subsection 2(2) of EATA).

Although section 2 indicates that the tax is not payable until the issuance of the Certificate, the current practice is to submit the payment with the application in accordance with the requirements of section 3 of EATA.

If the value of the estate is unknown at the time of the application, it is possible to provide an estimated value to the court and to deposit the requisite amount of probate tax based on the estimated value. An undertaking signed by the applicant to report the full value of the estate must also be filed pursuant to subsection 4(3) of EATA. The undertaking must indicate that the applicant will, within six months after giving the undertaking, (a) file a sworn statement of the actual total value of the estate; and (b) pay any additional tax payable if the actual value is higher than the estimated value. Note that it is possible to request reimbursement from the court for an overpayment of probate tax if the initial deposit was too high, but such requests may not be successful.

Whether the original deposit of probate tax was based on an estimated value of the estate or not, if additional property belonging to the estate is subsequently discovered, the applicant must, within six months thereafter, deliver to the registrar a true statement of the total value, duly verified by oath or affirmation, of such newly discovered property and pay the requisite tax thereon (subsections 32(2) of the *Estates Act* and 2(7) of EATA).

Although the probate tax is due at the time of the application, the applicant may request, pursuant to subsection 4(2) of EATA, that the court make an order deferring the payment of the tax and issue the Certificate of Appointment prior to receipt of the

tax. The court may grant such an order in situations where the court is satisfied: (a) that the Certificate is urgently required, (b) that financial hardship would result from not issuing the Certificate before the deposit is made, and (c) that sufficient security for the payment of the tax has been furnished to the court. Note that the court must be satisfied as to all three of the foregoing prerequisites.

Document Search by Estate Registrar

After an application for a Certificate of Appointment of Estate Trustee is filed, the Estate Registrar will conduct a search of certain documents in the central registry pursuant to Rule 74.12(1) and section 17 of the *Estates Act*. Among other things, a search is conducted to determine whether the deceased had deposited a Will with the Superior Court of Justice, and more specifically, to confirm that if such a deposit was made, the Will on deposit is not dated later than the Will which forms part of the application. This may cause a delay in the issuance of the Certificate if the Will that forms part of the application is particularly old, and if the deceased had a common name. If one of these searches is not clear, the applicant must resolve the matter prior to the Certificate being issued.

Issuance of the Certificate

Once the requirements of the court have been satisfied, the Certificate of Appointment of Estate Trustee With/Without a Will will be issued by the court. If the deceased had a Will, a copy of the Will will be attached to the Certificate.

The turnaround time for receiving the probate application varies from court office to court office. It may be a matter of days, weeks or months. At the time of writing, the current turnaround time for applications brought in Peel Region is 6-8 weeks, while applications brought in Toronto may take several months. In all court offices, however, court staff is generally willing to expedite applications where there is a sense of urgency, such as an impending real estate sale.

Recent Amendments to the *Estate Administration Tax Act, 1998*

Pursuant to recent amendments to EATA, a new section 4.1 has been added to indicate that probate applicants must include additional information that they were not previously required to submit. Section 4.1 applies to applications made on or after January 1, 2013.

Pursuant to the new section, the applicant must give the Minister of Revenue such information about the deceased person as may be prescribed by the Minister of Finance (subsection 4.1(2)), and the information required shall be given within the time and in the manner as may be prescribed by the Minister of Finance (subsection 4.1(3)). Unfortunately, as of the time of writing this paper, the "information" has not yet been prescribed.

It is believed by many estates practitioners that the information that will need to be disclosed will be information with respect to (i) jointly owned assets (that pass by right of survivorship outside the estate) and (ii) assets that pass by way of beneficiary designation outside of the estate, such as life insurance proceeds, registered

investments and pensions. Attached to this paper is a copy of Form 16-14 that is currently used in probate applications in Saskatchewan. Note that applicants are required to disclose such information in Part II of that form. It is believed that the Ontario regulations will require similar disclosure.

Conclusion

As can be seen by the above cursory review of the typical issues in a probate application, there are numerous matters that must be carefully addressed. I have found that court staff is quite willing to assist with any questions or concerns with respect to probate applications. If in doubt, call the court or speak to a senior, experienced practitioner for guidance. Court staff refer to the Estates Procedure Manual[11] when processing probate applications. The forgoing is a summary of the relevant considerations in a typical probate application. Each case will turn on its specific circumstances, and a careful review of the relevant legislation is vital to a successful estate administration practice.

[11] The manual is a very useful tool when preparing probate applications, and a copy of the manual may be obtained from the government. Requests can be made by mail to the Ministry of the Attorney General, Freedom of Information and Privacy Office, McMurty-Scott Building, 720 Bay Street, 5th Floor, Toronto, ON M7A 2S9, or by phoning 416-326-4300. The Ministry may charge application and processing fees for providing the manual.