



## ADMINISTERING ESTATES: The Role of a Solicitor Revisited

by Ian M. Hull

The recent decision of Justice Pierce of the Superior Court of Justice in *Rooney Estate v. Stewart Estate*<sup>1</sup> addressing several important issues relating to the administration of an estate, the passing of accounts and the role of a solicitor.

In *Rooney Estate v. Stewart Estate*, the Applicant sought an Order requiring the estate solicitor to pass his accounts. The deceased had died in December of 2000 and she had named her niece as her estate trustee. A Certificate of Appointment was obtained in March 2001 and the estate trustee retained a solicitor in relation to the administration of the assets which exceeded \$600,000.00.

The central issue related to the question of legal fees and disbursements charged by the estate solicitor. The Court held that the Estate was a simple one to administer as there were no complexities such as real estate holdings or minor children interests.

The question of compensation was not contentious and was payable in the amount of \$30,000.00. However, the fees charged by the solicitor, in excess of \$30,000.00 was in dispute. Furthermore, there were contentious estate accounting fees to be paid in the amount of \$4,600.00.

The Court set out a clear delineation as between the role of the estate trustee and the role of the solicitor.

The Court held (at paragraph 17) the estate trustee is responsible for:

1. arranging for the funeral and disposition of remains;

2. locating the Will and instructing the solicitor to apply for the appropriate grant of appointment;
3. locating all of the assets of the Estate, including making arrangements to secure, preserve, and dispose of such assets in accordance with the terms of the Will;
4. advertising for creditors and paying all debts of the Estate including the filing of appropriate tax returns;
5. preparing a set of accounts for the approval of the beneficiaries or the Court, as is required; and
6. distributing the Estate.

The Court went on (at paragraph 20) to set out the duties of a trustee, or an estate trustee in keeping accounts:

1. to keep clear and accurate accounts of the Estate, rendered at appropriate intervals to the beneficiaries;
2. to keep the accounts distinct from other accounts;
3. to retain supporting documents for all accounts;
4. to produce to any beneficiary the accounts when requested. Income or revenue beneficiaries are entitled to have accounts at reasonable intervals; accounts must be presented to residuary beneficiaries when entitled to possession;
5. to make all beneficiaries fully aware of their rights;



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6. to disclose any and all breaches of trust;
7. to allow all beneficiaries adequate time to investigate the accounts;
8. to ensure that all beneficiaries have competent, independent advice in reviewing the accounts;
9. to notify all interested beneficiaries of any Court audit.

In assessing the role of the estate trustee and her solicitor, the Court attempted to clarify the delineation of payment of executor's compensation and payment of solicitor's fees. The Court made it clear that the estate trustee (paragraph 21) may retain a solicitor to help with the Estate; however, the role of solicitor is to apply for a Certificate of Appointment for the trustee and to attend upon a passing of accounts. The Court emphasized the distinction between the solicitor's work and the work of estate trustee as described in *Smith Re*<sup>2</sup>:

*The executor is entitled to employ a solicitor and charge for his services but not for work which he might have properly done himself. The solicitor is solicitor for the executor and not of the estate; and costs recoverable by him against the*

*executor can be charged against the estate by the executor only if he shows they are necessary and proper charges against the estate. An executor is not entitled to employ a solicitor to do work which he could do, such as writing ordinary letters, attendances, and paying premiums on policies, attending to the bank to make transfers and other ordinary attendances; services which an ordinary layman ought to do without the intervention of a solicitor.*

The Court held that in this administration, the solicitor (at paragraph 25) erred in charging to the Estate, fees that were incurred in performing trustee's work.

The Court made it clear that while it is proper to render an account for trustee's work done by the solicitor, the account must be rendered to the trustee, to be paid out of her compensation.

In summary, it appears that the delineation role of executor and estate trustee has been further emphasized, and the Court has re-affirmed important guidelines in respect of the administration of an estate.

2 [1972] 2 O.R. 256 (Ont. Sur. Ct.) at 261.

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