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Updated Probate Rules for Small Estates

In 2015, the Law Commission of Ontario released its final report for the Simplified Procedures for Small Estates. Since that time, there has been speculation as to how and when the law might be updated to make it less onerous to obtain the authority to administer an estate in Ontario when dealing with limited assets, with the process of applying for a Certificate of Appointment of Estate Trustee With or Without a Will (often referred to as “probate”) being the same regardless of the size of an estate.

Along with other amendments to the law fast-tracked during COVID-19 in an effort to enhance access to justice, changes are being made to Ontario’s Estates Act, RSO 1990, c E.21, and its regulations (under the Smarter and Stronger Justice Act, 2020, SO 2020, c 11) to incorporate some of the recommendations included in the Law Commission’s 2015 report. Specifically:

- Estates valued at \$150,000.00 will be considered to be “small estates”.
- An addition to the Estates Act (new sub-section 7(4)) will refer to procedures to apply for probate in respect of small estates;
- An administration bond will not be required in respect of most small estates;
- The probate application materials for authority to administer a small estate will be made easier to complete and file with the court, including a simplified application form and fewer required supporting documents (such as a commissioned affidavit of service, which can increase the applicant’s costs and/or necessitate the assistance of a lawyer);
- Additional resources will be made available to those applying for probate in respect of small estates.

These changes come into effect April 1, 2021.

Notably, the upcoming legislative amendments do not alter the provisions of the Estate Administration Tax Act, 1998, SO 1998, c 34, regarding the payment of Estate Administration Tax (more frequently referred to as “probate fees”). While estates valued at less than \$150,000.00 may be considered small for the purposes of a probate application, only those valued at \$50,000.00 or less are fully exempt from probate fees. The changes can nevertheless be expected to make estate administration more accessible and less costly for estates valued under \$150,000.00.