

# THE PROBATER

VOLUME 21, NUMBER 1, JANUARY 16, 2015



HULL & HULL LLP  
Barristers and Solicitors

## New Regulations, Reporting Requirements and Returns under the *EATA*

By Josh Eisen

In 2011, amendments were made to Ontario's *Estate Administration Tax Act, 1998*<sup>1</sup> (the "*EATA*") to provide for expanded reporting requirements and enforcement powers, promising new regulations to follow. There was speculation in the wills and estates community that this might bring an end to a number of estate planning techniques which had become popular as ways of reducing the amount of estate administration tax payable. The long-awaited regulation<sup>2</sup> came into force on January 1, 2015, providing some guidance as to what effects this will have on applications for certificates of appointment of estate trustee going forward.

Section 4.1 of the *EATA* provides that, upon an application for a certificate of appointment of estate trustee, the estate representative must provide information about the deceased person to the Minister of Revenue. The new regulation details the nature of the information that now needs to be disclosed, and the corresponding form, the "Estate Information Return" (the "**Return**"), provides the format for this disclosure.

### New Reporting Requirements

Under the new rules, persons applying for a certificate of appointment of estate trustee with or without a will are required to file the Estate Information Return within 90 days after the issuance of the certificate.<sup>3</sup> Under the regulation, the Return is only deemed to be given to the Minister on the day that it is received, so it is advisable to file it in advance of the deadline.<sup>4</sup>

The regulation provides a detailed list of the information that will need to be reported on the Return.<sup>5</sup> In general, details about the application for the certificate

of appointment, the deceased person, and the estate representative must be included in the Return. The regulation also requires detailed information about the assets of the estate.

For real property, the Return asks for the fair market value of the property at the date of death, the municipal address, the value of any encumbrances, the assessment roll number under the *Assessment Act*<sup>6</sup>, and the property identifier number under the *Land Titles Act*<sup>7</sup> or *Registry Act*<sup>8</sup>.

For cash and investments, a description including the type of asset, the number of units held at death, particulars of the asset including the particular series of bonds or shares, contact information of the adviser or financial institution, and account number (if applicable) are required.

For other kinds of assets, the type of asset and other identifiers (such as the VIN on a vehicle or HIN on a boat) must be included. If any assets were held as tenants in common with another, the percentage of the deceased's ownership at the time of death should be included as well.

The estate representative is required to certify that information given in the Return and in any supporting documents is true, correct and complete. A failure to provide accurate and honest disclosure can result in penalties including a fine of at least \$1,000, imprisonment for up to two years, or both.<sup>9</sup>

**Continued on back**

## Multiple Wills

Contrary to some speculative concerns expressed by the wills and estates bar prior to the release of the regulation, the new regulation does little to affect the Ontario practice surrounding the use of multiple wills as an estate planning tool. The Return provides that if the certificate of appointment is limited to the assets referred to in the will, only assets included in that will are to be listed on the Return. Further, the *EATA*'s definition of "value of the estate" refers to section 32 of the *Estates Act*, which provides that where an application or grant is limited to only part of the deceased's property, it is sufficient to set out only the value of property intended to be affected by the application or grant.<sup>10</sup>

## Joint Assets

Assets passing outside of the estate, including the proceeds of life insurance policies and assets held jointly with right of survivorship, do not need to be included on the Return and it continues to be the case that no estate administration tax is payable on these assets. However, if the asset was transferred into joint tenancy for convenience purposes only

and therefore the deceased held the beneficial interest in that asset, it must be declared as an estate asset and tax will be payable thereon. Accordingly, it may be advisable to include in a secondary (non-probate) will any beneficial interests in assets where legal title is held jointly with another.

## Questions

There are still many open questions as to how these regulations will affect estate administrations going forward. How will these new regulations be applied by the Ministry? How aggressively will auditors be scrutinizing Estate Information Returns? Will information about assets passing outside of the estate be sought by the Ministry on an audit?

As the regulation is brand new, we simply do not have all of the answers yet. As assessments and audits begin, a clearer picture will begin to take shape. Wills and estates professionals will be keeping a close watch on developments in this area as they begin to take shape.

## BREAKFAST SERIES

### We have a 2-part Breakfast Series on Effective Charitable Giving

#### Part 1:

Understanding Gifts and

Charitable Foundations

(February 25, 2015)

#### Part 2:

Drafting Charitable Gift Clauses and

Foundation Clauses

(June 3, 2015)

Please review the attached form for more details on these two upcoming seminars.

- 1 S.O. 1998, c. 34, Sch.[*EATA*].
- 2 *Information Required Under Section 4.1 of the Act*, O. Reg. 310/14.
- 3 *Ibid.*, s. 1.
- 4 *Ibid.*, s. 2.
- 5 *Ibid.*, s. 3.
- 6 R.S.O. 1990, c. A.31.
- 7 R.S.O. 1990, c. L.5.
- 8 R.S.O. 1990, c. R.20.
- 9 *EATA*, *supra* note 1, s. 5.1.
- 10 R.S.O. 1990, c. E.21, s. 32(3).



**HULL & HULL LLP**

Barristers and Solicitors

*Trust Experience™*

## Editor: Suzana Popovic-Montag

141 Adelaide St. W., Suite 1700,  
Toronto, Ontario M5H 3L5  
Tel: (416) 369-1140 Fax: (416) 369-1517  
spopovic@hullandhull.com  
www.hullandhull.com