



HULL & HULL LLP
Barristers and Solicitors

Probate Applications and Proof of Death

In January 2016, the [Rules of Civil Procedure](#) were amended to require that applications for a Certificate of Appointment of Estate Trustee include proof of death. This filing requirement applies to both probate applications in respect of an intestacy and where a Last Will and Testament has been left behind.

The *Rules* define proof of death as documentary evidence that a person has died, which is typically in the form of a death certificate.

Death certificates are most often issued by a funeral director, but can otherwise be issued by the Registrar General. Funeral directors normally receive a copy of the Medical Certificate of Death along with the deceased person's body and can, therefore, attest to the identity of the deceased and the fact of his or her death on the specified date. Some organizations may require an official death certificate that is issued by the provincial government – for example, some life insurance companies may require a death certificate issued by the Province of Ontario before releasing the proceeds of a policy to its beneficiary. If a death certificate has been issued, but is lost or destroyed prior to the filing of a probate application, a replacement certificate may be ordered through the [Service Ontario website](#).

An Order granted under the [Declarations of Death Act, 2002](#), can also be acceptable proof of death for the purposes of a probate application. An application is typically made under the *Declarations of Death Act* only in situations where a person has either disappeared in circumstances of peril or has been missing for greater than seven years, and is presumed to be dead.

Solicitors assisting clients in preparing probate applications should ensure that proof of death is obtained and preserved, such that it may be readily available for filing with the probate application, in light of the update to the *Rules of Civil Procedure* in this regard. In circumstances where the *Declarations of Death Act* may apply, steps should be taken to obtain an Order declaring the person dead well in advance of whenever probate may be required. Ensuring that these steps are taken in a timely manner will ultimately assist in preventing unnecessary delays in the administration of an estate.