



HULL & HULL LLP
Barristers and Solicitors

Trust Experience™

Considerations Relevant to Estate Trustee Compensation

Drafting solicitors and other lawyers who may act as and/or for estate trustees are already aware that financial compensation is normally paid out of the assets of an estate to the individuals by whom it is administered. Compensation may be paid pursuant to the Last Will and Testament appointing the trustee or, otherwise, in accordance with the [*Trustee Act*](#).

Typically, an estate trustee is entitled to compensation equivalent to 2.5% of each of capital receipts, capital disbursements, revenue receipts, and revenue disbursements, as well as a care and management fee of 2/5 of 1% of the average annual value of the estate assets. When the outcome of such a calculation does not result in the payment of what is considered to be reasonable compensation in the circumstances, the following five factors may also be considered:

1. The size of the trust;
2. The care and responsibility involved in the administration;
3. The time occupied in administering the trust;
4. The skill and ability shown by the trustee; and
5. The degree of success resulting from the administration.

In addition to the general compensation calculation guidelines, lawyers should keep in mind several important points when advising clients with respect to a potential compensation claim:

- Compensation paid to an estate trustee will be treated as taxable income in the hands of the trustee. Depending on the circumstances (and, specifically, whether the trustee is also a residuary beneficiary of the estate), it may or may not make sense to claim compensation.
- If multiple estate trustees have administered an estate, the compensation to which they are entitled will be split by the number of trustees. If the estate trustees agree that one of them will do

the bulk of the work involved, it would be prudent to formalize such an agreement and to ensure that the compensation to which each would otherwise be entitled is adjusted accordingly.

- If all residuary estate beneficiaries do not consent to the compensation sought, an application to pass accounts may be required. An application to pass accounts has the potential to become contested litigation, for which the estate trustee(s) and other parties are exposed to potential costs consequences.
- If an estate trustee delegates general duties to professionals, the payment of the professionals will not be subject to compensation calculations. Further, if the work conducted by the professionals is considered to be work that ought to have been done by the trustee him or herself, any related charges may be payable out of the compensation to which the estate trustee is otherwise entitled.