



HULL & HULL LLP

Barristers and Solicitors

Trust Experience™

Protecting Estate Trustees from Future Liability

When assisting clients with the administration of an estate, it is important that they understand the potential liability that they may face relating to their conduct in administering an estate. Typically, the only way to protect an estate trustee from any potential claims relating to the administration is to obtain signed releases from all residuary beneficiaries or to pass accounts.

A recent decision of the Ontario Court of Appeal (sitting as the Divisional Court) highlights the potential liability relating to the administration of an estate and the ability of a beneficiary to object to the manner of administration of an estate many years after death. In *Wall v Shaw*, [2018 ONCA 929](#), the Court refused to strike out objections pertaining to entries from more than two years earlier in an estate accounting.

An accounting can be compelled many years down the road, notwithstanding that some may argue that a two-year limitation period applies to seeking damages relating to the accounts and that an ultimate fifteen-year limitation period ought to apply in any event. The decision in *Wall v Shaw* suggests that an objection to accounts is not a “claim” that would be statute-barred after two years and, accordingly, liability relating to an estate trustee’s conduct may extend well beyond two years after date of death and/or two years after the disputed transaction.

When assisting an estate trustee client, solicitors should consider the importance of obtaining a release from all beneficiaries prior to making final distributions. Without a formal release, the best way to protect a client from liability arising from the administration of an estate is to apply to pass accounts. In circumstances where the beneficiaries of an estate refuse (or are unable, as may be the case with a minor or a party under another legal disability) to sign a release, it is prudent to advise estate administration clients of the option of passing accounts.

Similarly, it may also be prudent, when acting for estate beneficiaries, to keep in mind that the standard limitation period may not apply to objections in respect of passings of accounts and that it may be possible to pursue such remedies regardless of the amount of time that has passed since death.