



**HULL & HULL LLP**  
Barristers and Solicitors

### **When Can an Estate Trustee Renounce?**

We often encounter situations where an estate trustee named in a will no longer wishes to act for a multitude of reasons. Sometimes, by the time of the testator's death, the named estate trustee will wish to decline the position because of age or health reasons. In others, an estate trustee may not wish to continue acting because the duration of the administration is longer or the extent of responsibility is greater than he or she had previously realized, or because relationships with beneficiaries have deteriorated over time.

The options in terms of choosing not to act as estate trustee depend on whether the named estate trustee has begun acting.

#### **Renunciation of Estate Trustee**

Only before an estate trustee begins acting can he or she validly renounce by signing a Renunciation of Right to Certificate of Appointment of Estate Trustee with a Will. The original Renunciation will be filed as part of the application for a Certificate of Appointment that is subsequently filed with the court. It may also be prudent to provide written notice of the renunciation to individuals with an interest in the estate.

A renunciation after an estate trustee has freely accepted the role as estate trustee may not be considered to be effective, whether a Certificate of Appointment of Estate Trustee with a Will has been issued or not.

#### **Removal of Estate Trustee**

While clients may think that the assistance of a court in ordering the removal of an estate trustee is unique to contentious estate proceedings, a court order (even if granted on consent) is necessary to give formal effect to the termination of the appointment if the estate trustee has taken any steps in the administration. Section 37 of the *Trustee Act*, RSO 1990, c T.23, describes the process for the removal of an estate trustee by court order.

A court order formally removing the estate trustee can be an important step in protecting the former estate trustee from liability relating to the administration of the estate going forward, especially if a co-trustee continues to act unilaterally with no clear end date to the role.

#### **Retirement/Replacement of Trustee**

Where the administration of an estate is complete, other than the administration of a testamentary trust, such as a Henson trust or spousal trust, the trustee may be able to resign by deed without

the intervention of the court. Sections 2 and 3 of the *Trustee Act* describe the process for the retirement of a trustee and appointment of a new trustee.

### **Passing of Accounts**

Regardless of which option may be applicable in terms of ceasing to act as estate trustee, it is advisable in many cases for clients who have acted in these capacities to apply to pass their accounts in respect of the administration to protect themselves (and their families, if a claim is made after the former trustee's death) from liability in the absence of releases signed by all beneficiaries and/or a release and indemnity signed by a new or continuing estate trustee.