

Simplified Procedures for Small Estates

Consultation Questionnaire For Anyone Who Has Administered a Small Estate in Ontario

The Law Commission of Ontario (LCO) is an independent organization that studies laws and makes recommendations to the government about how to make laws fairer, easier to use, and more effective. You can find more information about us on our website, here: www.lco-cdo.org.

In this project, we are studying Ontario's probate system. Probate is a court procedure which provides evidence that someone administering the estate of a deceased person is legally authorized to do so. "Administering an estate" means gathering the deceased's assets, paying debts and distributing what is left to the beneficiaries. We want to know how well the probate system is working for people administering small estates. We have not yet settled on the definition of "small" estate but it is most likely **less than \$100,000** and maybe even **less than \$50,000** (before debts and expenses are paid).

We are interested in your story whether you applied for probate or administered a small estate without probate.

This questionnaire is **mainly directed at individuals** who have administered a small estate in Ontario, either with or without legal or other professional assistance. If you are a **lawyer or other professional**, we encourage you to respond to the Questions for Feedback in the Consultation Paper available at the LCO's website.

We will use your answers to help us understand how the law is working and to make recommendations for change. We will not use your answers for any other purpose. **No one except the people at the LCO will be allowed to see the answers to your questions.** We will never give out your name or personal information. If we write about your experiences in our report, we will do it in a way that others cannot identify you.

Completing This Questionnaire

- You can answer our questions in the way that is easiest for you. You can write the answers to our questions on this form and mail it back to us at the address below,
- fill out this form on your computer and email it back to us as an attachment,
- fill out the form on our website, here: <http://lco-cdo.org/en/small-estates-consultation-questionnaire>,
- or call us using our local or toll-free telephone numbers, and we will write the answers down for you.

To Contact Us

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You do not need to answer all of the questions. You can answer only the questions that are important to you

Deciding Who Should Administer the Estate

1. Have you administered what you consider to be a small estate? If yes, please continue.

 2. What was your relationship to the deceased?
 - Member of the deceased's family.
 - Friend of the deceased.
 - Lawyer or other professional retained to assist with the estate administration.
 - Other - please describe.
-

This questionnaire is mainly intended for laypeople administering small estates. Lawyers and other professionals are encouraged to respond to the Questions for Consideration in the Small Estates Consultation Paper at the LCO website.

3. (a) Did the deceased leave a will?
 - Yes
 - No

(b) If there was a will, were you named as executor?

 - Yes
 - No

4. If you answered "no" to Q. 3(a) or (b), briefly explain why you administered the estate.
-
-
-

5. Was there any dispute over who should administer the estate? If so, who was involved and how was it resolved?
-
-
-
-

Beneficiaries

6. Who were the beneficiaries of the estate? Tell us their relationship to the deceased (not their names). Choose all the answers that apply.

- | | |
|--|--|
| <input type="checkbox"/> Spouse (such as, husband, wife, common-law partner) | <input type="checkbox"/> Other relative (such as a niece or nephew, cousin, aunt or uncle) |
| <input type="checkbox"/> Adult child (including a step child) | <input type="checkbox"/> Friend |
| <input type="checkbox"/> Minor child (under 18 years) | <input type="checkbox"/> Charity |
| <input type="checkbox"/> Brother or sister (including step brothers or sisters) | <input type="checkbox"/> Other - please tell us their relationship to the deceased: |
| <input type="checkbox"/> Parent (such as mother, father, stepfather, stepmother) | _____ |

7. How many beneficiaries were there in total?

- 1 – 3
- 4 – 6
- 7 or more

8. Were any of the beneficiaries minor children (under 18 years) or mentally incapable?

- No
- Yes. How did you deal with this?

9. Was it easy or difficult to contact the beneficiaries? If difficult, tell us why.

Value of the Estate

10. Please tell us what kinds of assets were owned by the deceased. **Indicate whether each asset was part of the estate or not part of the estate.** If you do not know, please answer DK (short for “I don’t know”).

(Assets that are not part of the estate are those that transfer directly to a beneficiary, either because they are jointly-owned or because they have a designated beneficiary, such as the designated beneficiary of a life insurance policy or RRSP.)

Assets	Asset Included in the Estate	Asset Outside the Estate (Jointly-Owned Assets or Assets with Designated Beneficiary)	Estimated Value of the Asset
Bank Accounts			
Real Estate (e.g. House)			
Vehicle			
Cash			
Jewellery or other Personal Items of Value			
CPP Death Benefit			
Registered Investment Accounts (e.g. RRSP, TSFA, RRIF)			
Non-Registered Investment Accounts (e.g. GIC, Stocks, Bonds)			
Insurance Policy Proceeds			
Pension Entitlement			
Money Owed to the Deceased			
Business Assets (e.g. Inventory, Accounts Receivable)			
Other (What kind?)			
Other (What kind?)			

11. What was the approximate total value of the estate (before debts and expenses were paid)?

Estimated Total Value of the Estate: _____

12. How much of the deceased's assets formed part of the estate (i.e. did not transfer directly to a beneficiary)?

- All the assets were part of the estate.
- Most of the assets were part of the estate.
- About half of the assets were part of the estate
- A small portion of the assets were part of the estate
- None of the assets were part of the estate.

13. Were there debts to be paid out of the estate? If so, how much was owed compared to the value of the estate?

- A small portion of the value of the estate went to pay debts
- Roughly half of the value of the estate went to pay debts
- Most or all of the value of the estate went to pay debts

Hiring a Lawyer

14. Did you hire a lawyer or other professional to help you with the probate application?

- Yes
- No

15. If you hired a lawyer or other professional, why? Choose all the answers that apply.

- The lawyer had the will
- It was more convenient and the estate could afford it
- The probate application process was too complicated to do on my own
- There was a dispute among family members
- Other – tell us the reason

16. What did your lawyer charge you for assisting with the probate application? _____

17. Was the lawyer's fee based on an hourly rate, a flat fee or other? _____

18. If you did not hire a lawyer or other professional, why not? Choose all the answers that apply.

- It was too expensive relative to the value of the estate
- It was too expensive generally
- I could handle it myself
- Other – tell us the reason

19. If you did not hire a lawyer, did you have other assistance obtaining probate? Who helped you?

- I obtained probate on my own
- Court staff answered my questions
- I got a book about Ontario probate from the library or bookstore
- I used the Law Society of Upper Canada’s guide to obtaining probate on the internet
- I got free advice from a legal clinic
- I spoke to a volunteer lawyer or law student
- I spoke to a friend who had gone through the probate process before.
- Other - please explain

Questions about Probate

IF YOU DID NOT APPLY FOR PROBATE, PLEASE SKIP TO Q. 29.

20. Why did you apply for probate for the estate? Choose all the answers that apply.

- My lawyer advised me to do so
- I needed probate to collect the estate assets
- I needed probate to file the deceased’s final tax return
- Other. Please explain

21. In what region of Ontario did you file your probate application? Name the municipality, county or district.

22. What kinds of costs were involved in applying for probate and how much did it cost in total? Choose all the answers that apply.

- Legal fees
- Appraisals
- Cost of obtaining a bond
- Estate administration tax
- Other - please explain

Estimated Total Cost of Obtaining Probate: _____

23. Do you think that the cost of probate was reasonable in relation to the value of the estate?

- Reasonable
- Too expensive

If too expensive, what part of the process was too expensive?

24. Roughly how long did it take for the court to grant probate after you or your lawyer filed the application?

25. How easy or difficult was it for you or your lawyer to gather the necessary information, send the necessary notices and satisfy the court that probate should be granted?

26. If the probate process was difficult, please identify and describe the reason(s) for this. Choose all the answers that apply.

- Difficult finding someone to administer the estate
- Difficult searching for or finding a will
- Difficult finding correct court forms to fill out
- Difficult completing the court forms
- Difficult finding someone to swear the affidavit
- Difficult locating beneficiaries
- Difficult valuing the assets
- Difficult calculating tax owing
- Complications because of handwritten or altered will
- Difficult obtaining bond
- Extra steps because there were minor or incapable beneficiaries
- Family disputes
- Practical difficulties such as health, age or living far away from the court or the deceased's home
- Other - please describe

27. What kinds of assistance would have made it easier for you to obtain probate without a lawyer? Choose all of the answers that apply.

- Simpler court forms
- Plain language guide to obtaining probate
- Telephone help line
- Duty counsel located at court registry offices
- Service for having affidavits sworn
- Online interactive application process
- Other - please explain

28. Would you be willing to pay a small fee for the forms of assistance listed above?

- Yes
- No

Administering the Estate Without Probate

IF YOU APPLIED FOR PROBATE, SKIP TO QUESTION 32.

29. Why did you decide not to apply for probate? Choose all the answers that apply.

- It was too expensive
- The estate was too small to bother
- There was no need because the beneficiaries agreed on how to administer the estate
- There was no need given the types of assets in the estate
- Other - please explain

30. How easy or difficult was it to administer the estate without probate? Please briefly describe any of the following or other difficulties you had.

- Collecting the deceased's assets
- Opening an estate account
- Filing the deceased's final tax return

31. Was the estate administered to everyone's satisfaction (you, the beneficiaries, the creditors, other family members)? If there were problems, please briefly explain.

Your Opinion

PLEASE ANSWER THE FOLLOWING QUESTIONS WHETHER OR NOT YOU APPLIED FOR PROBATE.

32. When you hear the phrase “small estate”, what amount do you think of? _____

33. I think that Ontario’s probate system plays an important role in protecting the beneficiaries and creditors of both large and small estates from fraud or improper administration.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

34. Please tell us anything else that you would like to about your experiences with Ontario’s probate system.

Some Information About You

The LCO would like to ask some questions about you. Your answers will help us understand the kinds of experiences that different people have administering small estates in Ontario, and to make sure that we are hearing from people with many different experiences. However, **you do not have to answer these questions if you do not want to.**

35. What is your age?

- Under age 25
- Age 25 – 44
- Age 45 – 64
- Age 65 – 84
- Age 85 or older

36. Are you a person with a disability or disabilities?

- No
- Yes. Please identify your disability or disabilities: _____

37. What is your gender? _____

38. How would you describe your race or ethnicity? _____

39. Do you identify as an Aboriginal person? If so, with which Aboriginal nation(s) or community(ies) do you identify? _____

40. What is your primary language? _____

41. What is the highest level of education that you have attained?

- Public school
- Some high school
- High school diploma
- Some college or university
- College or university diploma
- Graduate or professional schooling

42. Have you been living in Canada for less than 10 years?

- Yes
- No

Your Contact Information

Would you like to be added to our mailing list for this project, so we can send you information about other consultations or future reports and recommendations? **You do not have to provide your contact information if you don't want to.**

- Yes, please add me to your mailing list
- No, please do not contact me

If you would like to be added to our mailing list, please provide us with your contact information, depending on how you prefer to be contacted:

Name: _____

Address: _____

E-mail address: _____

Telephone Number (optional): _____