



Communication to STEP members in Ontario August 13, 2020

Submission to the Ontario Government RE: Justice Sector Consultation on Estates Law

STEP has been asked to provide its views on changes to Estates law in Ontario, including but not limited to making some of the recent temporary changes to executing documents permanent. As we seek to ensure our members voices are included in our submissions, we would ask that you provide us with any thoughts you may have on the proposals below. We note that some are quite substantive and it is important that STEP's views be represented in the development of any changes. We have been provided a brief timeline in which to respond, so please send your thoughts to consultation@step.ca **no later than Wednesday, August 19th**. We will then prepare submissions on behalf of the STEP branches and chapter in Ontario reflecting the views of our members. The request from the Province is as follows:

Our government has been working with justice partners to simplify Ontario's complex and outdated justice system to make it easier, faster and more affordable for people to resolve legal issues. As part of this effort, we introduced the *Smarter and Stronger Justice Act, 2020*. We are pleased to inform you that the *Smarter and Stronger Justice Act, 2020*, including amendments to the *Estates Act*, received Royal Assent on July 8, 2020.

The amendments to the *Estates Act* include the authority to establish a regulation to prescribe a small estates value. The amendments pertaining to small estates will come in to force on proclamation at a later date. This approach was taken to allow the Civil Rules Committee an opportunity to review the changes and consider any amendments to the *Rules of Civil Procedure* and forms that may be required and, to allow for consultation with the estates bar on the value of small estates.

We are writing to invite you to provide us with your written input on the appropriate defined value of "small estate" to be set out in regulation.

As you know, the Law Commission of Ontario's (LCO) report on *Simplified Procedures for Small Estates*, published in 2015, recommended that "small estate" be defined as estates "valued up to \$50,000". We understand that this number was chosen so as to exclude most real property transactions in Ontario.

In Spring 2019, the Ministry of Finance's amendments to the *Estate Administration Tax Act, 1998* were passed to provide a tax exemption for estates valued under \$50,000. This exemption aligns with the LCO's 2015 recommendations and took effect on January 1, 2020.

Given the passage of time, we are interested in understanding what members of the estates bar would consider to be an appropriate value for small estates. Is the \$50,000 limit still appropriate or should another value be chosen to better reflect the world in 2020? Would any procedural difficulties arise if the two amounts do not align?

In addition to continuing to implement the LCO's recommendation on small estates, we are also

exploring other areas of estates law reform to modernize estates law and streamline and expedite the resolution of estates. In that regard, we would also appreciate your thoughts on the following questions:

- When the emergency order that grants the ability to witness the making of a will or the execution of a power of attorney through audio-visual communication technology, and the ability to sign identical copies in counterpart, should be lifted and no longer in effect;
- Whether the ability to witness the making of a will or the execution of a power of attorney through audio-visual communication technology, and the ability to sign identical copies in counterpart, should be made permanent;
- Whether section 16 of the *Succession Law Reform Act* (SLRA), which provides that a will is revoked upon marriage, should be repealed;
- Whether section 17 of the SLRA, which revokes a bequest to a former spouse upon divorce, should be extended to spouses that have been separated from the deceased for two years or longer, or where a court order or agreement intended to permanently finalize the dissolution of the marriage is in place;
- Whether the court should be granted greater latitude in validating or rectifying an improperly prepared will;
- Whether estates administration should be simplified by providing that only heirs to a specified degree of consanguinity are entitled to an estate on intestacy and requiring more distant relatives to obtain a court order or relief from forfeiture under the *Escheats Act*; and
- Whether the preferential share for spouses under the SLRA, which is currently set at \$200,000 and has not been updated since 1995, should be changed.

We would also be interested in hearing any other proposals for estates law reform that you may have.

Best regards,

Paul Taylor, STEP Ottawa Regional Branch Chair

Elaine Blades, STEP Toronto Regional Branch Chair

Justin Hoffman, STEP Southwestern Ontario Regional Chapter Chair.

About STEP: The Society of Trust and Estate Practitioners is the leading international organization for trust and estates professionals. Headquartered in London, England, it has more than 22,000 members worldwide in 95 countries.

STEP Canada, founded in 1998, has 3,000 members with branches in the following cities and regions: Atlantic, Montreal, Ottawa, Toronto, Winnipeg, Calgary, Edmonton, Vancouver and chapters in Okanagan Valley, Saskatchewan, and Southwestern Ontario. STEP is a multi-disciplinary organization with the most experienced and senior practitioners in the field, including: lawyers, accountants, financial planners, insurance advisors and trust professionals. They provide domestic and international advice on trust and estates, including planning, administration and related taxes.

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