



**Manitoba Law
Reform Commission**

UPDATING THE ADMINISTRATION OF SMALL ESTATES IN MANITOBA

Final Report

March 2018



UPDATING THE ADMINISTRATION OF SMALL ESTATES IN MANITOBA

Library and Archives Canada Cataloguing in Publication

Manitoba Law Reform Commission

Updating the Administration of Small Estates in Manitoba

(Report ; 135)

Cover title.

Includes bibliographical references.

ISBN 978-0-7711-1589-9

The Commission's Reports are available electronically at www.manitobalawreform.ca.

Commissioners: Cameron Harvey, Q.C., President
Hon. Madam Justice Lori T. Spivak
Jacqueline Collins
Michelle Gallant
Sacha Paul
Myrna Phillips

Legal Counsel: Kristal Bayes
Elizabeth McCandless

Administrator: Linda Manson

The Commission offices are located at 432–405 Broadway, Winnipeg, MB R3C 3L6.

Tel: (204) 945-2896 **Email:** mail@manitobalawreform.ca
Fax: (204) 948-2184 **Website:** <http://manitobalawreform.ca>

The Manitoba Law Reform Commission is funded through grants from:



ACKNOWLEDGEMENTS

The Commission gratefully acknowledges the Honourable Gerry Jewers, former Commissioner and member of the Law Society of Manitoba's Access to Justice Stakeholders' Committee for proposing this project of law reform and former student interns Jesse Epp-Fransen and Svetlana Chechelnitsky, Faculty of Law, University of Manitoba and summer student Alexa Lecomte, University of North Dakota, for their research contributions to this project.

The Commission would also like to thank the following individuals for providing valuable feedback on this project: Karen Dyck, former Executive Director, Legal Help Centre; Natasha Brown, Seneca Longclaws, and Kara Hague, Legal Help Centre; Mary Troszko, Jennifer Dunik and Sean Young, Community Legal Education Association; Sandra Prairie, Former Registrar, Manitoba Court of Queen's Bench; Ginette Le Sann, Acting Registrar, Manitoba Court of Queen's Bench; Anita Southall, Fillmore Riley LLP; John Fergusson, Deputy Public Guardian and Trustee-Legal Services; Irv Simmonds, Deputy District Registrar, Winnipeg Land Titles Office; Kelly Dickson, Roy Johnston TDS LLP; Heather Dixon, Dixon Law; and Dennis Smith, Hook & Smith Barristers and Solicitors.

Please note that the information provided and recommendations made in this report do not necessarily represent the views of those who have so generously assisted the Commission in this project.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	vi
RÉSUMÉ	vii
GLOSSARY.....	viii
CHAPTER 1: INTRODUCTION.....	1
CHAPTER 2: BACKGROUND	3
1. Probate.....	4
2. Letters of Administration	5
3. Summary Administration of Small Estates	6
CHAPTER 3: OTHER CANADIAN JURISDICTIONS	9
1. Specialized Procedures for Small Estates	9
(a) Saskatchewan.....	9
(b) Northwest Territories.....	10
2. Other Types of Small Estate Procedure	11
3. No Specialized Small Estate Procedure	12
(a) Ontario	12
(b) British Columbia	13
CHAPTER 4: THE NEED FOR REFORM	15
1. The Consultation Process.....	15
2. Recommendations.....	15
(a) Increasing the monetary jurisdiction.....	16
(b) Disclosing inventory of assets	19
(c) Residency requirement	20
CHAPTER 5: SUMMARY OF RECOMMENDATIONS.....	23
APPENDIX A.....	25

EXECUTIVE SUMMARY

The Court of Queen’s Bench Surrogate Practice Act (“*The Surrogate Practice Act*”) governs the administration of estates in Manitoba. The Act provides for a simplified process under Section 47 whereby estates falling under the monetary jurisdiction can be administered in a less onerous and more cost efficient way. This simplified process, known as the summary administration of small estates, applies to estates valued at \$10,000 or less (including real and personal property.)

The Manitoba Law Reform Commission (“the Commission”) has chosen to study the administration of small estates as part of its *Access to Courts and Court Processes* initiative, which identifies specific legislative amendments that can be made to improve access to court processes and promote the efficient administration of justice in Manitoba. This Final Report considers possible amendments to improve the legislation and procedure related to the summary administration of small estates under *The Surrogate Practice Act*.

The Commission recommends that the monetary jurisdiction for the summary administration of small estates should be increased. Rather than making any sweeping changes to the process, the Commission concludes that procedure is simply in need of updating to reflect the rising value of estates in the province since the Act was last amended. The Commission also makes recommendations to the disclosure of assets requirement under the summary administration process, which, if implemented, would help to clarify and improve the process. Finally, the Commission proposes a residency requirement for administrators under the summary administration rule.

In making its recommendations, the Commission seeks to strike a balance between the goals of accessibility, efficiency and affordability on the one hand, and ensuring the legal protection of estates from mismanagement and fraud, on the other.

RÉSUMÉ

La Loi sur la pratique relative aux successions devant la Cour du Banc de la Reine (Loi sur la pratique relative aux successions) régit l'administration des successions au Manitoba. L'article 47 de la Loi prévoit un processus simplifié selon lequel les successions qui ne dépassent pas la compétence monétaire fixée peuvent être administrées d'une manière moins onéreuse et plus économique. Ce processus simplifié, connu sous le nom d'administration sommaire des petites successions, s'applique aux successions dont la valeur est estimée à 10 000 \$ ou moins (biens réels et personnels compris).

La Commission de réforme du droit du Manitoba (la Commission) a choisi d'étudier l'administration des petites successions dans le cadre de son projet intitulé Accès aux tribunaux et processus judiciaires, qui vise à déterminer les modifications législatives qui pourraient être faites pour améliorer l'accès aux processus judiciaires et favoriser l'administration efficace de la justice au Manitoba. Ce rapport final considère les modifications qui pourraient améliorer les dispositions législatives et la procédure applicables à l'administration sommaire des petites successions en vertu de la Loi sur la pratique relative aux successions.

La Commission recommande l'augmentation de la compétence monétaire pour l'administration sommaire des petites successions. Au lieu de faire de vastes changements au processus, la Commission conclut qu'il faut simplement mettre à jour la procédure afin de refléter la valeur croissante des successions dans la province depuis la dernière modification de la loi. La Commission fait aussi des recommandations sur l'exigence de divulgation des actifs prévue dans le processus d'administration sommaire qui, si elles sont mises en oeuvre, aideraient à clarifier et améliorer le processus.

Dans ses recommandations, la Commission cherche à parvenir à un équilibre entre les objectifs d'accessibilité, d'efficacité et d'abordabilité d'une part, et la protection juridique des successions contre la mauvaise gestion et la fraude, d'autre part.

GLOSSARY

- Administrator:** A person appointed by the Court to handle the estate if the testator does not name an executor in their will, or no will exists.
- Beneficiary:** A person named in a will to receive some of the estate.
- Estate:** After a person's death, their assets and liabilities make up their estate.
- Executor:** A person named in a will to carry out the terms of the will.
- Letters of Administration:** Documents issued by the Court authorizing an administrator to deal with an estate.
- Personal Representative:** General term used to describe both administrators and executors.
- Probate:** The Court process of proving that a will is valid and administering the estate under supervision of the Court.
- Testator:** A person who has made a will.

CHAPTER 1: INTRODUCTION

Every Canadian province and territory has laws and procedures in place that govern how an estate is to be administered after a person's death. In Manitoba, *The Court of Queen's Bench Surrogate Practice Act* (“*The Surrogate Practice Act*”)¹ governs the administration of estates, whether there is a will or not. The rules in place serve to protect estates from fraud and mismanagement. The ordinary process for obtaining probate carries with it legal and administrative costs as well as time and administrative burdens. But what happens in the case of relatively small estates, where the costs associated with administering the estate may be disproportionately high compared to the value of the estate? In these cases, the estate available for distribution may be depleted. Alternatively, the personal representative for the estate may choose not to administer the estate at all.

In 1938, the Legislative Assembly of Manitoba adopted a practical solution to this problem, which was to create a separate stream for the administration of small estates.² This separate stream, known as the summary administration of small estates, was designed to be much simpler and less costly than the regular procedure. In order to be eligible for this simplified process, the value of an estate must fall within a monetary limit prescribed by statute. The current limit is \$10,000 and includes both personal property and real property.³

This Final Report considers possible amendments to improve the legislation and procedure related to the summary administration of small estates under *The Surrogate Practice Act*. The primary areas addressed are: (1) whether the monetary jurisdiction should be increased; (2) whether the disclosure of assets requirement should be clarified and improved; and (3) whether the residency requirement for administrators appointed by letters of administration ought to expressly apply to administrators of small estates.

This project is part of a wider Commission initiative entitled *Access to Courts and Court Processes*, which identifies specific legislative amendments that can be made to improve access to court processes and promote the efficient administration of justice in Manitoba. While the Commission recognizes that the changes proposed in this report only address one aspect of a large and multifaceted access to justice problem, the recommendations, if implemented, would allow more people to access the simplified process for the administration of estates where the value is small enough that the ordinary cost of estate administration renders the act impractical. Although there are many identified barriers to accessing the justice system, it is well established that the cost and complexity are two such barriers.⁴

¹ CCSM c290 [*The Surrogate Practice Act*].

² *The Surrogate Courts Act*, SM 1937-38, c 11.

³ *The Surrogate Practice Act*, *supra* note 1, s 47(1).

⁴ See *Hryniak v Mauldin*, 2014 SCC 7, [2014] SCR 87 at para 1.

Chapter 2 of this Final Report describes the administration of estates under *The Surrogate Practice Act* with a focus on the summary administration of small estates. Chapter 3 discusses the approaches taken to deal with small estates in other Canadian jurisdictions. Chapter 4 explores the need for reform and makes recommendations to improve and update the summary administration of small estates in Manitoba. Chapter 5 provides a summary of the recommendations made in this report.

CHAPTER 2: BACKGROUND

When a person dies, it can be said that the person has died either testate (having made a valid will) or intestate (not having made a will at all or having an invalid will.) In either situation, laws are in place to deal with the deceased person’s affairs, such as collecting the person’s assets, paying any debts, including taxes, and distributing the remainder of the estate. Probate is the term used to describe the court process establishing the validity of a will, if there is one, and a personal representative’s authority to act on behalf of the estate.

The Surrogate Practice Act governs the administration of wills and estates in Manitoba. It gives the Court of Queen’s Bench jurisdiction over all testamentary matters and causes.⁵ In order to formalize the administration of the deceased’s estate, someone must apply to the Court of Queen’s Bench for either a Grant of Probate or Letters of Administration. Probate is granted in the case of a valid will, and administration is granted in all other cases, upon the application of the appropriate person. In the case of relatively small estates, there is also a simplified procedure known as the summary administration of small estates.

The purposes of probate, administration and the summary administration of small estates are: (1) to validate the will, if there is one; (2) to establish the authority of the estate representative (also known as the executor in the case of probate, the administrator in the case of administration, and generically the personal representative) to receive the deceased’s assets and otherwise administer the deceased’s estate according to the will or rules of intestate succession law; (3) to provide a shield for estate representatives from liability; (4) to provide a public record of estates for interested persons; and (5) to educate to some extent estate representatives of their responsibilities.

According to statistics provided by the Court of Queen’s Bench Registry - Probate Division,⁶ grants of probate are the most common type of grant, letter or order granted:

<u>QB Registry Filings</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Grants	2738	2827	2680	2655
Letters of Administration	547	512	560	579
Letters of Administration with Will Annexed	94	83	87	133
Section 47 Orders	216	212	215	209
TOTAL	3595	3634	3542	3576

⁵ *The Surrogate Practice Act*, *supra* note 1, s 6. Pursuant to s 1, “matters and causes testamentary” includes “...the granting of probate of wills and letters of administration of estates of deceased persons having property in the province, and the revocation thereof, and all matters and causes relating thereto or arising therefrom.”

⁶ Statistics provided by Sandra Prairie, Court of Queen’s Bench Registry, 26 April 2017 and Ginette Le Sann, Court of Queen’s Bench Registry, 29 January, 2018.

Although the statistics are not available, a comparison of Queen’s Bench Registry filings and Vital Statistics registered deaths suggests that the majority of estates do not go through a formal probate process. According to Vital Statistics, in the 2014/2015 fiscal year, 10,981 deaths had been registered compared to fewer than 4,000 grants, letters or orders. Similarly, in 2015/2016, 10,513 deaths had been registered while fewer than 4,000 grants, letters or orders had been issued.⁷ Although there may be reasons why estate administration may not be required for some deaths, such as death of a minor, it is reasonable to assume that many estates do not go through any formal administration process.⁸

The following section will provide background into the procedure for probate, administration and the summary administration of small estates in Manitoba.

1. Probate

The procedure for probating a will is prescribed in the *Court of Queen’s Bench Rules* (“QB Rules”), Rule 74.⁹ In order to have a will probated, the executor must make a Request for Probate to obtain a Grant of Probate from the court, which is needed in order for the executor to deal with the assets and debts of the deceased person.¹⁰ It typically involves a lawyer collecting information from executors and financial institutions before preparing the Request for Probate. Additional documents such as Letters of Direction and Transmissions for real property or financial assets may also be required, depending on the nature of the estate. Next, the Request for Probate, together with the probate fees, is filed with the court for review by a judge. The judge, if satisfied with the information, will issue a Grant of Probate.

The ordinary procedure for probating a will under *The Surrogate Practice Act* carries with it legal and administrative costs as well as time and administrative burdens. Probate fees are the fees paid by the executor to the provincial government upon submitting the Request for Probate or Administration. *The Law Fees and Probate Charge Act*¹¹ establishes the fees payable for the administration of estates in Manitoba. For estates over \$10,000, the fees are calculated at \$70 plus

⁷ Manitoba, *Vital Statistics Agency 2015/2016 Annual Report* at 16, available online:

<https://vitalstats.gov.mb.ca/pdf/2016_vs_annual_report_en.pdf>. Note that a precise statistical comparison is not possible with the information available, since the court registry information is based on the calendar year while the Vital Statistics recorded death statistics are for the fiscal (April 1 to March 31) year.

⁸ This conclusion is consistent with findings in other Canadian jurisdictions. For example, see Law Reform Commission of Nova Scotia, *Probate Reform in Nova Scotia* (March 1999) at 41. Available online: <http://www.lawreform.ns.ca/Downloads/Probate_FIN.pdf>. “Comparing the number of deaths with the number of estates opened each year, it appears that only approximately 30% of Nova Scotia estates are formally probated” at 41.

⁹ *Court of Queen’s Bench Rules*, Man Reg 553/88 [QB Rules].

¹⁰ *Ibid*, Rules 74.02(1).

¹¹ CCSM c L80.

\$7 for every additional \$1,000 or fraction thereof.¹² For an estate valued at \$25,000, for example, the probate fee would be \$175.

Personal representatives to an estate will often retain a lawyer to assist with probating the will or administration of the estate. The QB Rules provide what types of services can be claimed by lawyers for fees payable, such as: receiving instructions and providing advice; reviewing the will; preparing the required documents to obtain probate or administration of the estate; filing documents with the court; assisting the personal representative in settling debts; preparing documents for land transfers; and advising and assisting the personal representative in distributing the estate property in accordance with the will or intestate succession provisions.¹³ The legal fees associated with probating a will are governed by the QB Rules, which sets out the following formula:

- 3% on the first \$100,000, or portion of that amount, of the total value of the estate, subject to a minimum fee of \$1,500;
- 1.25% on the next \$400,000, or portion of that amount, of the total value of the estate;
- 1% on the next \$500,000, or portion of that amount, of the total value of the estate; and
- 0.5% on the total value of the estate over \$1,000,000.¹⁴

For an estate valued at \$25,000, for example, the legal fee would be \$1,500 plus disbursements. Taking into account both probate and legal fees, the cost of administering an estate valued at \$25,000 would be approximately \$1,675.

The rules also provide that legal fees are reduced to 40% of the fees reproduced above if the executor is a trust company, the Public Trustee, or a lawyer who is acting as both the executor and the lawyer.¹⁵

Note that in addition to the legal fees set out above, there may be additional fees the lawyer is entitled to receive for services such as appearances in court, keeping and preparing the accounts of the personal representative or where the estate is above average in terms of complexity.¹⁶

2. Letters of Administration

Administration orders are granted by the Court of Queen's Bench Probate Division to appoint a person or persons to administer a deceased person's estate. Letters of administration orders are typically made when there is no will, and the appointed person will administer the estate according

¹² See Schedule to *The Law Fees and Probate Charge Act*, *ibid*.

¹³ QB Rules, *supra* note 4, Rule 74.14(8).

¹⁴ QB Rules, *ibid*, Rule 74.14(6).

¹⁵ QB Rules, *ibid*, Rule 74.14(7).

¹⁶ QB Rules, *Ibid*, Rule 74.14(9).

to intestate succession laws, although administration orders may also be used when there is a will but the court must appoint a person or persons to administer the will (known as letters of administration with will annexed.)¹⁷

Although there are some differences, for the purposes of this report the procedure for obtaining an administration order is similar to the procedure for probating a will.

3. Summary Administration of Small Estates

In addition to probate and administration, the Legislative Assembly of Manitoba has enacted a simplified process to deal with relatively small estates. In the case of small estates, the cost of obtaining probate or administration was seen as so costly and the process so arduous as to induce the government to provide a simplified procedure, known as the summary administration of small estates.

The summary administration process was added to *The Surrogate Courts Act*¹⁸ in 1938. The original monetary limit was \$300 and the process applied only to personal property. The monetary limit was subsequently increased to \$1,000 for all property in 1968,¹⁹ followed by an increase to \$5,000 in 1983.²⁰ The most recent increase took place in 1996, where the limit was increased to \$10,000.²¹

The Surrogate Practice Act allows the court to dispense with probate or administration in estates valued at \$10,000 or less, whether there is a will or not.²² Pursuant to Section 47(1), the court may issue an order for distribution of the estate according to the law:

Summary administration of small estates

47(1) Where it appears to the court that the total value of all the property of a deceased does not exceed \$10,000, so far as can be reasonably ascertained, the court, without the grant of probate or administration, may order that the personal property be paid or delivered to such person as the court directs, to be disposed of by him as the court directs in

- (a) paying the reasonable funeral expenses;

¹⁷ See *Surrogate Practice Act*, *supra* note 1, s 1: “Administration refers to all letters of administration of property of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes.”

¹⁸ SM 1937-38, c 11.

¹⁹ SM 1968, c 14.

²⁰ SM 1982-83-84, c C290.

²¹ SM 1996, c17, s 2.

²² *Surrogate Practice Act*, *supra* note 1, s 47(1).

(b) paying the debts of the deceased; and

(c) paying over any balance in accordance with the terms of the will, if any, or to the next of kin, or if there is no next of kin or if none can be conveniently found, paying over the balance to the Minister of Finance to be credited to the Consolidated Fund;

and may order that the real property be vested in such person as the court directs and that the proceeds therefrom be disposed of as provided in clauses (a), (b) and (c); and any such order dealing with the real property shall be conclusively deemed to be an order made under section 176 of *The Real Property Act*.

Subsection 47(3) clarifies that, in cases where section 47(1) applies, the provisions of the Act dealing with probate or administration do not apply.

QB Rule 74.15(2) deals with summary administration of small estates. The procedure is much simpler than obtaining probate or administration. It directs that a person may swear an affidavit requesting an order pursuant to Section 47 of *The Surrogate Practice Act*, in order that the person may administer the property of the deceased.²³ (Note, however, that the court has discretion in whom to appoint as administrator.²⁴) The administrator of the estate must fill out a form for Request for Order under Section 47 (74BB) and an Order under Section 47 form (74CC), as provided in the QB Rules.²⁵ The person who fills out the forms is required to identify themselves and their relationship to the deceased, as well as some other information related to the deceased's surviving next of kin, if applicable. The form includes a declaration that the property of the deceased does not exceed \$10,000 and the applicant must describe the real property included in the estate. The document must be signed in front of a Notary Public or Commissioner for Oaths. If there is a will, it must be attached to the application as an exhibit.²⁶

The cost of getting a Section 47 Order is minimal; the filing fee is \$70.00. The procedure is not complicated and can be done without the assistance of legal counsel, although the applicant will still need to have their signature witnessed by a Notary Public or Commissioner for Oaths, so the process still requires the applicant to take the added step of identifying an appropriate person to witness their signature.

All applications (regardless of type) are filed with the Court of Queen's Bench, Probate Division and undergo the same review. When an application is filed, a Deputy Registrar will review it for compliance with the QB Rules, *The Surrogate Practice Act*, and applicable directives. Next, it will

²³ If there is no will, *The Intestate Succession Act*, CCSM, cI85, sets out the priority of claims to an estate.

²⁴ *Surrogate Practice Act*, *supra* note 1, s 14.

²⁵ QB Rules, *supra* note 4, Forms 74BB and 74CC.

²⁶ The Community Legal Education Association (CLEA) provides a step-by-step guide for the procedure under section 47 of the *Surrogate Practice Act*. Available online: <http://www.communitylegal.mb.ca/wp-content/uploads/Estates-Under-100001.pdf>.

be forwarded to a Court of Queen's Bench General Division judge or rejected and returned. The judge will review the application and either grant the order or reject it.

CHAPTER 3: OTHER CANADIAN JURISDICTIONS

There is considerable variation in the administration of small estates in Canada. This section will briefly review the procedures in other Canadian jurisdictions.

1. Specialized Procedures for Small Estates

Saskatchewan and the Northwest Territories are the only other Canadian jurisdictions that have specialized court procedures for small estates.

(a) Saskatchewan

Saskatchewan's *Administration of Estates Act*²⁷ provides for a simplified process for small estates.

Section 9(1) of the Act provides:

Disposal of property under certain amount without grant

9(1) On the application of any person interested, which may be made ex parte unless a judge orders otherwise, a judge may, without granting letters probate or letters of administration, order that the personal property of a deceased person be paid or delivered to a person named by the judge to be disposed of by that person as the judge directs and in accordance with subsection (2), where:

- (a) the deceased owned no real property in Saskatchewan that will pass through the estate; and
- (b) the value of the personal property of the deceased does not exceed the amount prescribed in the regulations.

The monetary limit is currently \$25,000.²⁸ Saskatchewan's process for small estates applies only to estates where the deceased owned no real property, as opposed to Manitoba's process, where the value of the estate can include real and personal property. Similar to Manitoba, there is no requirement to give notice to beneficiaries or creditors.

Although the simplified procedure under Section 9 applies only to estates where the deceased owned no real property, the *Administration of Estates Act* also provides assistance in cases where estates are small but do contain real property. Section 7 of the Act provides that, in the case of

²⁷ SS 1998, c A-4.1, ss 9(1).

²⁸ *Ibid*; *The Administration of Estates Regulation*, RRS c A 4.1, Reg 1, s 8.2. The monetary limit was increased from \$5,000 to \$25,000 in 2008, at which point the limit was moved from the Act to the regulations (see *The Administration of Estates Amendment Act, 2008*, c 2, s 9.)

estates below a certain monetary limit (currently \$15,000 as per the regulations²⁹), the local registrar will assist in completing probate or letters of administration:

Duty of local registrar re documents

7(1) On the request of an individual described in clause (b), the local registrar shall prepare the necessary papers leading to a grant of letters probate or letters of administration, as the case may require, and the bond required, if any, and administer the oaths where:

- (a) the value of the estate of the deceased person does not exceed the amount prescribed in the regulations;
- (b) letters probate or letters of administration are sought by an individual who:
 - (i) is a resident of Saskatchewan; and
 - (ii) is a person, other than a creditor, entitled to seek letters probate or letters of administration; and
- (c) the individual who makes the request provides the material required by the local registrar and pays the fee prescribed in the regulations.

(2) When letters probate or letters of administration are granted in an estate where the value of the estate of the deceased person does not exceed the amount prescribed in the regulations, the local registrar shall endorse the letters probate or letters of administration with the notation prescribed in the regulations.³⁰

Where Section 7 applies, probate or letters of administration is still required, but the local registrar can prepare the documents, meaning no application for probate or administration needs to be made.

The *Administration of Estates Act* also empowers the public guardian and trustee to administer estates under \$25,000 without a grant, even where there is real property.³¹

(b) Northwest Territories

Northwest Territories very recently enacted a simplified procedure for the administration of small estates. On January 31, 2017, the *Estate Administration Rules*³² introduced a new procedure under Part 1, Division 1. Section 10 provides:

10. (1) In this rule, "small estate" means an estate of a deceased if the net value of the estate reasonably appears to be less than \$35,000.

²⁹ *The Administration of Estates Regulation, ibid*, s 8.1(1).

³⁰ *Administration of Estates, supra* note 28, s 7.

³¹ *Administration of Estates Act, ibid*, ss 44.1.

³² NWT R-123-2016.

(2) A person other than the Public Trustee may, instead of applying for a grant, apply to the Court for a declaration that an estate is a small estate.

(3) A person other than the Public Trustee who applies for a declaration that an estate is a small estate shall complete and file with the Clerk

(a) an Application for Declaration of Small Estate in Form 2; and

(b) a Memorandum and Affidavit in Support of Application for Declaration of Small Estate in Form 3.

(4) If the Court is satisfied that an application made under this rule is in respect of a small estate, the Court may declare that the estate is a small estate and order that the applicant

(a) is authorized to administer the estate of the deceased; and

(b) may use any of the property in the small estate to

(i) pay reasonable funeral expenses,

(ii) pay the debts of the deceased, and

(iii) pay any remaining balance to those entitled under the terms of the will, or if there is no will, to those entitled under the *Intestate Succession Act*; and

(c) do any other thing under these Rules that would be required of a personal representative in respect of an estate.

The procedure under the Northwest Territories' Act applies to estates with a net value of \$35,000 or less. Similar to Manitoba, this simplified procedure applies even where the estate contains real property. Proceeding under this provision will not result in a grant of probate, but will result in a court order that will have the same effect as a grant.

2. Other types of Simplified Procedure

In Alberta, the *Public Trustee Act*³³ provides that the Public Trustee may take possession of and administer small estates where no one has been granted probate.³⁴ This simplified process is only available if the estate does not contain real property and it is valued at less than the prescribed limit, which is currently \$10,000.³⁵ The *Public Trustee Act* also allows the Public Trustee to take

³³ SA 2004, c P-44.1.

³⁴ *Ibid*, s 13.

³⁵ *Ibid*; *Public Trustee General Regulation*, AR 241/2004, s 2.

possession of and administer estates of up to \$75,000³⁶ where no one else has been granted probate.³⁷ The procedural requirements under this provision are more onerous. Under both these provisions, there is no obligation on the Public Trustee to undertake the administration of any small estate so it only applies if the Public Trustee elects to administer an estate.

Similar provisions that allow the Public Trustee to administer small estates can be found in New Brunswick,³⁸ Nova Scotia,³⁹ Newfoundland and Labrador.⁴⁰

In 1999, the Law Reform Commission of Nova Scotia published a report entitled *Probate Reform in Nova Scotia*. In the report, the Law Reform Commission rejected the notion of using monetary limits as criteria for a simplified procedure for the administration of estates, arguing that monetary values may not accurately determine whether or not an estate is simple. Instead, the report recommended that estates should proceed through the probate system as a contentious estate, a non-contentious estate, or entirely outside the court system.⁴¹ Subsequent to the publication of the report, a new *Probate Act*⁴² was enacted in Nova Scotia.

3. No Specialized Small Estate Procedure

Both Ontario and British Columbia do not have a simplified process for the administration of small estates. Interestingly, law reform agencies in both provinces have recommended that such a process be implemented.

(a) Ontario

In 2015, the Law Commission of Ontario (“LCO”) released a Final Report on *Simplified Procedures for Small Estates*,⁴³ which recommended a procedure similar to Manitoba’s and Saskatchewan’s for estates valued up to \$50,000, including both real and personal property.⁴⁴ In the report, LCO considered whether the eligibility for summary administration should be based on complexity of the estate or on a monetary limit. It concluded that “[v]alue is relative and other factors such as the type of assets and the number and identity of beneficiaries may impact the cost

³⁶ *Public Trustee General Regulation*, *ibid*, s 3(1).

³⁷ *Administration of Estates Act*, *supra* note 34, s 16.

³⁸ *Probate Court Act*, RSNB c P-17.1, s 20.

³⁹ *Public Trustee Act*, RSNS 1989, c 379, s 16.

⁴⁰ *Public Trustee Act*, SNL 2009, c P-46.1, s 13.

⁴¹ Law Reform Commission of Nova Scotia, *Probate Reform in Nova Scotia* (March 1999) at 41-42. Available online: <http://www.lawreform.ns.ca/Downloads/Probate_FIN.pdf>.

⁴² SNS 2000, c 31.

⁴³ Law Commission of Ontario, *Simplified Procedures for Small Estates*, (2015). Available online: <http://www.lco-cdo.org/en/small-estates-final-report>.

⁴⁴ *Ibid* at Chapter VIII.

of probating the estate [...] a bright line monetary eligibility limit for a small estates process best balances the goals of accessibility and legal protection.”⁴⁵

The LCO provided four reasons for recommending \$50,000 as the monetary limit for eligibility:

- 1) Considering that the cost of legal fees to obtain probate in Ontario is between \$1,000 and \$5,000, a \$50,000 limit would be ample to capture almost all estates for which cost poses an obstacle.⁴⁶
- 2) A \$50,000 limit would be low enough to discourage large estates from using estate planning strategies to fit within the small estates process. The LCO considered that, in most cases, the legal costs involved in restructuring a large estate to fit within a \$50,000 limit would likely exceed the potential savings.⁴⁷
- 3) A \$50,000 limit would capture most vehicle transfers while excluding most real estate in Ontario. The LCO concluded, however, that estates containing real property should not be excluded from the small estates process.⁴⁸
- 4) A \$50,000 limit is in line with monetary limits in other similar contexts in Ontario, such as the *Estate Administration Tax Act*,⁴⁹ where the amount of tax payable increases from 0.5% to 1.5% where the estate is more than \$50,000.⁵⁰

To date, the Law Commission of Ontario’s recommendations have not been implemented.

(b) British Columbia

In British Columbia, the provincial government chose not to bring into force a procedure for the administration of small estates which was included in its recently enacted *Wills, Estates and Succession Act*.⁵¹ The British Columbia Law Institute (BCLI) published an interim report which recommended that procedure for the administration of small estates be available for estates valued at \$50,000 or less having no real property.⁵² In discussing the reason for recommending the monetary limit be set at \$50,000, the interim report explained that this figure represented “the value of a typical small estate in which the assets might consist of a motor vehicle, a modest bank account, and some personal property of relatively negligible value.”⁵³ In considering whether to

⁴⁵ *Ibid* at 23.

⁴⁶ *Ibid* at 23.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*.

⁴⁹ Estate Administration Tax Act, 1998, SO 1998, c 34, Sch.

⁵⁰ *Ibid*, s 2(6).

⁵¹ SBC 2009, c 13.

⁵² British Columbia Law Institute, *Interim Report on Summary Administration of Small Estates*, Report No 40 (2005)[BCLI Report]. Available online:

http://www.bcli.org/sites/default/files/Summary_Administration_Small_Estates_Interim_Rep.pdf.

⁵³ *Ibid* at 27-28.

include estates containing real property, the report noted that British Columbia's *Land Title Act*⁵⁴ precludes real property registered in the name of a deceased person from being transferred by a personal representative without a grant of probate or administration. Therefore, if estates containing real property were to qualify, then amendments to the *Land Titles Act* would be required. Regardless, the report noted that, given the level of land values in British Columbia, very few estates would be excluded if the monetary limit were set at \$50,000.⁵⁵

Although the recommendations from the interim report were originally adopted in Part 6, Division 2 of the *Wills, Estates and Succession Act*, Division 2 ultimately was not brought into force. Instead, the provincial government chose to enact new probate rules that allow two options for filing an application for an estate grant where there is a will: a short-form affidavit for simple estates and a long-form affidavit for complex estates. Interestingly, the monetary value of the estate is not a factor in determining whether an estate is simple or complex. Some requirements for the short-form affidavit for simple estates include whether the executor is named in the will and if there is no evidence of a later will.⁵⁶

Note also that, while some jurisdictions do not provide a summary administration process, some jurisdictions, such as British Columbia, will waive probate fees if the value of the estate does not exceed a certain amount.⁵⁷

⁵⁴ RSBC 1996, c 250.

⁵⁵ BCLI Report, *supra* note 53 at 28.

⁵⁶ *Supreme Court Civil Rules*, BC Reg 168/2009, Part 25.

⁵⁷ *Probate Fee Act*, SBC 1999, c 4, s 2(2).

CHAPTER 4: NEED FOR REFORM

Having described the law and procedure regarding small estates in Manitoba and other Canadian jurisdictions, the following section will discuss the need to reform certain aspects of the small estates system.

1. The Consultation Process

On September 7, 2017, the Commission released a Consultation Report on *Updating the Administration of Small Estates in Manitoba*.⁵⁸ The purpose of the consultation process was to gather a broad range of perspectives on proposed changes to Section 47 of *The Surrogate Practice Act*. The Consultation Report was posted on the Commission's website, circulated to the Commission's mailing list, and sent directly to certain individuals and organizations. The Commission received a number of written submissions and informal responses to its proposed recommendations.

As part of the consultation process, the Commission also created an online, anonymous survey, which was posted on the Commission's website. The Commission received a modest sixteen responses to the survey, the majority of which came from practicing lawyers. A summary of the online survey results can be found at Appendix A.

As a result of the valuable feedback received through the consultation process, the Commission decided to include some additional recommendations that, if implemented, would help to improve the administration of small estates. These additional recommendations are included below.

2. Recommendations

The Commission has considered the current law in Manitoba and elsewhere in Canada as it relates to the administration of small estates under Section 47 of *The Surrogate Practice Act*. In the Commission's view, Manitoba is ahead of many other Canadian jurisdictions in terms of adopting a legislative scheme that allows those administering small estates to do so without the more costly and onerous requirements of probate or administration. The Commission is not proposing any sweeping changes to Manitoba's procedure for administering estates or suggesting that Manitoba should consider other models; rather, in the Commission's view, the procedure is simply in need of updating to reflect the rising value of estates in the province since the Act was last amended.

The Law Commission of Ontario's report on *Simplified Procedures for Estates* notes:

⁵⁸ Manitoba Law Reform Commission, *Updating the Administration of Small Estates in Manitoba* (Consultation Report, September 2017), available online: http://www.manitobalawreform.ca/pubs/pdf/additional/consultation_report_sept2017.pdf.

The goal of any simplified procedure for small estates is to strike a balance between the legal protections afforded in the probate process with the affordability and accessibility to ensure that small estates will be administered, and, if administered, will not be unduly diminished.⁵⁹

The Commission agrees with this statement on the need to strike a balance between the goals of accessibility, efficiency and affordability on the one hand and ensuring the legal protection of estates from mismanagement and fraud on the other.

With these goals in mind, the Commission makes the recommendations noted below.

(a) Increasing the Monetary Jurisdiction

The primary issue identified by the Commission is the need to increase the monetary jurisdiction of Section 47 of *The Surrogate Practice Act*. The monetary jurisdiction has not increased since 1996, when the limit was increased from \$5,000 to \$10,000.⁶⁰ In the Commission's view, reform is appropriate to bring the monetary limit in line with the current reality of administering estates in Manitoba.

If the monetary limit under Section 47 were increased, it would enable a greater number of estates to be captured under the simplified process. It would recognize the fact that, in many cases, the cost of administering an estate is disproportionate to the size of the estate and may unduly deplete the estate to the point where it would be impractical to go through the probate or administration process at all. Considering this provision was introduced because the cost of obtaining probate or administration was seen as costly and onerous relative to the size of some estates, it appears that Section 47 is no longer capturing many of the estates it was intended to serve.

The Court of Queen's Bench, Probate Division has advised that it does not track estate values, therefore it is not possible to state with certainty the number of estates which are valued above the \$10,000 but still low enough to result in disproportionate costs associated with probate or administration compared to the value of the estate. The Commission has heard anecdotally of many instances of estates valued somewhere in the range of \$10,000 and \$20,000; if a modest estate contains a vehicle but no real property, it is reasonable to conclude that it would not be captured under Section 47.

Everyone who provided input during the consultation period agreed that the monetary limit for small estates should be increased. A total of 87.50% of respondents believed that the monetary limit should be increased to at least \$25,000. While some agreed that the monetary limit should be

⁵⁹ LCO Report, *supra* note 44 at 1.

⁶⁰ SM 1996, c17, s 2.

raised, they cautioned that the limit should only cover estates of “nominal” value, pointing out that significant beneficiary and creditor rights arise with estates approaching \$50,000.

In recommending an increase to the monetary limit under Section 47, the Commission is aware of the concern that too high a monetary limit could potentially expose more estates to mismanagement or fraud; Section 47 Orders do not carry the same legal protections as the ordinary procedures for obtaining probate. However, this must be weighed against the argument that some relatively small estates above \$10,000 are being dealt with informally or abandoned because of the cost and more onerous procedural steps required, so if the monetary jurisdiction of Section 47 were increased, those estates would at least go through the summary administration process rather than no process at all.

It is important to keep in mind the balance that must be struck between the goals of accessibility, affordability and efficiency on the one hand, and legal protections on the other. In the Commission’s view, the current laws swing too far in the direction of requiring more estates to go through probate or administration at the expense of accessibility and affordability for relatively small estates. In making this conclusion, the Commission notes that the inflation rate since 1996 (when the limit was increased) has resulted in an over 46% increase, meaning that goods valued at \$10,000 in 1996 would now be worth close to \$15,000.⁶¹

The Commission also points out that the two other Canadian jurisdictions that provide for the summary administration of small estates have much higher monetary limits compared to Manitoba. Saskatchewan’s limit is \$25,000⁶² and the Northwest Territories’ limit is \$35,000.⁶³ This discrepancy between Manitoba’s limit and the other two Canadian jurisdictions suggests that reform is appropriate to put Manitoba on par with other Canadian jurisdictions that provide summary administration.

The Commission does not propose any changes regarding the eligibility of estates containing real property, as is the case in Saskatchewan. Section 47(1) expressly provides that any order dealing with real property shall be conclusively deemed to be an order made under section 176 of *The Real Property Act*,⁶⁴ meaning the district registrar must treat the Section 47 Order as a court order.⁶⁵

⁶¹ Based on the Canadian average annual rate of inflation at 1.84% between 1996 and 2017. See Bank of Canada Inflation Calculator, available online: < <http://www.bankofcanada.ca/rates/related/inflation-calculator/>>.

⁶² *The Administration of Estates Regulation*, RRS c A 4.1, Reg 1, s 8.2.

⁶³ *Estate Administration Rules*, NWT R-123-2016, s 10(1).

⁶⁴ CCSM c R30.

⁶⁵ Section 176(1) of *The Real Property Act* provides that “[i]n a proceeding respecting land, or in respect of a transaction or contract relating thereto, or in respect of an instrument, caveat, memorial, or other entry affecting land, the court may, by order, direct the district registrar to cancel, correct, substitute, or issue, a certificate of title, or make an endorsement or entry on any instrument, or to do or refrain from doing any act, or make or refrain from making any entry necessary to give effect to the judgment, or order of the court.”

The Commission stresses the importance of increasing the monetary limit under Section 47 as a way to further accessibility and efficiency objectives and does not want this recommendation to be overshadowed by a discussion on specific dollar amount. Therefore, the Commission does not propose a specific monetary limit and instead simply highlights the need for an increase.

Recommendation #1: The monetary jurisdiction of the summary administration of small estates under *The Court of Queen’s Bench Surrogate Practice Act* should be increased.

In making the recommendation to increase the monetary jurisdiction for the summary administration of small estates, the next question is whether Section 47 of the Act should be amended to reflect this value, or whether the Act should simply be amended to allow the monetary limit to be adjusted upward by regulation.

The Commission notes there are some practical advantages to allowing the monetary limit to be adjusted upward by regulation as opposed to fixing the monetary limit under statute. Experience suggests that additional increases to the monetary limit will be needed in the future. Accordingly, the Commission recommends that Section 47 should be amended to allow the monetary limit to be adjusted upward by regulation to allow for maximum flexibility.

Recommendation #2: Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should be amended to allow the monetary limit for small estates to be adjusted upward by regulation.

(b) Disclosing Inventory of Assets

During the consultation process, it was suggested that the process under Section 47 should be clarified so that the summary administration authority is limited to only those assets disclosed in the Request to Order (74BB) Form. The concern is that the executor or administrator would attempt to use the summary administration process to administer estate assets that would otherwise require probate, by adding other assets to the estate which were not listed on the 74BB Form. Therefore, this concern could be alleviated by requiring that the authority of the administrator under Section 47 be limited to assets disclosed in the application form.

Recommendation #3: Orders granted under Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should only apply to assets disclosed on the Request to Order Pursuant to Section 47 of *The Court of Queen’s Bench Surrogate Practice Act*.

If this recommendation were implemented, *The Surrogate Practice Act* would need to be amended so that, in the event that other assets are discovered that were not listed on the application form, a mechanism is in place so that further assets can be added to the inventory. During the consultation process, it was brought to the Commission’s attention that, while *The Surrogate Practice Act* requires the filing of an amended inventory of assets where assets are discovered after the granting of probate or letters of administration,⁶⁶ no such mechanism exists under the summary estate provisions in the Act. Section 24(2) provides:

Property discovered after grant

24(2) Where, after the grant of probate or administration, property belonging to the deceased at the time of his death, and not included in the inventory, is discovered by the executor or administrator, the executor or administrator, as the case may be, shall, within 30 days thereafter, or such longer period as a judge may allow on application, make and deliver to the court an inventory, verified by oath, of the newly discovered property.

Neither the statutes of Saskatchewan or the Northwest Territories, which contain summary administration schemes, expressly provide for an amended inventory to be made or delivered to the court following the discovery of additional property.

The Commission sees no reason why the obligation to file an amended inventory would not be consistent under *The Surrogate Practice Act* regardless of whether the value of the assets in the estate was greater than or less than the summary limit. Therefore, the Commission recommends that Section 24(2) of the Act, requiring the filing of an amended inventory of assets discovered

⁶⁶ *Ibid*, s 24(2).

after the grant of probate or administration within 30 days of the discovery, apply to estates falling under the summary estates limit.

Recommendation #4: Section 24(2) of *The Court of Queen’s Bench Surrogate Practice Act*, requiring the filing of an amended inventory of assets discovered after the grant of probate or administration within 30 days of the discovery, should apply to small estates falling under Section 47 of the Act.

The Commission received feedback concerning the nature of assets disclosed on the 74BB Form. Currently, the 74BB Form requires the applicant to provide an inventory of real property but not personal property.⁶⁷ In contrast, both the probate and administration processes require a complete inventory of all property which belonged to the deceased.⁶⁸ In order to ensure accountability, the Commission is of the view that the disclosure requirement on the 74BB Form should include both real and personal property. This would capture information such as banking institutions where assets are held, nature of assets (i.e. vehicle, household contents, etc.). The Commission is aware that this would impose more of a burden on the applicant. However, a full inventory would offer more protection to beneficiaries and creditors.

Recommendation #5: The Request to Order Pursuant to Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should require applicants to disclose an inventory of both the real and personal property of the deceased.

(c) Residency Requirement

During the consultation process, it was also brought to the attention of the Commission that there is no residency requirement for an administrator of a small estate. This is contrary to the requirements contained in subsections 7(1) and 7(2) of *The Surrogate Practice Act* that letters of administration shall not be granted to a person who is not habitually resident within Manitoba⁶⁹ and that, as a general rule, probate shall not be granted to a person not habitually resident within

⁶⁷ QB Rules, *supra* note 4, Form 74BB, s 5 provides:

That the total value of all property of the said deceased which (he or she) in any way died possessed of or entitled to, does not exceed \$10,000.00 consisting of \$ _____ personalty, and \$ _____ realty (which includes any interest of the deceased in a real property mortgage).

The realty is situated in the Province of Manitoba and is more particularly described as follows:

⁶⁸ *Supra* note 1, s 24(1).

⁶⁹ *The Surrogate Practices Act*, CCSM c290, s 7(1).

Canada unless security is provided.⁷⁰ Under Section 47(1), the court has discretion regarding the appointment of administrators of small estates.⁷¹

Residency requirements for executors and administrators of estates are inconsistent throughout Canada. For example, in Alberta, there is no requirement that an executor or administrator be a resident of the province but, where competing applications have been made by individuals with equal priority, residents of the province are given priority for grants of probate and letters of administration.⁷² The Northwest Territories' *Estate Administration Rules*⁷³ similarly prioritizes resident applicants⁷⁴ and requires the payment of security where a personal representative does not reside in the territory.⁷⁵ In Ontario, letters of administration cannot be granted to a person who is not residing in Ontario⁷⁶ while a person who is not resident in the province may be granted letters probate where security is paid in accordance with Ontario's *Estates Act*⁷⁷. No residency requirements exist in British Columbia and Nova Scotia. In the Yukon Territory, the *Estate Administration Act*⁷⁸ provides for the granting of special administration to an applicant where the executor or administrator has been absent from the territory for a specified period of time.⁷⁹

It is a hallmark of common law jurisdictions that testators enjoy testamentary freedom with few exceptions. This includes the freedom to choose one's own executor to carry out the terms of the will. The Manitoba legislature chose not to fetter a testator's ability to select an executor except by legislating that an individual habitually residing outside of Canada may be required to post a bond.⁸⁰ This provides some financial security to the beneficiaries under the will in the circumstance that the executor fails to meet his or her obligations.

In contrast, where an executor has not been appointed and the court is responsible for appointing an administrator for a deceased person's estate, there exists no testamentary freedom to protect. Here, the legislature has chosen to require that persons appointed as administrators be habitual residents of Manitoba, ensuring that those persons provided with the responsibility of administering the estate squarely fall under the authority of the same court that appointed him or her. The Commission does not see why this residency requirement would not extend to small estates administered in accordance with s. 47 of *The Surrogate Practices Act*. The same argument exists that the administrator was not chosen by the testator him or herself but the administration order was granted by the Court of Queen's Bench. While the value of the assets

⁷⁰ *Ibid*, s 7(2).

⁷¹ *Ibid*, s 47(1).

⁷² *Estate Administration Act*, SA 2014 Ch E-12.5, s 13(1).

⁷³ *Estate Administration Rules*, NWT Reg 123-2016

⁷⁴ *Ibid*, s 12(3).

⁷⁵ *Ibid*, s 30(2).

⁷⁶ *Estates Act*, RSO 1990, c E.21, s 5.

⁷⁷ *Ibid*, s 6.

⁷⁸ *Estate Administration Act*, RSY 2002, c 77.

⁷⁹ *Ibid*, s 11(1)-11(3).

⁸⁰ *Supra* note 1, s 7(2)

of the estate are capped, the residency requirement protects the beneficiaries by maintaining the jurisdiction of the Court of Queen's Bench over that individual.

Recommendation #6: Section 47 of *The Court of Queen's Bench Surrogate Practice Act* should be amended to expressly provide that administration of an estate falling within the jurisdiction of that section shall not be granted to a person who is not habitually resident within Manitoba.

CHAPTER 5 – SUMMARY OF RECOMMENDATIONS

Recommendation #1: The monetary jurisdiction of the summary administration of small estates under Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should be increased. (page 18)

Recommendation #2: Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should be amended to allow the monetary limit for small estates to be adjusted upward by regulation. (page 18)

Recommendation #3: Orders granted under Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should only apply to assets disclosed on the Request to Order Pursuant to Section 47 of *The Court of Queen’s Bench Surrogate Practice Act*. (page 19)

Recommendation #4: Section 24(2) of *The Court of Queen’s Bench Surrogate Practice Act*, requiring the filing of an amended inventory of assets discovered after the grant of probate or administration within 30 days of the discovery, should apply to small estates falling under Section 47 of *The Court of Queen’s Bench Surrogate Practice Act*. (page 20)

Recommendation #5: The Request to Order Pursuant to Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should require applicants to disclose an inventory of both the real and personal property of the deceased. (page 20)

Recommendation #6: Section 47 of *The Court of Queen’s Bench Surrogate Practice Act* should be amended to expressly provide that administration of an estate falling within the jurisdiction of that section shall not be granted to a person who is not habitually resident within Manitoba. (page 22)

This is a report pursuant to section 15 of the *Law Reform Commission Act*, C.C.S.M. c. L95, signed this 14th day of March, 2018.

“Original Signed by”
Cameron Harvey, President

“Original Signed by”
Hon. Lori Spivak, Commissioner

“Original Signed by”
Jacqueline Collins, Commissioner

“Original Signed by”
Michelle Gallant, Commissioner

“Original Signed by”
Myrna Phillips, Commissioner

“Original Signed by”
Sacha Paul, Commissioner

APPENDIX A

Results of the Commission's Online Survey Regarding Administration of Small Estates

This anonymous online survey was posted on the Commission's website from September 7, 2017 to October 30, 2017.

(16 Respondents in Total)

1. Who Responded?

Has acted as an executor or personal representative to an estate	18.75% (3)
Interested member of the public	25.00% (4)
Practicing lawyer	62.50% (10)
Student	26.67% (4)
Works in the courts system.	0.00% (0)
Other (retired)	6.25% (1)

Note that survey participants could select multiple answers to the above question.

2. What should the monetary limit for summary administration be?

It should remain at \$10,000	0.00% (0)
It should be increased to \$15,000.	6.25% (1)
It should be increased to \$20,000.	6.25% (1)
It should be increased to \$25,000.	56.25% (9)
It should be increased to \$50,000.	31.25% (5)

3. Have you encountered any difficulty administering a small estate? If so, please elaborate. Examples may include obtaining the release of assets from financial institutions or transfers in ownership of personal or real property.

Yes	31.25% (5)
No	68.75% (11)

Comments:

Bank requirments [sic] are all different .you are hurting and made to run around dealing with govt [sic] crap.

procedure is not well known or easy to follow

I acted for a surviving spouse and sole beneficiary in a small estate where a financial institution would not release the sum of \$300.00 held in a bank account without first providing Letters of Administration.

4. The process for the summary administration of small estates is designed to be simple and straightforward so that personal representatives do not need a lawyer to navigate the procedure. Please provide any comments on how to make the process for more user-friendly.

one single entity covers all.

precedents

Providing a very clear package of guides and forms written in plain language.

Simplified court process

I don't know.

Have a one page resource on line of every step you need to take along with the contact info and links of where to find the forms and what to do with them.