



Fleury, Comery LLP  
Barristers & Solicitors

## WHAT IS “PROBATE”?

Clients sometimes inquire what they need to do in order to deal with a deceased’s estate, and, in particular, whether they will need “probate”.

### WHAT IS “PROBATE”?

“Probate” is a short form both for the process of obtaining what used to be called “Letters Probate”, and also the actual document. The word comes from the Latin verb *probare* which means “to prove”. Letters Probate was the term for a letter (or letters) from the Court to the effect that the attached Will has been *proven* to be the last Will of the deceased. Others may thus rely on the authority of the executor(s) named in the Letters Probate to, for example, give good title on a sale of the deceased’s property.

In Ontario, the legal name for Letters Probate has been changed to “Certificate of Appointment of Estate Trustee *With a Will*” (“CAET”). The court *certifies* the appointment of the named executor(s) - or any substitute person named in the CAET. Instead of “executor” - the person who *executes* the instructions in the Will - the CAET uses the term “Estate Trustee”.

### WHEN THERE IS NO WILL?

Where there is no Will to be proven, people sometimes still use “probate” to refer to a court appointment of estate trustee under what used to be called “Letters of *Administration*”. Where there is no Will, the court would appoint an “administrator” to administer the deceased’s estate.

In Ontario, the term for Letters of Administration is now “Certificate of Appointment of Estate Trustee *Without a Will*” - still “CAET”). Instead of “administrator”, the appointed person is still called “Estate Trustee”.

### IS PROBATE ALWAYS REQUIRED FOR AN ESTATE?

Probate is not always required in order to administer a deceased’s estate. It depends on the assets the deceased held. If, for example, the deceased’s assets were held in joint ownership, or “joint tenancy with right of survivorship” (“jtwros”), the ownership passes automatically to the other joint owner(s) by right of survivorship.

Assets, such as RRSP’s, RIFs, and TFSAs usually have named beneficiaries, and thus pass directly to those beneficiaries without “probate”.

Further, if banking assets are minimal, sometimes the banks (in their discretion) will accept a “Letter of Indemnity” from a named executor and turn over the deceased’s accounts on the basis of a promise by the executor to “indemnify and save harmless” the bank for relying on the Will.

### HOW DO YOU GET “PROBATE”?

The process of obtaining a CAET obviously involves a court application. What used to be called a “probate fee” - now more honestly called “Estate Administration *Tax*” (“EAT”) - is based on the value of the deceased’s estate and generally payable when the application is filed at the court. It is therefore important to determine, as soon as possible, the value of the deceased’s assets on the date of death, or as close to that date as possible.

All beneficiaries of the deceased’s estate must be notified as part of the probate process, as well. Thus it also helps to have up-to-date contact information for the beneficiaries.

### CAN WE ASSIST?

Experience suggests that a legal professional is almost always needed to assist with a court application for a CAET. At Fleury, Comery LLP, both Stephen Fleury and Greg McConnell have extensive experience with the “probate” process. Please do not hesitate to contact us for a consultation if you need assistance to deal with a deceased’s estate.

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