

EXECUTORS' COMPENSATION IN ESTATES

The person or institution that administers an estate is entitled to receive compensation for time and trouble. (If named in a Will, this person or institution generally is called the "executor." *Note: In most provinces, the individual appointed under a will to administer an estate is referred to as an 'executor'. In Ontario, an executor is referred to as an "estate trustee with a will". In Quebec, the role is referred to as a "liquidator". Select the most appropriate term for your province).*

If there is no Will, the court appointee generally is called the "administrator" of an estate. *Note: In Ontario, an administrator is referred to as an "estate trustee without a will". In Quebec, the role is still referred to as a "liquidator". Select the most appropriate term for your province).*

When there is no statutory guideline as to how compensation is to be calculated, the court has discretion to award it, taking into account the following factors: size of the estate, care and responsibility involved, time occupied in performing duties, skill and ability shown, and, success in administration. The amount normally awarded is approximately 5% of the aggregate value of the estate.

An individual making a Will can agree with the named executor in advance concerning the fees that will be charged on the administration of the estate. This is known as a "fee agreement," and is normally arranged with professional executors such as trust companies. A testator may also leave a monetary legacy to the executor, in lieu of compensation, with the hope that this will give the executor a financial reward for the time and trouble involved.

Another variable in calculating the executor's compensation is the need for additional help. If the executor engages an agent to act in some capacity in the administration of the estate, the fee paid to the agent is part of the total fee allowed by the court. Therefore, the amount of compensation paid to the executor will only be the amount left over from the total compensation allowed by the court, after the agent has been paid.

Some fees and commissions will not reduce the executor's compensation. If, for example, a piece of real estate is being sold and a commission must be paid to the agent, the fee is part of the costs of sale and not part of the executor's compensation. Furthermore, if a professional, such as a solicitor or an accountant, performs work that is in their particular

area of expertise, the completion of which could not reasonably have been expected of the executor, those fees will also not be deducted from the executor's compensation.

Compensation generally cannot be collected until the administration of the estate has been completed, or the Estate Accounts have been passed by the court (the two events usually occurring at the same time). However, some compensation may be paid before the estate is settled, if permitted under the Will or if approved by all residual beneficiaries.

Like all aspects of a well thought out estate plan, the cost of executor compensation should be considered *before* appointing an executor under a Will.