

CSD Notice to Legal Profession: Regulations establishing a small estate process O. Reg. 110/21 made under the Estates Act and O. Reg. 111/21 made under the Courts of Justice Act

Earlier today, the Ministry of the Attorney General filed two regulations to establish a small estate process in Ontario:

- O. Reg. [110/21](#), made under the [Estates Act](#) establishing a small estate value of up to \$150,000, effective April 1, 2021.
- O. Reg. [111/21](#), made under the [Courts of Justice Act](#) amending the [Rules of Civil Procedure](#) (RCP) to establish a small estate process, effective April 1, 2021.

The regulations, which come into force on [April 1, 2021](#), are described in Ontario Regulatory Registry notices at: [21-MAG005](#) and [21-MAG006](#).

A small estate process was enabled by amendments to the *Estates Act* introduced through the [Smarter and Stronger Justice Act, 2020](#). The amendments to ss. 1, 7(4), 36(3)(4)(5) of the *Estates Act* have been [proclaimed](#) to come into force on April 1, 2021.

The [RCP amendment regulation](#) establishes a simplified probate process for estates valued at up to \$150,000 as an alternative to the existing probate system.

New rule 74.1 allows for a court issued Small Estate Certificate with the equivalent legal effect to a Certificate of Appointment of Estate Trustee, except that authority is limited to the estate assets specifically listed in the application. The rule specifies the requirements for applications for a Small Estate Certificate, including the requirements for filing, for notice to persons entitled to share in the estate and for applying to seek authority for estate assets that are discovered after the issuance of a Small Estate Certificate.

The RCP amendments are expected to reduce costs and simplify the process to apply for probate of small estates through:

- a new, simpler application form;
- the removal of certain requirements in the existing probate process (for example, it is not necessary to obtain a commissioned affidavit of service); and
- estate court user guidance on the process to apply for probate of a small estate.

The simplified rules in the RCP and the *Estates Act* amendments also allow for expeditious processing by court staff by:

- reducing the number of documents that are required to be reviewed;
- allowing missing information and documentation to be identified quickly through a new form to request filing of documents and the streamlined format of the application forms; and
- removing the need for a bond for small estates, with a few exceptions, thereby reducing the volume of motions to dispense with a bond.

Please note: The small estates limit of \$150,000 will apply for the purpose of determining eligibility to apply to the court for a Small Estate Certificate. It does not impact the *Estate Administration Tax Act* exemption limit of \$50,000.

Additional information is available at:

EN: <https://news.ontario.ca/en/release/60331/ontario-making-it-easier-and-less-costly-to-manage-small-estates>

FR: <https://news.ontario.ca/fr/release/60332/ontario-rend-la-gestion-des-petites-successions-plus-simple-et-moins-couteuse>

Further inquiry can be directed to the following addresses, quoting the reference # attached to your response/ in the subject line:

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