

An Accountant's Perspective

Prepared For: Legal Education Society of Alberta

Estate Litigation

Presented by:

Penny Leckie

P. Leckie Professional Corporation

Calgary, Alberta

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OBJECTIVES

The objectives of this paper are as follows:

- Improve understanding of a personal representative's obligations from an accounting perspective.
- Provide insights into how information provided by a professional accountant might assist in building an estate litigation case.
- Provide insights into areas of consideration for a personal representative during the financial administration of an estate to minimize their exposure to litigation.

BACKGROUND

In preparing this paper, I have drawn on personal experience and areas of success in my practice as a professional accountant. My approach is typically described as practical and reasonable, with my clients' best interests at heart. It should be noted that the experience and approach of others may differ. These potential differences have not been considered.

The contents of this paper are intended to be gender neutral. Where reference is made to a specific gender, it is intended to include representatives of the other gender, as well and readers should interpret it as such.

ACCOUNTING OBLIGATIONS OF A PERSONAL REPRESENTATIVE

The accounting obligations of a personal representative are described in the *Surrogate Rules*¹. A copy of these obligations is provided in Schedule A. I do not intend to review the provisions in detail, rather, for purposes of this paper, I intend to comment on a few specific areas of the provisions, that as an accountant, I find of particular note.

Paragraph 97(1) provides "A personal representative must give an accounting of the administration of the estate at regular intervals

- (a) by preparing financial statements...
- (b) by giving the financial statements to the beneficiaries"

¹ Paragraphs 97 – 99, Surrogate Rules, Part 3 Accounting, Division 1 General, Alberta Rules of Court, Volume 2, Effective November 1, 2010, Published December 20, 2013.

“Financial statements” are defined in the Definitions² section of the *Surrogate Rules*. It “means a formal financial report or statement required to be prepared by a personal representative under Part 3;”

Paragraph 98(3) states, “The financial statements may be in any format...”

Unless beneficiaries require financial statements, a personal representative is not obliged to prepare financial statements. In smaller estates, where the co-executors are similar or identical to the beneficiaries, and as such, are likely actively involved in the administration of the estate, there may be no need to prepare financial statements. Income tax compliance does not require submission of financial statements, only full reporting of the taxable income of an estate. It is often possible to determine taxable income without preparing formal accounting records and financial statements. For these reasons, it is my experience that only estates with multiple beneficiaries, with complex financial structures or that have become contentious, require financial statements.

The financial statements that a professional accountant might prepare to assist a personal representative in complying with their obligations under the *Surrogate Rules* may differ from the financial statements that they would typically prepare for an operating business. While the provisions of Paragraphs 97 – 99 require specific information, paragraph 98(3) permits some interpretation and creativity by the individual preparing the report.

The report needs to meet the criteria required. However, in designing the report, my experience indicates that like every other financial report, optimal results are achieved when the preparer considers the end user and the end user’s needs. In the case of an estate, most often the end user is a beneficiary of the estate. The report should provide the information a beneficiary requires, in an understandable manner. If the beneficiary is satisfied by the information provided in the estate’s financial statements, it may be possible to avoid estate litigation.

Attached for consideration are anonymous financial statements that have been issued by my firm, in the past, with respect to estates.

- Schedule B – Estate 1
- Schedule C – Estate 2
- Schedule D – Estate 3 (period 1)
- Schedule E – Estate 3 (period 2)

² Paragraph 1, Alberta Rules of Court, Volume 2, Effective November 1, 2010, Published December 20, 2013.