

Right to Receive Remuneration:

An executor – or an administrator where there is no Will – is entitled to be compensated for the time and trouble spent handling the estate of the deceased; but how much remuneration is appropriate?

Unless a Will specifically sets out the amount of compensation the executor is entitled to, the amount is governed by Section 88 of the B.C. Trustee Act (the “Act”). Under the Act, acceptable remuneration depends on the circumstances and complexity of the estate. While the executor of an average “run of the mill, simple estate” is usually entitled to between 2-3% of the gross aggregate value of the estate, in more complicated circumstances they could be entitled to up to 5%. An executor may also be entitled to up to 5% of any income earned on the estate’s assets while under their control. Additionally, if the executor is acting for an extended period of time – for example when managing an ongoing trust – an annual “care and management fee” of up to 0.4% of the average market value of the estates assets may be appropriate.

An executor may not just pay themselves whatever they like; they must first submit a claim for approval from the beneficiaries of the estate. If the beneficiaries do not agree, or if there are beneficiaries who are not legally capable of giving their consent – such as minor children or incapacitated adults – then the executor must seek approval from the Court.

Factors the Court considers in determining the appropriate fee include:

- size of the estate;
- care and responsibility involved;
- time spent;
- skill and ability displayed; and
- success achieved in the final results of the administration.

If there are multiple executors, the fee is split between them. If they cannot agree on how to split the fee, they must seek direction from the Courts.

Advice to our Executor Clients:

We recommend that all executors be prepared to justify their claim for remuneration. Since the Court – and likely the beneficiaries – will require an executor to explain why they feel the proposed fee is appropriate, it is best to keep a diary of all steps taken and the time and energy spent acting on behalf of the estate. Some examples of things to include are:

- planning funeral arrangements and notifying family members;
- visits to the bank, accountant, government offices, law offices, and discussions with these advisors;
- correspondence sent/received, reviewing paperwork, etc;
- time spent in discussions with the beneficiaries, or keeping them up to date;
- time spent on the phone or online cancelling accounts and subscriptions or notifying third parties of the death;
- sorting through documents or personal effects; and
- cleaning up the residence.

If there is a need to call upon the Court to approve/decide on the fee, an estate administration lawyer will incorporate the executor’s list of work into an Affidavit to file with the Court, along with the executor’s accounts of the assets remaining for distribution, and the proposed remuneration.

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Tax Payable on Remuneration:

Canada Revenue Agency (“CRA”) treats the executor as an employee of the estate. Any remuneration paid to an executor is taxable and must be declared on the executor’s personal tax return using the T4 slip issued by the estate. The estate must remit the appropriate tax as follows:

- obtain a Business Number and payroll account with CRA;
- withhold and remit income tax and any applicable Canada Pension Plan contributions;
- file a T4 information return with CRA for the executor (the estate employee);
- close down the Business Number and Payroll account when the estate is fully distributed.

We recommend that executors seek advice from the estate’s accountant and instruct the accountant to prepare the necessary tax filings and handle all remittances to CRA.

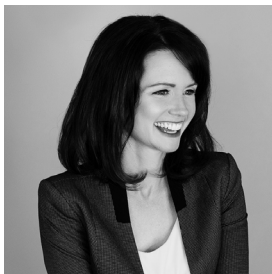
Best Practices:

The following can lead to an executor receiving a more generous fee:

- responding promptly and knowledgeably to beneficiary inquiries;
- progressing the administration of the estate as quickly as reasonably possible;
- keeping the beneficiaries up to date on the status of the estate and its assets;
- keeping good records, to show the beneficiaries how the estate has been handled; and
- justifying the fee claim with time records and evidence of work done.

We have the experience to help you claim appropriate compensation for the work that you do as an executor. If you have any questions about submitting your compensation claim, or any other questions about your role as executor, contact a member of our team.

Questions? Contact a member of our experienced [Estate Team](#):



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