Protecting Estates, Estate Beneficiaries & Creditors

Bonding of Estate Trustees

Date: October 2012

Submitted to: Ministry of the Attorney General

Submitted by: The Surety Association of Canada
**Introduction**

Representing 97% of all surety premiums written in Canada, the Surety Association of Canada (SAC) is the national advocacy group for the Canadian surety industry. Our members include surety companies, surety brokers and other firms involved in matters pertaining to the business of surety risk management. Our head office is located in Mississauga, Ontario.

In April, 2010 the Ontario Bar Association (OBA) wrote to the Ministry of the Attorney General to propose changes to the *Estates Act* (the “Act”). The proposed changes focused on Section 35 which includes the requirement that an estate trustee post a bond to ensure the financial protection of the estate, and its beneficiaries and/or creditors. Overall, the OBA has recommended that the instances in which bonds are required be significantly reduced or eliminated altogether.

In reviewing the submission by OBA, we respectfully suggest that its recommendations are based upon a fundamental misunderstanding of the protection afforded by surety bonds; and that a number of its assertions and underlying assumptions are simply wrong. More importantly, if implemented, the OBA’s suggestions would leave estate beneficiaries and creditors without protection against losses caused by wrongful acts of the trustees.

Our industry was recently asked by the Office of the Public Guardian and Trustee (OPGT) to comment on the OBA submission and provide input on the Act’s requirement for trustee bonding. Specifically, we were provided with a list of questions which were compiled to assist the Ministry and OPGT in their understanding of suretyship in the context of its role under the Act.

Upon receipt of these questions, SAC submitted them to a cross section of our membership for their review and commentary. The responses of our member firms have been compiled and are respectfully submitted herein.

**The Rationale for Protecting Estate Beneficiaries & Creditors with Estate Bonds**

Reducing and/or eliminating bonding requirements for securing the performance of estate trustees will seriously diminish the protection of the estate, the estate’s beneficiaries and creditors. We believe that ensuring this protection is an imperative under the OPGT mandate and its importance cannot be overstated. Surety bonds are ultimately the only available form of security that is designed to protect estate beneficiaries and creditors and to guarantee that the estate trustee or executor complies with certain of the requirements of his/her role. This ultimately protects beneficiaries and creditors from malfeasance, misfeasance or nonfeasance of the appointed trustee.

Over the years, bonds have proven to be a very effective tool in providing the required protection. They offer tangible benefits to beneficiaries and creditors of estates by:
• Prequalifying applicants to ensure fitness for their role as trustees;
• Holding trustees accountable by requiring their covenant to reimburse the surety for any loss it incurs under the bond. This will keep the estate trustee committed to fully executing his or her obligations;
• Proactively intervening in the administration of an estate should an issue arise which could ultimately lead to litigation and a claim under a bond. In this manner losses to beneficiaries and trustees are prevented and the resources of the courts are not squandered on preventable litigation.
• Providing financial compensation to the estate in the event that the court determines the trustee acted wrongfully.

It should be noted that contrary to the popular misconception, estate bonds are widely available to trustee applicants at a negligible cost to the estate or trustee.

Summary / Recommendations

As the baby boom generation ages, and as the value of estates increase in value, the financial risk relating to estate management will continue to increase. As a result, estate trustees will be required to manage a larger number of estates and the amount at risk in each estate will escalate. This will magnify the potential damages to heirs, creditors and the government of Ontario resulting from mismanagement or fraud by estate trustees. Many years ago the government of Ontario, along with other provincial governments throughout Canada, mandated that the private sector provide financial protection to ensure that estates are settled in accordance with the law. This system of financial protection continues to this day and functions well, at no cost to the government of Ontario.

We respectfully suggest that the government of Ontario should not consider dismantling or reducing the effectiveness of this risk management system, particularly at a time when the financial risk for estate heirs, beneficiaries and the government of Ontario is expected to increase. Reducing or eliminating bonding requirements for estate trustees will not benefit the taxpayers of Ontario and will ultimately create more problems than it solves. Instead we urge the Ministry of the Attorney General to work with SAC and other stakeholders to modernize the current system and make it more responsive to the needs of beneficiaries, creditors and the government of Ontario. This can be accomplished by:

• Amending the statutory formula in Section 37(1) of the Act, which calls for bonds in the amount of twice the value of an estate. Such amendment could specifically allow for bonds in lower amounts in cases where the bond requirement would otherwise significantly exceed the value of the estate and where there is no demonstrable need for a bond of twice the value of an estate;
• Exploring the concept of a time-limited and “renewable” bond to address any difficulties for applicants in obtaining bonds for estates that may take more than several years to resolve;
• Incorporating contact information for the surety company on the bond form for the benefit of the heirs and creditors;
• Requiring trustees to deliver meaningful interim reports on the status of an administration, the assets collected or collectable, the expenses paid and outstanding liabilities, to beneficiaries and to the surety that has issued a bond;
• Codifying the ability of the surety to intervene in estate administrations;
• Devising an expedited process for obtaining passings of accounts or a release from beneficiaries or other satisfactory evidence of the conclusion of the administration. This would not only reduce the costs burden on the estate, but should expedite the ability to assess whether or not a loss has occurred to which a bond should respond;
• Implementing requirements for the timelier issuance of such necessary documentation, as referred to above, to discharge the trustee once the estate has been wound up. This will enable bonding companies to more easily arrange for the bonds to be delivered up from the Registrar for cancellation. This will in turn encourage more surety practitioners to participate in the process which will increase competition and the availability of bonds;
• Exploring the use of technology to allow for “electronic” surety bonds. This will modernize the process and reduce the cost of administration.

We thank the Ministry of the Attorney General and the Office of the Public Guardian and Trustee for the opportunity to respond to your questions and provide input into the decision making process. Should any further elaboration be required, we would be happy to meet at your convenience.
QUESTION #1
WHAT IS THE NUMBER OF APPLICATIONS RECEIVED VERSUS THE NUMBER OF APPLICATIONS RECEIVED AND REJECTED? WHAT ARE THE MAIN REASONS FOR REJECTING AN APPLICATION?

The answer to this question will vary depending on the surety company and its involvement in the estate trustee market. Surety firms who are very active in their pursuit of estate/fiduciary bonds and are knowledgeable and sophisticated in their underwriting of this class of business will boast a very low rate of rejection; typically 2% of all applications received. The smaller firms who don’t specialize in this class of bonds report rejection rates ranging from 5% to 25% of total applications received.

At first glance this discrepancy appears puzzling and even paradoxical. Intuitively it would seem more logical that the more sophisticated markets would reject a higher, not lower, percentage of applications received. The inconsistency is best explained by examining the differences in underwriting approaches between different surety firms. The more sophisticated bonding companies are more likely to employ a “solutions-oriented” style of underwriting where innovation and flexibility are applied to complex estates which often allows difficult submissions to be accepted. Smaller firms who may not have this level expertise are more likely to shy away from complex or challenging submissions.

This solutions-oriented approach is becoming a necessary trend in the estate trustee market as a direct result of increased complexity in estate management. For example, an increase in entrepreneurial activity and the creation of multiple family businesses is a recent trend that is anticipated to grow. More complex transfer of wealth and distribution rules that apply to complex family structures is another common occurrence which has led the major surety players to adopt more flexible underwriting approaches to complex or difficult cases.

The top three reasons cited for rejection of an application are consistent among all surety companies:

1. **Qualifications of applicant:**
   
   One of the primary advantages of an estate bond is the prequalification criteria that are applied to each submission. Applicants must not only be financially stable, but will need to qualify for the task at hand from a capability perspective as well. The surety company has a responsibility to protect the interests of the estate’s beneficiaries and will assess applicants with this perspective in mind. In some situations, a trustee applicant may refuse to provide the necessary information required by the surety company to assess their qualifications.

   Simply put, if the surety company believes the beneficiary’s interests could be jeopardized as a result of an inability to perform the required tasks as a trustee, financial instability or questionable character of the applicant, the bond will not be issued.
2. **Life Time or Long-Term Risk.**

As credit products, surety bonds are priced and designed to provide risk management solutions for a finite period of time; typically two to three years. Sometimes, the terms of a Will may extend this time period, such as where there are continuing trusts.

For example, a Will may establish a trust for life for one beneficiary of an estate, and upon his/her death, a gift over of the capital to other beneficiaries. This would require a bond to remain in force for the remainder of the beneficiary’s life. This can be a challenge for a surety that is asked to issue a bond for such an estate administration, unless a mechanism is in place to allow the status and conduct of an administration to be reviewed and for the bond to be renewed on an annual or bi-annual basis. This option of renewable bonds is among our recommendations as discussed in our response to Question #10 (Recommendation 4).

3. **Amount of Bond:**

When the amount of the bond is set at twice the value of the estate, the surety company may hesitate to issue the bond, particularly where the bond amount is excessive in comparison to the financial stability of the applicant. We recommend that the formula be adjusted to ensure that the bond amount more accurately reflects the amount of risk, which will increase bond availability and reduce the cost of bonds (See Question #10, Recommendation 3).

Depending on circumstances, innovative risk management approaches will typically be applied to the first reason to work around an issue. For the second two reasons, the adoption of our recommendations should address these issues.

It is worthwhile to note that although all of the bonding companies issue estate bonds, such is not the case with surety brokers. Indeed several brokers have indicated that they have very little interest in pursuing this class of business due to the administrative problems that can arise from bonds issued for long term periods.

In practice, bonds issued for periods of more than three years can become a substantial accounts receivable problem as the trustee becomes less engaged in the process and simply stops paying. Because of this reluctance in the brokerage community, a trustee may be required to contact several surety brokers before finding a suitable match. This could explain the OBA’s perception that such bonds are unavailable and again, renewable bond forms would go a long way to addressing this issue.
QUESTION #2
WHAT IS THE NUMBER OF ESTATE ADMINISTRATION BONDS ISSUED PER YEAR IN ONTARIO OVER THE PAST 5 TO 10 YEARS? IS THERE A BREAKDOWN AVAILABLE, PER VALUE AND TYPE OF ESTATE?

In the past year, based on the responses of seven surety companies, the surety industry issued an estimated 350 estate bonds in Ontario, providing risk management security for approximately $160 million in estate assets.

The distribution of bonds by estate value this past year is estimated to be as follows:

<table>
<thead>
<tr>
<th>Estate Bond Values:</th>
<th>Estimate % of all Estate Bonds issued:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $250k</td>
<td>66%</td>
</tr>
<tr>
<td>$250k to $500k</td>
<td>20%</td>
</tr>
<tr>
<td>$500k to $1mm</td>
<td>10%</td>
</tr>
<tr>
<td>Greater than $1mm</td>
<td>5%</td>
</tr>
</tbody>
</table>

On average, bonds for domestic estate trustees represent over 80% of the smaller estates (under $250k). Comparatively, bonds for foreign estate trustees account for anywhere from 33 to 40% of the higher valued estates (above $250k).

Unfortunately, time did not allow us to develop and collect sufficient historical data regarding the annual average number of bonds over the last five to ten years.
QUESTION #3


The Surety Association of Canada does not set, or even influence, the price of the product and each surety establishes its own premium rates for estate bonds. That said, our members have provided us with information as to how premiums have historically been calculated by the marketplace. The following rate chart is typical and reflects a competitive industry. Rates are usually calculated on a sliding scale basis, as follows:

<table>
<thead>
<tr>
<th>Bond Amount</th>
<th>Rate Per Thousand</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1 - $100,000</td>
<td>$4.00</td>
</tr>
<tr>
<td>$100,001 - $500,000</td>
<td>$3.00</td>
</tr>
<tr>
<td>$500,001 and above</td>
<td>$2.00</td>
</tr>
</tbody>
</table>

To put this in perspective, application of these rates will generate annual premiums as set out in the following examples:

<table>
<thead>
<tr>
<th>Bond Amount</th>
<th>Annual Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000</td>
<td>$400</td>
</tr>
<tr>
<td>$250,000</td>
<td>$850</td>
</tr>
<tr>
<td>$500,000</td>
<td>$1,600</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>$2,600</td>
</tr>
</tbody>
</table>

The minimum annual premium is determined by each surety company and is often in the area of $350. For example, all bonds in an amount less than $87,500 could be subject to the minimum premium. Given the size of estates today, it is highly unusual to issue an estate bond in an amount less than $87,500.

Premiums are charged annually. Typically, sureties charge the full premium based on the expected lifespan of the estate bond. For example, if it is expected that the estate will be finalized within 3 years, the surety will charge the 3-year premium at the time the bond is issued. A substantial discount – up to 25% - is generally provided to the client when payment is made for more than one year of premium.

If the estate takes longer to finalize than expected, the surety usually attempts to invoice for the additional time required to resolve the estate. Additional premium is often charged for two reasons: first, the surety is exposed under the bond for a longer duration than originally contemplated; and second, the recurring bond premium motivates the estate trustee to finalize the estate, which is in the interest of all parties.
The surety industry does not, however, typically surcharge premium based upon risk factors alone, which is a common practice for insurance products.

To illustrate how the invoicing of an estate bond operates, assume the following:

- Expected duration of estate - 3 years
- Annual premium - $500
- Estate actually takes 4 years to be finalized

Upon issuing the estate bond, the surety will invoice the estate trustee for the expected duration of the estate, 3 years. Assuming that the estate trustee is provided with a 25% discount for multi-year premium payment, the premium calculation is as follows:

<table>
<thead>
<tr>
<th>Premium for Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$ 500</td>
</tr>
<tr>
<td>Year 2</td>
<td>$ 375</td>
</tr>
<tr>
<td>Year 3</td>
<td>$ 375</td>
</tr>
<tr>
<td>Total</td>
<td>$1,250</td>
</tr>
</tbody>
</table>

At the end of the third year, the surety will contact the estate trustee for the status of the estate. Upon learning that the estate trustee requires another year to finalize the estate, the surety will invoice the estate trustee the following amount:

<table>
<thead>
<tr>
<th>Premium for Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 4</td>
<td>$ 375</td>
</tr>
</tbody>
</table>

Each time the surety issues an invoice to the estate trustee, it has the opportunity to obtain an update on the status of the estate, and to encourage the estate trustee to finalize the estate as soon as possible.

Premium rates can vary with some surety companies based on the estate trustee’s country of residence. In some cases, the rate per thousand for principals living outside Canada is reported to be $6.00. The rate is higher if the surety accepts a foreign indemnity agreement. Not all surety companies report higher premium rates for principals living outside Canada.

In discussing the cost of estate bonds, we offer two points for the Ministry to consider:

1) The cost of surety bonds to secure trustee performance is nominal. Using the figures cited above, an estate with a bond of $250,000 which is open for three years will generate a total premium of $2,125; less than 1% of the bond amount.

2) Premiums for estate bonds have been extremely stable. Indeed premiums have not increased for this class of business for well over a decade and there is currently no indication from surety companies that premium increases are being contemplated at any time in the foreseeable future.
QUESTION #4
WHAT IS THE AVERAGE NUMBER OF ‘ACTIVE’ OR OPEN BONDS DURING THE YEAR?

Presuming that the average duration of an estate bond is three years, the number of ‘active’ bonds can be estimated at three times the response in Question #2. Based on the seven sureties surveyed, we estimate over 1,000 bonds to be currently ‘active’; i.e. those still holding security obligations to estate beneficiaries and which have not been delivered up by the Registrar for cancellation. This means the seven surety companies surveyed have existing exposure to estate management risk in the area of $480 million or greater.

Obviously this is an estimate based upon average length of time that a bond is in force. Many surety companies report that some estate bonds issued in 2007 or earlier are still ‘active’.
QUESTION #5
WHAT IS THE AVERAGE LENGTH OF TIME THAT A BOND IS LEFT OPEN OR ‘ACTIVE’?

Surety companies find that despite a referring lawyer’s assurances that the “estate will be wound down in less than one year”, most estates take several years to settle. As indicated earlier, estate bonds are designed to respond to estates that are settled within a one, two or even three year time period. Many estates go beyond this timeframe which can become problematic for all parties with an interest in the completion of the administration and/or with an interest under a bond.

While most surety companies cited three years as the average length of time for a bond to remain active, several sureties, particularly the larger firms, suggested that five to seven years was closer to the mark. This is largely due to the impact of several long term bonds (eight to ten years or more) which drove up the average.
QUESTION #6
COULD YOU PROVIDE INFORMATION ON CLAIMS RECEIVED, CLAIMS ACCEPTED AND NUMBERS PAID OUT? FORM 74.33 STATES THAT THE OBLIGEE IS THE ACCOUNTANT OF THE SUPERIOR COURT. IN PRACTICE, HOW DOES A CLAIM WORK? WHAT IS THE PROCESS AND ARE THERE ASSIGNMENTS ENTERED INTO WITH THE ACCOUNTANT OF THE COURT?

Before beginning any discussion about claims on estate bonds, we should state and explain the obvious: The actual dollar amount paid out annually by surety companies is very small. This does not mean that writing estate bonds is a risk free business. On the contrary, improperly administered estates have resulted in surety companies paying out significant amounts in claims in several instances. One surety advised of a claim in excess of $250,000 to the Canada Revenue Agency that resulted from the trustee’s non payment of estate taxes.

The primary reason for the minimal claims figures is the extensive effort by sureties to ensure that claims are prevented. This is accomplished by:

1) Diligent prequalification of applicants for bonds to ensure financial stability, administrative competence and strength of character of the applicant.

2) Continuous monitoring of the estate and its status to allow for early identification of issues that can lead to a claim.

3) Requiring that the trustee applicant sign an “indemnity agreement” which effectively holds them responsible for reimbursing the surety for any losses incurred under the bond. This provides trustees with a powerful incentive to ensure that the estate is properly administered.

4) Proactively responding to disputes between heirs, creditors and trustees as they arise to prevent them from deteriorating into full scale claims.

As an example of how a surety company can proactively intervene in a troubled estate, the surety may be contacted directly by an interested party expressing concern about the trustee’s performance of his or her duties. The complainant may be the heir(s) or the creditor(s) of the estate, or even a succeeding estate trustee. The surety will then typically commence an investigation to determine the validity of these claims. The investigation will include consultation with the estate trustee and his or her lawyer about the status of the estate.

The goal of the surety company’s intervention is to successfully influence the estate trustee to correct the reported performance deficiencies and in some cases, alter their behaviour to ensure that his or her duties as estate trustee are fully and properly performed. More often than not, estate trustees are highly motivated to fulfil their obligations since they are personally responsible to the surety for all losses and expenses incurred under the estate bond. This indemnity is a powerful incentive for potentially wayward estate trustees to properly administer the estate, which is in the interest of all concerned parties – the estate trustee, the heirs, the creditors, the court and the surety.

In situations where the estate trustee is not cooperative, or resists the urgings of the surety to properly perform his or her duties, the surety may intervene in the estate (often in cooperation with the heirs) to obtain a court order that will remedy the matter. In this way, issues that might ultimately lead to costly and protracted litigation are effectively truncated and resolved.
Early and prompt resolution of issues that may ultimately result in litigation is to the benefit of the court in that it reduces the burden on scarce judicial resources. It also serves the interests of the heirs and creditors by reducing the legal costs to the estate and ensuring that the estate proceeds are properly distributed or disbursed.

The steps involved in making a claim under an estate bond may, but not must, include those set out below. It is important to note that the claims adjusting process allows for considerable flexibility as regards which steps may be required by the surety and which may be dispensed with.

1. A meaningful assessment or judicial determination of the quantum of losses to the estate caused by the conduct or lack of performance of the trustee.
2. A demand made by the claimant upon the trustee/principal which is returned unanswered. It should be noted that the claimant is not required to exhaust his/her remedies against the trustee before making a claim under the bond.
3. An order for assignment of the bond to the claimant.
4. A demand made by the claimant upon the surety for payment under the bond.
5. An action or suit by the claimant on the bond for payment.

Among our recommendations (see Question #10 Recommendation 5) is to amend the Estates Act to allow beneficiaries and/or creditors to claim directly against the bond. This should significantly streamline the process and reduce frustration and costs for all concerned. As well, it may assist in ensuring that the surety receives notice at an early date of serious problems in the administration and is afforded a greater opportunity to intervene.

If need be, under Section 38 of the Act an appropriate person can take an assignment of the bond as trustee for those persons with an interest in the estate and sue on the bond. The amount claimed is typically the amount required to compensate the estate for losses as a result of a trustee’s conduct or lack of performance. The monies paid under the bond replace the monies lost and are then available to be distributed to beneficiaries or disbursed to creditors, as need be. The surety’s obligation is to provide the claimant with the funds required to satisfy proven losses to the Estate. At this point, the surety no longer has the option of intervening to correct the trustee’s behaviour or to resolve the breach. The bonding company may not contest the amount of a claimant’s demand. This is contingent on the determination of the validity and quantum of the claims by judicial proceeding, such as on a passing of accounts. The losses determined as a result of that proceeding are losses to which the bond is required to respond.

Again, the goal for sureties is to minimize the frequency of claims on bonds. The information collected during the application process, the personal indemnification of the estate trustee and the corporate responsibility of the surety company to guarantee compliance and performance of estate trustees are key underlying success factors that contribute to the effectiveness of estate bonds.

Surety bonds are simply the best and most effective security mechanism available to protect creditors and heirs from losses due to malfeasance, misfeasance or nonfeasance of the trustee.
QUESTION #7
ARE MOST CLAIMS RECEIVED FROM HEIRS OR DO SOME COME FROM CREDITORS AND IS THERE ANY DATA ON THIS?

All surety companies reported receiving complaints from either an heir of the estate, a family member or a concerned friend of the family which triggered claims prevention action on the part of the surety. It appears that the majority of claims come from or are made on behalf of one or more beneficiaries of an estate. There is, however, no available long-range historical data to confirm this.

One surety firm provided an example of a lost opportunity in which a concerned family member contacted the court directly when it suspected that the administrator was delinquent in his duties. In this case the surety’s intervention may have been able to rectify the performance issues had the family member contacted the bonding company first.

In another instance the surety noticed small amounts of funds being removed by an executor’s wife. The surety advised the estate’s lawyer and had the executor replaced. This illustrates how a surety can intervene proactively to identify and address potential claim situations before they escalate.
QUESTION #8
IS THERE INFORMATION OR DATA AVAILABLE ON ‘POTENTIAL’ CLAIMS, E.G. NON RESPONSIVE, OR NON-RENEWED AND STILL ‘OPEN’?

This information is not kept by our member companies in any usable form. As discussed, surety companies are very proactive when it comes to potential claims and will take extensive measures to prevent it from turning it into a real one. One member firm provided a number of anecdotal examples of potential claims and this information is included as the Appendix to this paper. These examples outline typical bond disputes which the surety has addressed or is working to address.

Another surety imposed a condition that a trust fund be set up to manage the estate. This included a requirement that the heirs were to receive notice of each and every disbursement. In this case, the surety firm was mitigating what they believed to be a flight risk.

At this point it is appropriate to discuss a frustrating administrative challenge that besets sureties in their efforts to secure estate assets; that of obtaining a discharge from possible liability following the wind-up of an estate. Bonding companies report that often proper documentation is never received from the court to allow for cancellation of bonds (i.e. there is no release signed by beneficiaries that received distributions or no judgment on passing of accounts, and so there is no court order directing the Registrar to deliver up the original bond for cancellation).

Some sureties take the initiative and ask for the original bond to be returned. But, the experience of sureties in being able to obtain return of bonds is “hit and miss”. Often circumstances require a surety to simply close its file from an administrative standpoint. However, in the absence of documentation verifying that the administration of the estate has been completed, the bond issued remains in force and the surety’s liability continues.
QUESTION #9
IS THERE A MAIN AREA OF CONCERN IN TERMS OF RISK, E.G. ONTARIO RESIDENTS VS. NON RESIDENTS? YOU HAD MENTIONED CONCERNS ABOUT THE VALIDITY OF A RELEASE, AND HOW TO VERIFY IF A BENEFICIARY IN ANOTHER COUNTRY DID IN FACT RECEIVE THE FUNDS. DO YOU HAVE JURISDICTIONAL ISSUES IN TERMS OF PURSUING THE PRINCIPAL AFTER A CLAIM?

The higher-risk estate bonds include:

- Non-resident estate trustees
- Estates that will take more than five years to resolve
- Estates in which there are known or expected disputes among the heirs with respect to the distributions of the proceeds of the estate
- Estates in which the assets include complex businesses that are challenging to either manage as a going-concern, quickly sell as a going concern, or wind-down (NOTE: it is somewhat unusual to receive a request for an estate bond involving a complex business. Usually the owners of such businesses have performed extensive estate planning that eliminates the need for the estate bond.)

Jurisdictional issues in terms of pursuing a principal located outside of North America will likely cause a surety company to ask certain questions of the lawyer acting for the principal. For instance more information may be required to confirm:

- That the country in which the trustee is resident does not impose restrictions on the ability of beneficiaries to pursue the trustee and obtain and enforce orders requiring the completion of the administration.
- That existing legislation allows for reciprocal enforcement of an order or judgment obtained in Ontario against a trustee located elsewhere.
- That the trustee’s being non-resident does not give rise to adverse tax consequences by way of an impact on the situs of the estate/trust being administered.
- That there is no other known circumstances which would cause an undue delay in the settling of the estate.

The concern for the surety company is fundamentally that the estate can and will be settled in a manner according to Ontario law and as quickly as possible.

Contrary to the OBA’s submissions, dispensing with the requirement that a U.S. or non-Commonwealth trustee post a bond, where he/she is named in a Will, will add considerable risk and uncertainty to estate administrations. If losses are suffered by an Estate, they may not be capable of being recouped from such a trustee. Reliance on the law of fiduciary duty, which allows executors to be held liable for breach of trust, particularly where the trustee is outside the jurisdiction of Ontario, is cold comfort to those with an interest in the completion of the administration. In outside jurisdictions, where there are greater difficulties and costs in pursuing a defaulting trustee, dispensing with the requirement of posting a bond will only increase the likelihood that beneficiaries and creditors will not be made whole.
Relatedly, the OBA’s submission that, where one of several trustees is resident in Ontario, and the others are not, a bond be dispensed with also involves adding risk to an administration. Moreover, it places severe burden on the trustee that is an Ontario resident, to the potential exclusion of the others. As trustees may be held jointly and severally liable for losses, the Ontario trustee may find that enforcement for losses is taken only against him or her. Such a trustee named in a Will, properly advised, may well decline to take on an appointment as such and renounce the right to do so.

Contrary to the OBA’s submission, it is not only minors and incapable persons that are vulnerable in respect of an estate administration. Claims on bonds may involve estates where the beneficiaries are all adults, or *sui juris*. The nature of a trustee’s role and the trustee-beneficiary relationship is such that there is considerable opportunity for abuse by a trustee of his/her control over estate assets to the detriment of any beneficiary.

SAC cautions that the OBA’S suggestion of eliminating the bond requirement for all but certain estate scenarios which are deemed the most challenging or high risk will not result in the greater availability of bonds. In that regard, the OBA’s suggestion is a non-starter. If bonds were only required in challenging or high risk administrations, surety companies as a group would re-evaluate their participation in the marketplace. It is likely that many would simply withdraw from the entire class of business which would have a significantly adverse impact on the availability of bonds for estate trustees.
QUESTION #10
WOULD THE INDUSTRY HAVE RECOMMENDATIONS ON HOW TO MAKE THE SYSTEM MORE EFFICIENT, LESS OF A BARRIER TO APPLICANTS, MORE ACCOUNTABLE TO THE HEIRS AND CREDITORS?

The surety companies are appreciative of this opportunity to provide our suggestions. We firmly believe bonds provide the ultimate mechanism to ensure proactive and reactive accountability to the heirs and creditors. There are no other solutions that provide such accountability.

The content of the section above under Summary / Recommendations should be referred to here. In addition, SAC offers the following recommendations:

1. Change the *Estate Act* to clarify the information required by the court to consider dispensing with the estate bond.

In the 2008 decision *Re Estates of Robert Henderson and Eugenia Zagaglia*, 2008 CanLII69136, the court itemized the information requirements to enable the court to consider dispensing with the estate bond. The court advised that affidavit evidence must be submitted by the estate trustee setting out:

i. the identity of all beneficiaries of the estate;
ii. the identity of any beneficiary of the estate who is a minor or incapable person;
iii. the value of the interest of any minor or incapable beneficiary in the estate;
iv. executed consents from all beneficiaries who are *sui juris* to the appointment of the applicant as estate trustee and to an order dispensing with an administration bond should be attached as exhibits to the affidavit. If consents cannot be obtained from all the beneficiaries, the applicant must explain how he or she intends to protect the interests of those beneficiaries by way of posting security or otherwise;
v. the last occupation of the deceased;
vi. evidence as to whether all the debts of the deceased have been paid, including any obligations under support agreements or orders;
vii. evidence as to whether the deceased operated a business at the time of death and, if the deceased did, whether any debts of that business have been or may be claimed against the estate, and a description of each debt and its amount;
viii. if all the debts of the estate have not been paid, evidence of the value of the assets of the estate, the particulars of each debt – amount and name of the creditor – and an explanation of what arrangements have been made with those creditors to pay their debts and what security the applicant proposes to put in place in order to protect those creditors.
Note: To this list, we suggest adding the requirement to provide affidavit evidence, together with exhibits, verifying that three or more sureties refused to issue the required estate bond.

All of the above should be codified in the Act. These changes will reduce the burden on the judiciary of deciding requests to dispense with a bond and will reduce the legal expense to the estate.

The above being said, it is important to note that the crux of the above decision is that a person seeking an order dispensing with a bond must satisfy the Court that the protections afforded by a bond are not needed or can otherwise be met. It appears that, from the Court’s perspective, the instances in which a bond may be dispensed with are limited. SAC does not read the above decision as an invitation by the judiciary to create further instances in which a bond will be dispensed with. Rather, the decision seeks to provide guidance and is intended to achieve greater consistency as to when a bond may be dispensed with. The Court does not suggest that dispensing with the posting of a bond should be treated lightly. The evidence prescribed by the decision is referred to as the “minimum” necessary to persuade a Judge to dispense with a bond. The requirement of bond exists for good reason; to afford protections as regards the conduct of administrations to those with an interest in the estate. Going forward, it may be best to address an issue of whether to dispense with a bond on a case-by-case basis, with the assistance of statutory guidelines.

2. Clearly set out in the Estate Act the circumstances under which a bond is required by the court.

3. Change the Estate Act to reduce the amount of security required.

   The Act currently requires security in the amount of twice the value of the estate. In practice, the courts typically relax this requirement to the estate value.

   The Act should be amended to reduce the security requirement to the value of the estate, which will result in fewer motions to reduce the amount of security and thereby reduce both the judicial burden and legal expense for the estate.

4. For long-duration estates (such as estates involving minors or lifetime trusts), empower and encourage the court to accept an estate bond for a limited duration, with the option for renewal of the estate bond at the end of the term.

   To improve availability of estate bonds in which there is a minor or a lifetime trust, the court should be encouraged to accept estate bonds for a limited duration of time (e.g. 5 years). At the end of that time period, the estate trustee will be required to provide a summary status report to the court (and surety), at which time the surety can determine if the bond will be extended for a further 5 year period.
By circumscribing the duration of risk for the surety, availability for bonds in estates of long-duration will increase.

5. Empower heirs and claimants to initiate claims directly under the estate bond.

By providing heirs and creditors the right to initiate a claim directly under the bond, heirs and creditors will no longer be required to initiate an action against the estate trustee and obtain a judgment. This will reduce judicial burden and expense for heirs and creditors.

6. Streamline procedures for bond cancellation once the estate has been settled.

Improve the processes, paper-work and time-lines for obtaining the delivery up of an estate bond at the end of the administration. This will eliminate unnecessary costs and frustrations for all parties. (Please see the above, under the heading Summary / Recommendations)
QUESTION #11
ARE YOU AWARE OF THE EXPERIENCE IN OTHER JURISDICTIONS WHERE THE REQUIREMENT
OF A SURETY BOND HAS BEEN ABOLISHED? (E.G. THE UK, APPARENTLY).

We are not aware of the experience of the U.K. It is our understanding that other major
Commonwealth countries (for example, Australia) require security from estate trustees. It is
also our understanding that all states in the United States also require estate bonds, the
particulars of which are set out in each state’s estate statutes.

In Canada, all jurisdictions require estate bonds to be posted.
QUESTION #12
WHAT ARE YOUR VIEWS ON ‘ESTATE TRUSTEE INSURANCE’ IN TERMS OF THE PROTECTIONS AVAILABLE FOR RECOVERY BY THE BENEFICIARIES AND CREDITORS? COULD THIS BE A VALID AND PRACTICAL ALTERNATIVE TO A SURETY BOND? IT SEEMS CLEAR THAT INSURANCE IS BETTER PROTECTION FOR THE ESTATE TRUSTEE FOR ERRORS AND OMISSIONS (BECAUSE THEIR OWN ASSETS ARE PROTECTED) BUT DOES E & O INSURANCE COVER DELIBERATE MALFEASANCE?

By way of background, errors and omissions insurance (“E&O Insurance”) is liability insurance payable to the insured (the estate trustee) as indemnification for certain losses or expenses incurred as a result of alleged negligent acts by the insured. Note that deliberate acts are excluded from coverage under E&O Insurance. Consequently, acts of theft or fraud by the estate trustee are not payable by E&O Insurance. In contrast, estate bonds in effect provide compensation for both negligent and deliberate acts by the estate trustee, including theft and fraud. This, in and of itself, should persuade the Ministry to reject E&O Insurance as a viable security option or an alternative to estate bonds.

There are additional factors for the Ministry to consider when evaluating E&O Insurance as an option. For instance, changes to the appropriate legislation, including the Estates Act, would be required to compel the estate trustee to purchase E&O insurance (estate bonds are currently a statutory requirement, whereas E&O Insurance is not).

Assuming the required changes can be made to the relevant legislation; the Ministry must consider the other features of E&O Insurance and assess their impacts.

It is important to note that E&O Insurance is an insurance product, not a surety bond. The difference is important. As an insurance policy, E&O Insurance has the following characteristics*, which differs or varies from the characteristics of surety bonds and must be taken into consideration:

- The insurer’s obligation under the policy is to the insured (i.e. to the estate trustee), not to the heirs and creditors of the estate. Heirs and creditors are not entitled to make a claim under the E&O policy.
- Heirs and creditors must initiate a claim against the estate trustee alleging breach of his/her duties (statutory or otherwise) as estate trustee.
- The estate trustee must file a claim under the E&O Insurance seeking defence and indemnity by the E&O Insurer.
- For E&O Insurance to apply to a particular claim:
  - the event giving rise to the claim must fall within the scope of the coverage.
  - no policy exclusions must apply to the claim
  - the policy must be in force (insurance policies are in force typically for a year, then they lapse unless renewed by the insurer. Some policies may enable the insurer to cancel the policy prior to the annual renewal date). As third parties, neither the court nor the beneficiaries would have control over whether or not an E&O Insurance policy remains in force and would not be aware of it lapsing or being cancelled.
• If coverage applies to the allegations made in the claim, the insurer will investigate the claim and appoint a solicitor to defend the estate trustee in the litigation.
• The heir or creditor suing the estate trustee must:
  - Demonstrate that the estate trustee failed to pay amounts that were due and payable by the estate to the heirs and/or creditors
  - Prove the quantum of damages incurred

[*comments are based on general principles relating to E&O insurance]*

All of these elements will apply to any claim initiated by heirs and creditors against the estate trustee. Clearly, recovery of amounts owed to heirs and creditors by the estate is not guaranteed, straight forward nor timely under the E&O Insurance policy.

Moreover, the coverage provided by E&O Insurance policies is not mandated by statute. Consequently, policy wordings will likely differ from insurer to insurer. For E&O Insurance to be an effective alternative, the Ministry would need to mandate a policy wording that will be sufficient to provide the required financial protection to heirs and creditors. E&O Insurers are very particular about their policy wordings and obtaining unanimity among the many E&O insurers about the policy wording would be difficult, particularly since the policy covers risks other than those to heirs and creditors. There is no certainty that insurers would be willing to issue the form of E&O Insurance mandated by the Ministry.

There are other factors that Ministry should consider when evaluating E&O Insurance:

• The Ministry will need to establish criteria for the minimum amount of E&O Insurance to be provided, and establish a formula to protect heirs and creditors in estates of varying sizes.
• The Ministry will need to establish procedures to ensure that estate trustees submit their E&O Insurance policy annually for review and inspection by the court.
• The Ministry needs to take into account the additional processes, risks and uncertainties of trying to collect payment under E&O Insurance:
  o The E&O Insurance policy amount may have been depleted or exhausted through prior claims under the policy.
  o The heirs and creditors will be required to initiate claim against the estate trustee officers alleging breach of their duties. There is no obligation on the part of the estate trustee to report a claim to their E&O insurer.
  o The estate trustee needs to comply with the E&O Insurance conditions, failing which the policy may be voided through no fault of the court or the heirs and creditors.
  o Heirs and creditors need to initiate a lawsuit against the estate trustee to attempt to obtain a judgement. Neither the heirs and creditors nor the court has the ability to compel the E&O Insurer to make payment under the policy.
  o There is no certainty that payment will be made under the E&O Insurance. E&O Insurance contains conditions and exclusions which may nullify coverage for a claim.
Estate bonds are a far more effective form of security than E&O Insurance. An estate bond is conditioned on the performance of four things by the trustee: making a complete and accurate inventory of the estate; administering the estate; providing an accounting of the estate, if required by the beneficiaries and/or creditors; paying the legacies and residue to the persons entitled, under the Will or on an intestacy.

- The bond wording is simple – a one page document.
- The bond in effect responds to both negligent and deliberate breaches of the estate trustee. But, it is only necessary to prove that the condition of the bond has been broken.
- The bond amount is determined by the court in an amount sufficient to safeguard the interests of heirs and creditors.
- The bond is irrevocable and cannot be cancelled.
- The surety will, in many instances, make payment under a bond upon being satisfied that the principal has broken the condition of the bond and the losses occasioned by the trustee’s conduct of the administration are quantified and are those to which the bond is required to respond.
- The bond enures to the benefit of the Accountant of the Superior Court of Justice, and a judge of the court on application in a summary way and on being satisfied that the condition of the bond has been broken has the power to assign a bond to an appropriate person who can sue in his/her own name, as if the bond had originally been given to them, and collect as trustee for all persons interested.

Moreover, estate bonds are an effective tool for both risk mitigation and risk management. The risk mitigation feature of estate bonds is clear – the risk of financial injury caused by the estate trustee to heirs and creditors is protected by the estate bond, which provides valuable financial protection for persons entitled to the proceeds of the estate and an assurance that they will be able to recover their rightful share of the estate.

Estate bonds also provide risk management, a service that usually goes unseen. The surety is motivated to ensure that the estate trustee properly and fully performs his/her duties. To that end, the surety periodically follows up with the estate trustee regarding the status of the estate. If the estate is taking longer than usual to resolve, the surety encourages the estate trustee to finalize it as quickly as possible, which is in the interests of all concerned parties. In our experience, estate trustees very often do not provide status reports to the court (even though orders often compel them to do so), and the surety is the only effective ‘monitor’ of the status of the estate.

Sureties often learn of potential issues or problems encountered by the estate trustee during these checks, and can intervene or provide advice to the estate trustee to resolve such issues.

It should also be noted that insurance premiums should not be an eligible expense of the estate as it only protects the estate trustee, whereas the bond premium is an eligible and appropriate expense to the estate.
QUESTION #13

THE OBA STATES THAT SURETY BONDS ARE DIFFICULT TO OBTAIN AND ARE EXPENSIVE. IT IS PERCEIVED THAT GOOD PEOPLE DO NOT QUALIFY FOR A SURETY BOND AND THAT IS A BARRIER TO THE EFFICIENT ADMINISTRATION OF ESTATES. PLEASE COMMENT.

As has been discussed throughout this document, the assertion that bonds are expensive and unavailable is simply not true. Estate bonds are not difficult to obtain for the vast majority of estates. When the proper information is available and submitted, it is a straightforward process and requests are often turned around within two business days. Indeed, some surety firms have a two day turnaround service guarantee for estate bonds.

Surety companies typically require information about the estate and the estate trustee that is readily available, such as:

- Copy of the will (if applicable)
- Names and ages of the heirs to the estate and their relationship to the deceased
- Assets and liabilities of the estate
- Copy of death certificate
- Copies of any court documents filed or pending with respect to the deceased’s estate
- Information about the estate trustee, including his/her assets and liabilities

The personal net worth of the estate trustee is not usually the determining factor in the decision to issue a bond, provided that the applicant is not in dire financial straits. The surety relies more on the characteristics of the estate, the character of the estate trustee, the estate trustee’s ability to perform his/her duties, and the relationship of the estate trustee to the deceased and heirs.

Applicants will almost always retain the services of a lawyer to assist them through the process and those who are in a stable financial position and provide the appropriate documentation and information should have no problem obtaining the bond.

The erroneous perception that bonds are difficult to obtain may be bolstered by a disturbing practice undertaken by some estate advisors of “soliciting declinations”. Two of the surveyed surety firms reported that they had been approached by representatives for an appointed trustee who presented an application for a bond and then refused to provide the required underwriting information. This of course resulted in the surety’s declination to provide the required bond. By approaching two or more sureties in this manner, the estate is thus able to convince the court to waive the bond requirement by presenting declination letters that purportedly demonstrate the applicant’s inability to obtain the required bond.

As discussed in our response to Question #3, estate bonds are not expensive. Indeed the cost is negligible; often considerably less than 1% of the bond amount and they provide true value in return for the premium. It should be noted that the premium for bonds is an eligible expense to the estate given its role in protecting the estate, its heirs and creditors.
The purpose of the bond is to protect the individuals who are entitled to share in the estate and the estate creditors. This requires the surety company to consider the best interest of all such parties as the top priorities. A “qualified” applicant does not always come with a strong financial position. Typically the biggest barrier to obtaining a bond is the refusal to provide the required information during the application process.
QUESTION #14
ALSO WITH RESPECT TO THE EFFICIENT ADMINISTRATION OF ESTATES, PLEASE COMMENT ON THE TIME AND COST OF OBTAINING THE RELEASE FROM THE BOND AT THE END OF ADMINISTRATION.

Unfortunately surety companies spend a great deal of time and resources in attempts to be released from liability once the estate administration has been concluded. A court order providing for the delivery up of the original bond or cancellation is in many instances the only way that the surety company can be fully confident that the estate administration has been concluded to all interested parties’ satisfaction.

We believe the policies and practices for releasing the bond upon the settlement of the estate can be and should be improved to eliminate unnecessary costs and frustrations for all parties.

Typically, in current practice, a surety company will request the estate trustee to obtain a discharge from the court of his/her duties as estate trustee. Indeed, this is a prudent practice on the part of the estate trustee since it signifies the termination of his/her responsibilities. Occasionally the surety encounters resistance or lack of cooperation in this regard from estate trustees.

As an alternative, the bonding company may ask the estate trustee to obtain confirmation from the heirs that they have received their share of the estate. If such confirmations are not received, the surety’s risk is not terminated under the bond as it still resides with the court and the estate trustee has not been discharged by the court.

To induce estate trustees to obtain the appropriate discharge from the court, sureties continue to invoice on an annual basis until the discharge is obtained or until they obtain confirmation from the heirs that they have received their share of the estate.

Some surety companies are prepared to accept a letter from the estate trustee’s lawyer verifying that the estate administration has been concluded.
QUESTION #15

PROVIDE ANY OTHER COMMENTS/ARGUMENTS THAT YOU BELIEVE WILL BE HELPFUL FOR MINISTRY DECISION MAKERS.

*Sole reliance on judgment:*

In the event of improper conduct by an estate trustee, the only remedy available to the heirs and creditors of the estate, in the absence of a bond, is to initiate an action against the trustee and obtain a judgement. A lawsuit is a highly inefficient, time-consuming, slow and costly method of debt-collection and this process deters many heirs and creditors from pursuing claims. Moreover, collecting on an unsecured judgment against an estate trustee is rarely accomplished, particularly since estate trustees are often individuals with limited financial means. Recovery from a non-resident estate trustee is particularly problematic – whether or not the estate trustee is a Commonwealth resident – since enforcement of the judgment requires legal and/or collection efforts in a foreign country.

Estate bonds provide protection to heirs and creditors of estates and ensure that sufficient funds are available to satisfy their claims. Reducing the frequency with which estate bonds are required will expose the public to greater frequency of non-payment by estate trustees.

*Impact on tax collection:*

The Ontario government should be conscious of the detrimental impact that the elimination of estate bonds will have on their ability to collect estate taxes. In January 2013 new amendments to the Estate Administration Tax (“EAT”) will take effect regarding the reporting and payment of EAT.

As background, about 19 years ago probate fees were abolished in favour of an estate administration tax. It was anticipated that the EAT would provide greater revenues for the government. Many people took advantage of tax planning to avoid large EAT assessments. However the provincial government believed that estate trustees were undervaluing the assets of the estate to minimize the amount of EAT payable to the Ontario Ministry of Finance.

Under the new legislation, estate trustees must provide the Minister of Revenue with an inventory of the estate’s assets, a declaration of value and/or supporting documents to confirm the valuation. The Minister has 4 years to audit the estate and has full investigative powers, including a requirement that third parties give the Minister access to their premises and/or permit the Minister to examine their assets and records.

If the estate trustee fails to file the information on time or if the Minister believes that the estate trustee has misrepresented the facts or committed any fraud, the audit period can continue indefinitely.

If additional assets are located after the initial filing, the four year audit period begins on the date the additional values are filed.
Thus far, no regulations have been drafted but there is no indication of a requirement or intention of the Minister of Revenue to issue a Clearance Certificate once payment of all EAT amounts has been made by the estate trustee.

Consequently, the estate trustee may have distributed the assets to the beneficiaries believing that all EAT amounts have been properly paid.

After all estate assets have been distributed, should a Ministry reassessment establish that additional estate taxes are due, the estate trustee and the beneficiaries are personally liable for payment. Without a bond in place, collection by the Minister of the EAT taxes from the beneficiaries or the estate trustee will be uncertain, time-consuming and expensive. The bond guarantees the payment of all amounts due to heirs and creditors, and the Minister of Finance is a creditor of the estate. Thus, the estate bond effectively is a guarantee of provincial taxes payable. At a time when the provincial government is challenged to maximize its tax revenue to satisfy budgetary constraints, elimination or reduced use of estate bonds exposes the provincial government to decreased tax collections from estates.

**Risk of “select against” market conditions:**
By reducing the bonding requirements or eliminating them in certain instances, sureties can find themselves in a “select against” position. This means that only when potentially difficult circumstances surrounding an estate are identified will a bond be required. As discussed earlier, this will result in more selective underwriting by sureties and in some cases bonding firms will cease writing the affected class of business. This will inevitably have the effect of reducing competition and making bonds harder to obtain.

**Growth in demand:**
The cumulative effect of estates growing by quantity and complexity profoundly underscores the need to ensure that appropriate security remains intact to protect the beneficiaries and creditors of estates. Again, bonds are the only form of security available to provide the needed protection to estate beneficiaries and creditors.

**Correction of deficiencies:**
Modernization of bonding requirements will bring the benefit of minimizing or removing the true barriers to efficiency, i.e. addressing the commitment period, establishing contact information for resolution on bond forms; and ensuring the proper and efficient release process for bonds. Potentially, efforts to modernize the efficiency might include an examination of the emerging technologies for electronic bond documents.
CONCLUSION / SUMMARY

The surety bond system has served the province of Ontario well and has provided estate beneficiaries and creditors with effective protection against wrongful acts by trustees. We respectfully suggest that the rationale used by the Ontario Bar Association in recommending that the use of bonds be reduced or eliminated is based upon a misunderstanding of the suretyship process or on assumptions that are simply wrong.

Surety bonds provide value to the estate administration process by:

- Prequalifying applicants to ensure their fitness to take on the role of trustee;
- Providing financial compensation to the estate’s beneficiaries or creditors, in the event that a claim is made under the bond.
- Intervening proactively in the administration of an estate should an issue arise which could lead to litigation and a claim under a bond. In doing so, losses to beneficiaries and trustees may be prevented and the resources of the courts not squandered on preventable litigation.
- Holding a trustee ultimately accountable by enforcing his/her covenant to reimburse the surety for any loss it incurs under the bond. This will keep the principal committed to properly executing his or her obligations.

In addition, contrary to the impression left by the OBA’s submissions, estate bonds are widely available to trustee applicants at a negligible cost to an estate.

Finally, some of the suggested alternatives such as Errors & Omissions Insurance are not appropriate to secure risks of this nature and would not provide adequate protection against losses to the bonded estates.

This is not to say that the current system is perfect as is. As recommended earlier in this paper, there are a number of beneficial changes that could be implemented to modernize and improve the process. The Surety Association of Canada would be pleased to offer the benefit of our expertise to assist the Ministry and the Office of the Public Guardian in bringing about these beneficial changes. We look forward to hearing from the Ministry in this regard and can be reached at the contact coordinates below:

**Contact:** Steven D. Ness  
Phone: 905-677-1353  
email: sness@suretycanada.com

Again we thank the Ministry and the Office of the Public Guardian and Trustee for the opportunity of providing our comments and input.
Appendix

ESTATE ADMINISTRATION BONDS

Sample File Summary

<table>
<thead>
<tr>
<th>File</th>
<th>Bond Type</th>
<th>Bond Amount</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1</td>
<td>Administration Bond</td>
<td>105,000</td>
<td>We received a claim from a lawyer representing one of the beneficiaries of this estate. In this case, this beneficiary had also passed away and the lawyer was trying to wind down her estate. The lawyer wanted to account for her interest in her aunt's estate. Our principal was not responding to any communication which resulted in our receiving notice of the claim. We contacted our principal and found out that the reason for the delay was due to the sale of a property that was located in Scotland. The property has now been sold and the principal is waiting for the Clearance Certificate from CRA and will be winding down the estate shortly.</td>
</tr>
<tr>
<td>#2</td>
<td>Administration Bond</td>
<td>750,000</td>
<td>We found out about a potential claim at the time when the premium was renewed and we had requested an update. Our principal had been appointed estate administrator of his late aunt's estate as most of the beneficiaries lived overseas. He had failed to comply with various court orders and refused to exit the premises where he lived which was situated on a property belonging to the estate. He was eventually removed as administrator and replaced by one of the beneficiaries. He refused to provide an accounting and continued to dispute the claim. He took the position that he had lived with his aunt and had provided extensive personal care to her for over 40 years which had been overlooked. His aunt had left a holographic Will leaving her assets to our principal and his other three siblings. This matter was eventually resolved by way of mediation.</td>
</tr>
<tr>
<td>#3</td>
<td>Administration Bond</td>
<td>1,500,000</td>
<td>We were advised by the new administrator that our principal passed away. This new administrator was appointed because our principal became ill and passed away before he was able to pass the accounts and finalize the winding down of his father's estate. Some of the beneficiaries initiated legal action against each other over unrelated issues and made allegations that our Principal (as well as his son) had misappropriated funds from the grandfather's estate. The new administrator, who is also a family member, has not been able to quantify the loss to the estate for various reasons. He could not get copies of the records from our principal's family and, apparently, some of the records were lost in a fire. Our principal's house, which was the main asset of his estate, has already been sold to a third party by his son who was the Executor of his Will. These issues are all being dealt with as part of the current litigation between the family members.</td>
</tr>
<tr>
<td>#4</td>
<td>Administration Bond</td>
<td>500,000</td>
<td>Our principal, who is the daughter-in-law of the deceased, was removed and a new Trustee has been appointed. The widow and her two daughters have made allegations of misappropriation of funds and have sued our principal. They are also contesting the validity of the Will which was discovered in the basement after the deceased had passed away. A distribution was originally made in accordance with the terms of the Will. It was a typed Will that was signed (but not witnessed) which renders it invalid. As a result, the distribution should have been made in accordance with the Succession Law Reform Act instead which allows the widow a $200,000 preferential share. The widow has sued our principal for her $200,000 portion (which our principal has already placed in trust) along with 1/3 of the remainder of the estate. To complicate matters further, the lawyer that our principal had used originally had given her erroneous advice about the Certificate of Appointment which created all of this confusion. He is being third-partied in the litigation and our principal's new lawyer expects that this will involve the law society's E&amp;O carrier, LawPro.</td>
</tr>
<tr>
<td>#5</td>
<td>Administration Bond</td>
<td>379,909</td>
<td>Our principal tried to pass the estate accounts and some of her expenses were contested by the beneficiaries. She is an elderly woman and was claiming that she incurred $123,000 in expenses over the course of two years to maintain a property belonging to the estate that was valued at only $35,000. She hired her son-in-law to drive her back and forth to this property (around 80km) and paid him an exorbitant amount for mileage, meals as well as a separate driver's fee. A Hearing took place and the judge ruled against her. She could not explain certain discrepancies that were pointed out to her by the lawyers for the other beneficiaries. She has been ordered to repay these funds back into the estate and also pay for the other lawyers' legal fees, however, she has not been able to comply with the Court Order.</td>
</tr>
<tr>
<td>#6</td>
<td>Administration Bond</td>
<td>375,634</td>
<td>Our principal, who is the husband of the deceased, was removed as administrator and has been replaced by the deceased's brother. The deceased died without a Will and her husband took control of her estate which he normally would be able to do pursuant to rights of survivorship (as they do not have any children). However, in this case, they had a marriage contract between them which stated that the deceased's parents had a specific interest in her estate. Our principal has not complied with the terms of the marriage contract, however, eventually an agreement was reached between the parties to get this resolved.</td>
</tr>
</tbody>
</table>