

When Can a Court Remove an Executor in Ontario?

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When a family member or friend dies, the estate beneficiaries entrust the administration of the estate to the deceased's chosen executor or, alternatively, to an estate trustee without a will. But what happens when that trust is broken? Perhaps the executor unduly delays administering the Estate, puts themselves in a conflict against the Estate, or, in extreme circumstances, steals from the Estate. Can the beneficiaries remove the executor?

The short answer is "yes", but it is a high bar. Pursuant to its inherent jurisdiction and the statutory powers under sections 5 and 37 of the Trustee Act, the court may remove an estate trustee and appoint another appropriate person to act in his or her place.^[1] Such an application can be made by a "person interested in the estate of the deceased".^[2]

The formal language of the removal depends on whether a certificate of appointment has been granted. If a certificate of appointment has already been granted, the court would order that executor's removal, while it would merely order that the executor be "passed over" were no certificate yet issued.^[3]

Situations in which removal may be justified include where the estate trustee has acted in a way that has endangered the trust property or otherwise shown a lack of honesty, proper capacity, or reasonable fidelity.^[4]

In the recent decision *Rosenberg v. Lipman*, 2026 ONSC 3008, Justice Sanfilippo referred to the accepted principles that a court considers when determining whether to remove an executor from its position as trustee of the estate:^[5]

- The court will remove the estate trustee only if doing so is clearly necessary to ensure the proper administration of the trust.
- The court should not lightly interfere with a testator's choice of the person to act as his or her estate trustee. The wishes of the testator will generally be honoured "even if the person chosen is of bad character".
- A court should remove an estate trustee only on the "clearest of evidence" and should be reluctant to pass over a named estate trustee unless "there is no other course to follow".

- The test for removal is whether the estate is likely to be administered properly in accordance with the fiduciary duty of the trustee and for the benefit of the beneficiaries; not whether the estate trustee executed their functions perfectly or ideally.
- Friction alone between co-executors is not itself reason for removal. For friction to be the basis for removal, it must rise to a level that prevents the proper administration of the estate.
- Passing over an executor is an “extreme remedy” and one of “last resort”.
- Past misconduct may justify removal if that misconduct is likely to continue in the future. Removal is not intended to punish, but to protect the Estate assets and the interests of the beneficiaries.
- The Court’s main guide should be the welfare of the beneficiaries.

The court may also take into account situations where the Estate Trustee has placed herself in a position of conflict, has failed to administer the Estate in a timely manner, is unable to administer the Estate impartially or with an even hand, or where the hostility and distrust between the Estate Trustee and the beneficiaries prevents communication or the effective administration of the Trust.[\[6\]](#)

The following paragraphs outline more specific examples where a court considered whether to remove an executor.

Friction Between the Beneficiaries

Friction and mistrust between the beneficiaries may be enough to justify an executor’s removal where such friction jeopardizes the administration of the estate.[\[7\]](#)

For example, in *Agostino v. Agostino*, 2025 ONSC 6009, the court determined that the friction between Francesco and Lucia had risen to a level that prevented the proper administration of the estate, putting the estate and its beneficiaries at risk. Both co-estate trustees had acted unilaterally and failed to cooperate, leading to significant delays and risks, including a lapsed insurance policy and a defaulted mortgage.[\[8\]](#) The deceased’s intent to balance family factions by appointing both Francesco and Lucia as co-estate trustees would be frustrated if only one were removed.

The deceased’s understanding of the difficult familial relationship might also be a factor. In the case of *La Calamita*, the court in part relied on the fact that the deceased knew of the relationship between his children in the 30 years between the execution of his Will and his death, and he chose not to revise his Will to appoint a different trustee.[\[9\]](#)

Delay

In circumstances where delay is the key complaint, the question becomes whether the delay has compromised the Estate in any manner and whether it will be repeated. Courts will further consider whether the delays have been reasonably explained and excused on that basis.[\[10\]](#) Delay in providing the beneficiaries with information about the Estate’s assets and liabilities are not necessarily cause for removal.[\[11\]](#)

In *Oldfield v. Hewson*, 2005 CanLII 2808 (ON SC), the Estate Trustee failed to administer the Estate for seven years, failed to pay taxes on time, loaned money to himself from the Estate,

and failed to transfer property to the beneficiary as set out in the Will.^[12] The court removed the estate trustee in those circumstances.

Conflict of Interest

A trustee may be removed where there is a conflict of interest between the trustee's interests and his duties as trustee or where he must inevitably weigh his personal interests against the interests of the beneficiaries.^[13] For example, estate trustees may be in a conflict of interest if they become creditors of the Estate.^[14]

However, even where there exists a conflict of interest, an estate trustee may not be removed if that conflict can be properly managed, and if there is no evidence of improper conduct. For example, in *Johnston v. Lanka*, 2010 ONSC 4124, the estate trustee purchased shares of a corporation that formed part of the Estate. The court acknowledged that, while such a purchase created a conflict, that conflict was mitigated after the estate trustee recused herself from decision making in respect of the transaction. This was sufficient for the court to find that the conflict did not require removal on that basis.^[15]

Misappropriation of Funds

An estate trustee misappropriating funds is one of the more straightforward reasons to remove them from that position. In *Tomas v. Tomas*, 2024 ONSC 2279, the court removed a co-estate trustee after finding that the co-estate trustee used the deceased's money while she was alive to meet his own needs, while she was incapable. After the deceased's death, the co-estate continued to be uncooperative, allowing various estate debts to accumulate and damage to estate assets to continue.^[16]

Further, in *Das Gupta v. Das Gupta*, 2026 ONSC 3310, the court found that the estate trustee ought to be removed given his breaches of fiduciary duties and misappropriation of estate funds.^[17] In that case, the court had also found that the estate trustee had refused to leave the estate home, which resulted in costs in having the Sheriff forcibly remove him.^[18]

Proper Replacement

Even when a court agrees with an applicant that the executor ought to be removed, it is still tasked with determining who ought to be a "proper" person for that replacement. It is not guaranteed that the applicant seeking the removal is the proper replacement. As a general rule, a person will not be appointed as an estate trustee if that person's duties as trustee would conflict with either his or her personal interests or duties which that person has undertaken apart from as trustee.^[19] Further, when considering whether to replace an executor with another person, the court may consider whether that new appointment will result in delaying the administration of the Estate.^[20]

Conclusion

While beneficiaries or interested parties may seek the removal of an estate trustee in situations involving serious misconduct, unreasonable delay, or unmanageable conflicts of interest, Ontario courts approach such applications with caution. Removing an executor is considered a

remedy of last resort, and courts remain reluctant to override a testator's clear intentions. Ultimately, the court's primary guide and overriding objective in deciding any removal application is protecting estate assets and ensuring the welfare of the beneficiaries.

[1] [St Joseph's Health Centre v. Dzwiekowski, 2007 CanLII 51347 \(ON SC\)](#), at para [25](#); [Chambers Estate v. Chambers, 2013 ONCA 511](#) at para [101](#); ss. 5 & 37.

[2] [Murphy Estate, 2012 ONSC 974](#) at para. 46.

[3] [Holmes v. Holmes, 2024 ONSC 4925](#) at para. 34.

[4] [Di Michele v. Di Michele, 2014 ONCA 261](#) at para. 84.

[5] [Rosenberg v. Lipman, 2026 ONSC 3008](#) at para. 178.

[6] [Staples et al. v Jean et al., 2024 ONSC 4590](#) at para. 48, affirmed [2026 ONCA 369](#).

[7] [Borisko v. Borisko, 2010 ONSC 2670](#) at para [5](#); [Davis, Re](#), 1983 CarswellOnt 608 at paras 5-7 (ONCA).

[8] [Agostino v. Agostino, 2025 ONSC 6009](#) at para. 29.

[9] [La Calamita v. La Calamita, 2024 ONSC 4219](#) at para 104.

[10] [Radford v. Wilkins, 2008 CanLII 45548 \(Ont Sup Ct\)](#) at para [108-109](#).

[11] [La Calamita v. La Calamita, 2024 ONSC 4219](#) at para 103.

[12] [Staples et al. v Jean et al., 2024 ONSC 4590](#) at para. 51.

[13] [Sasso v. Sasso, 2021 ONSC 3259](#) at para. 60.

[14] [Gonder v. Gonder Estate, 2010 ONCA 172](#) at para. 15.

[15] [Johnston v. Lanka, 2010 ONSC 4124](#) at para. 21.

[16] [Tomas v. Tomas, 2024 ONSC 2279](#) at paras. 12 and 15.

[17] [Das Gupta v. Das Gupta, 2026 ONSC 3310](#) at para. 78.

[18] *Ibid.*

[19] [Di Michele v. Di Michele, 2014 ONCA 261](#) at para. 87.

[20] [Holmes v. Holmes, 2024 ONSC 4925](#) at para. 39.