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New Estate Forms Coming to Ontario in 2022

By Suzana Popovic-Montag

2022 will be an important year for estate practitioners in Ontario. In addition to the changes to the *Succession Law Reform Act*, RSO 1990, c S.26 (the “*SLRA*”) announced earlier this year, the estate administration procedures set out in the *Rules of Civil Procedure*, RRO 1990, Reg 194 (the “*Rules*”) will also be amended as of January 1, 2022. One of the biggest changes being ushered in with the updates to Rules 74, 74.1 and 75 are new estate forms. The new court forms were released in October of 2021 and can be accessed online on the Ontario Court Forms website, although they will not be required when applying for certificates of appointment of estate trustee with or without a will (more frequently referred to as “probate”) until January 4, 2022. While it may take some time for practitioners to adjust to using the new forms, in the long term, we expect them to improve the process of applying for probate. Having been re-formatted and simplified, the new forms are more direct and appear to be more user-friendly. We are optimistic that they will make the process of preparing an application for probate less rigorous and more accessible.

Fewer Probate Forms and Rules

In total, 23 new estate forms are being introduced to replace 56 of the current forms. This marked reduction in the number of forms was achieved by creating essentially one form for each component of a probate application, ranging from the preparation of an application for a certificate of appointment (Form 74A) to the preparation of court orders (74I). Previously applicants had to choose from a variety of forms for most stages of the process, depending on a variety of factors, including:

- whether the deceased executed a will or not;
- if the deceased did execute a will, whether it dealt with limited assets; and
- whether the applicant was a corporation or an individual.

One of the forms currently required for applying for probate has also been eliminated - the Notice of

Application (Forms 74.7 and 74.17). This reduction in the number of forms to choose from should streamline the process, making it simpler and more straight forward.

In addition to the reduction in forms, there will also be fewer rules to consult when applying for a certificate of appointment. Starting on January 1, 2022, both Rules 74.04 and 74.05 will be revoked. These Rules set out the procedure for bringing an initial application for a certificate of appointment - Rule 74.04 currently applies to applications with a will and Rule 74.05 applies when there is no will. A new version of Rule 74.04 will take their place and govern all applications for a certificate of appointment of estate trustee.

The paperwork for seeking a certificate of appointment after the probate process has already commenced has also been streamlined. The requisite form, Form 74J, will take the place of six different forms and will cover applications to appoint a succeeding estate trustee, the nominee of a foreign estate trustee, and an estate trustee during litigation, in addition to confirmation of an appointment.

Forms Keep Pace with Legislative Changes

Changes to the new probate forms, particularly Form 74A, also reflect the recent amendments to the *SLRA*. Effective January 1, 2022, marriage will no longer automatically revoke a pre-existing will in Ontario, and provisions in a will for the benefit of one's spouse by marriage will no longer apply if a couple is separated at the time of death (as defined under new sub-sections 17(3) and (4) of the *SLRA*), unless a contrary intention is expressed by the deceased. As a result, Form 74A seeks more personal information about deceased persons related to marriage and separation, but this additional information is not particularly invasive and should not be onerous for those applying for probate to obtain for the purposes of the application. Also, if

lawyers or paralegals assist clients in executing a will remotely using audio-visual communication technology, those professionals will need to swear an affidavit confirming that they are licensed by the Law Society, thereby establishing that those wills comply with the requirements for remote execution set out in subsection 4(3) of the *SLRA*, as amended earlier this year.

New Forms Encourage the Use of Online Tools and Resources

Other minor tweaks to the forms are helpful and reflect the current digital age. For example, the new forms for a small estate certificate direct applicants to more free online resources than the previous forms did. The notice provided by the Registrar when a will or codicil is deposited with the court also references additional online resources. This is a positive development, as directing Ontarians to online resources with useful information about the probate process should improve transparency, and make the process easier to navigate for lawyers and applicant estate trustees alike.

Also, on Form 74A, the application for a certificate of appointment, applicants are now provided with a space to enter estate beneficiaries' email addresses. This is a logical update, given that application materials may now be served on beneficiaries *via* email under Rule 74.04(7)(b), and can also be served this way after the new Rule 74.04 comes into force in January. Similarly, Form 75.1, Notice of Objection, will also include a field for entering the email address of either the objector or counsel for the objector.

New Notice of Objection Requests Details

Form 75.1, Notice of Objection, has been updated to provide objectors to the appointment of an estate trustee with a greater opportunity to specify not only the grounds upon which they object, but to also provide details. Asking would-be objectors for this additional information could help weed out inappropriate objections at an early stage. The Ontario Superior Court of Justice held in 2020 that a Notice of Objection that is based solely on suspicion, rather than evidence, may be struck out on the basis that it is frivolous and vexatious: see *Dessisa and Wolde v. Demisie*, 2020 ONSC 641. Requiring a Notice of Objection to provide more detail about why a person is objecting to the issuance of probate may help elucidate whether or not there is merit to an objection earlier on in the process.

Forms Will Prioritize Service on Government Bodies Representing Beneficiaries

The new forms also appear to focus on ensuring that probate applications reach government entities, especially the Office of the Children's Lawyer, and are easier for those entities to process. An applicant will be required to confirm on Form 74A that notice of the application has been served on the Children's Lawyer if an unborn child or unascertained person may have an interest in an estate. While the requirement to serve such notice on the Children's Lawyer was incorporated into the *Rules* in the 1990s under Rule 74.04(5), the previous forms did not remind applicants of this requirement. Additionally, applications for a small estate certificate now require applicants to set out the value of a beneficiary's interest in the estate if that beneficiary is a minor or an incapable adult and service is required on the Office of the Public Guardian and Trustee or the Children's Lawyer regarding that beneficiary's interest. While these changes may appear relatively minor, they are noteworthy and commendable in that they can be expected to make it easier for the government to protect the interests of vulnerable beneficiaries - specifically minors, incapable adults, unborn children, and unascertained persons.

Conclusion

We welcome the new estate forms, particularly how they streamline and simplify the Rule 74 probate process. The current forms can be complicated - not just for the public, but even for seasoned estate practitioners. It can be easy to overlook or miss a requirement or make a mistake, even if an application for probate is carefully prepared, given the plethora of forms to choose from. Hopefully the new forms will make the probate process more straight forward and user-friendly for all Ontarians.



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