



AN INTRODUCTION TO THE NEW FORM 74G

By Suzana Popovic-Montag - March 2024

Last month, our Solicitor's Tip reviewed the new Form 74F, used to establish the validity of the handwriting appearing within holograph instruments, which will be required as of April 1, 2024 when applying for a certificate of appointment of estate trustee.¹ This month's Solicitor's Tip focuses on another new form that will also be required as of April 1, 2024 – an updated version of Form 74G (Renunciation and Consent)² that combines the current Form 74G, used to renounce the role of estate trustee,³ and Form 74H, which is used to provide consent to an application for a certificate of appointment of estate trustee.⁴

The Rationale Behind the New Form 74G

In merging Forms 74G and 74H, the intent appears to be to simplify the process of applying for probate by reducing the number of forms that must be prepared and filed. Over a decade ago in *O'Flynn Estate*,⁵ the Ontario Superior Court of Justice approved consolidation of this sort on this basis, noting that reducing the amount of paper needed to apply for probate was a “definite advantage”, albeit also a technical irregularity at that time.⁶

Another goal in merging Forms 74G and 74H is to reduce the risk of applicant errors, and thereby reduce the number of probate applications that are rejected and error notices issued due to missing forms.⁷ The new version of Form 74G, already available on the Ontario Court Services website,⁸ provides instruction as to when a renunciation and a consent must be filed.

¹ *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, r. 74.04 [*Rules*].

² Form 74G (Renunciation and Consent), online: <<https://ontariocourtforms.on.ca/static/media/uploads/courtforms/civil/74g/rcp-e-74g-1123.docx>>.

³ *Ibid.*, r. 74.04(1)(e), Form 74G.

⁴ *Ibid.*, r. 74.04(1)(f), Form 74H.

⁵ 2009 CanLII 57149 (Ont. SCJ).

⁶ *Ibid.* at para. 6.

⁷ See Ontario, Ontario's Regulatory Registry, online: <<https://www.ontariocanada.com/registry/view.do?language=en&postingId=46095>>.

⁸ Ontario Court Services, Estate Forms under Rule 74, 74.1, and 75 of the Rules of Civil Procedure, online: <<https://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/pre-formatted-fillable-estates-forms/>>.

Tips for Completing the New Form 74G

It is important to remember when applying for probate that a renunciation will not be required in all cases. Similarly, it will not always be necessary to include consents with the application. However, the circumstances under which these documents are required tend to be similar.

A renunciation (or renunciations) should only be necessary in two circumstances:

1. If the estate trustee named in the deceased's will is "unable, unwilling, or incapable of accepting the responsibility" of the role,⁹ or
2. In the case of an intestacy, if there is another person or persons who have priority or equal right to apply to be estate trustee under the *Estates Act*.¹⁰

The circumstances under which a consent to an application for a certificate of appointment of estate trustee is required are similar – consent must be provided:

1. If the person applying to be appointed estate trustee is not named in the deceased's will; or
2. When the deceased died intestate.

Under these circumstances, consent to the application for a certificate of appointment of estate trustee must be provided by the beneficiaries who together have a majority interest in the assets of the estate. In some cases, however, the consent of all beneficiaries will be required. Alternatively, Form 74G can also be used by beneficiaries to consent to an application to dispense with the requirement to file a bond, or an application to reduce the amount of a bond.

Law Unchanged by the New Form 74G

At this time, there is no reason to believe that the new Form 74G will change the substantive law with respect to renunciation or consent. For example, a renunciation completed using the new form will likely be ineffective if the renouncing party has already intermeddled in the deceased's estate.¹¹ The new Form 74G simply alters the application process.

There is also no reason to believe that other legal instruments cannot be admitted as proof of renunciation when necessary. For example, a separation agreement in which the deceased's former spouse renounces the right to act as estate trustee still ought to be effective proof of renunciation.¹²

⁹ *Cahill v. Cahill*, 2016 ONCA 962 at para. 40.

¹⁰ *Estates Act*, R.S.O. 1990, c. E.21, s. 29.

¹¹ See *Chambers Estate v Chambers*, 2013 ONCA 511 at para. 66.

¹² See Ontario Ministry of the Attorney General, *Estates Procedures Manual* (Court Services Division, October 2022) at s. 6.3.2.

Updates Effective April 1, 2024

As of April 1, 2024, the main changes to the estate forms will be found in Form 74G and Form 74F. However, there will also be other changes that merit note, including consequential form amendments made to Forms 74A, 74J and 74.1A, and, of course, the amendments to Rule 74.04 that actually implement the new forms will come into force on April 1, 2024.¹³ The current versions of Forms 74F, 74G and 74H can be used for the month of March, although applicants may also choose to use the new forms when applying for a certificate of appointment of estate trustee.

¹³ *Rules, supra* note 1, r. 74.04, as amended by O. Reg. 388/23.