

RULE 64 – ADMINISTRATION OF ESTATES (NON-CONTENTIOUS)

Interpretation and application

- (1) (a) The *Estate Administration Act*, the *Wills Act* and the *Trustee Act* apply to this rule.

(b) This rule applies to "non-contentious business" defined as the obtaining of a grant of probate or administration where there is no contention as to the right thereto and includes
 - (i) the obtaining of grants of probate or administration in contentious cases where the contest has been concluded,
 - (ii) the filing of caveats against the granting of probate or administration,
 - (iii) the fixing of remuneration and passing of accounts, and
 - (iv) all non-contentious matters relating to testacy and intestacy, not being proceedings in an action.

Application for grant of probate or administration

- (2) Subject to subrule (14), the applicant for a grant of probate or administration shall deposit with the clerk the original will, if any, and file
 - (a) a requisition in Form 4,
 - (b) an affidavit of executor or administrator in Form 72, 74 or 75,
 - (c) an order in Form 115 or 116, and
 - (d) any further affidavits as may be required by these rules.

Notice of application

- (3) Notice of application for a grant of probate or administration under s. 108 of the *Estate Administration Act* shall include named contingent beneficiaries (where a benefit depends on the happening of a condition or an event) and the date of mailing or delivery and be in Form 73.

Time of issuing grant

- (4) Unless the court otherwise orders, no grant of probate or administration shall be issued until after 14 days from the date of mailing or 7 days from the date of delivery of the notice of application.

Proof of death

- (5) The applicant shall state the day on which the testator or the intestate died and provide a certificate of death. If the fact of the death is certain, but there is no certificate of death, the applicant's affidavit shall set out the date and place of death and provide any other documents such as burial or cremation certificates.

Self-Government Agreement

- (6) Where the deceased was a member of a First Nation with a Self-Government Agreement, the applicant shall make inquiries and indicate whether the First Nation has passed any laws in relation to inheritance, wills, intestacy or the administration of estates and state whether these laws apply or whether the *Estate Administration Act*, the *Wills Act* and the *Trustee Act* apply.

Indian Act

- (7) Where the deceased was subject to the administration of the *Indian Act*, a consent of the Minister of Indian Affairs under s. 44 of the *Indian Act* must be filed.

Approval by court

- (8) A judge may approve the application and mark the documents as approved, but if the judge refuses to approve the application, the judge shall provide reasons for refusing approval.

Hearing of application

- (9) The applicant may set down the application for hearing by the court at any time after a judge has refused to approve it or apply for directions.

Proof of execution where no attestation clause

- (10) Where there is no attestation clause to a will or codicil, or if the attestation clause is insufficient, the clerk shall require an affidavit from at least one of the subscribing witnesses, if they or either of them are living, to prove that the requirements of the *Wills Act* as to execution, were in fact complied with.

Affidavit of witness

- (11) Where, on perusing the affidavit of a subscribing witness, it appears that the requirements of the *Wills Act* were not or may not have been complied with, the judge shall refuse to approve the application.

Proof where no affidavit of witness

- (12) Where no affidavit can be obtained from either subscribing witness, an affidavit shall be provided from any other person present at the execution of the will or codicil, but if no affidavit of any person can be obtained, evidence shall be provided on affidavit

(a) of that fact and of the handwriting of the deceased and the subscribing witnesses, and

(b) of any circumstances which may raise a presumption in favour of proper execution.

Proof of date of execution

- (13) Where there is doubt as to the date on which a will was executed, a judge may require evidence he or she thinks necessary to establish the date, and may endorse a note of the date on the will.

Proof of will

- (14) Where the circumstances appear to justify the direction, the court may require that proof of the will be made in court by oral evidence.

Petition

- (15) An application for proof of a will shall be by petition in Form 2, and Rule 10 applies.
- (16) On application for proof of a will, copies of the petition shall be served on all persons having an interest in upholding or contesting the validity of the will.

Interlineations and alterations

- (17) When an interlineation or alteration appears in the will, which is not properly executed, or recited in, or otherwise identified by the attestation clause, an affidavit in proof of its existence in the will before execution must be filed, except when the alteration is of small importance and is evidenced by the initials of the attesting witnesses.

Erasures and obliterations

- (18) An erasure or obliteration shall not prevail unless it is
- (a) proved to have existed in the will at the time of its execution,
 - (b) properly executed and attested, or
 - (c) rendered valid by the re-execution of the will, or by the subsequent execution of a codicil,

but if no satisfactory evidence can be adduced as to the time when the erasure or obliteration was made, and the words erased or obliterated are not entirely effaced, but can be ascertained on inspection, the words must form part of the probate.

Affidavit explaining

- (19) Where words that might have been of importance have been erased or obliterated, a judge may require an affidavit explaining the circumstances.

Document referred to in a will

- (20) Where a will contains a reference to a document, which is of such nature as to raise a question whether the document ought to form part of the will, a judge may require the production of the document to ascertain whether it is entitled to probate, and, if not produced, its non-production must be accounted for.
- (21) No document can form part of a will unless it was in existence at the time the will was executed.

Appearance of the paper

- (22) Where there is an indication on the testamentary papers leading to the inference that a document has been attached to them, the indication must be satisfactorily explained, or the judge may require the document to be produced, and, if not produced, its non-production must be accounted for.

Notice to next of kin

- (23) Where a person applies for a grant of administration under the *Estate Administration Act*, the names and kinship of those having a prior right or an equal right to a grant shall be shown, and it shall be shown that each of them has consented or renounced, otherwise a judge may direct notice to be given in Form 76 to any of them by mail.

Limited administrations

- (24) Unless the court otherwise orders, a limited administration shall not be granted unless every person entitled to a general grant has consented or renounced, or has been notified and has failed to file an appearance.
- (25) Unless the court otherwise orders, no person entitled to a general grant of administration of the personal estate and effects of a deceased will be permitted to take a limited grant.

Grants to an attorney

- (26) Where a person entitled to administration resides outside Yukon, administration, or administration with the will annexed, may be granted to the person or the person's attorney acting under a power of attorney.

Grants of administration to guardians

- (27) A grant of administration may be made to the guardians of an infant or person under a disability for his or her use and benefit, upon the consent of the Public Guardian and Trustee.

Administration bonds

- (28) Unless the court otherwise orders, the bond to be given upon any grant of administration shall be in Form 77 or Form 78.

Affidavit of surety

- (29) The sureties in an administration bond are required to prove by affidavit that they together have assets equal to the amount of the bond. No clerk shall become surety to any administration bond.

Required surety

- (30) In all cases other than those in which the court may dispense with a bond, unless the court otherwise orders, not less than 2 sureties shall be required to the administration bond, and the bond shall be in an amount as the court may order, and the court may also order that more than one bond shall be given so as to limit the liability of a surety.

Delay in application

- (31) Where probate or administration is applied for more than 3 years after the death of the deceased,
- (a) the reason for the delay shall be set out in an affidavit, and
 - (b) the court may require further proof of the alleged cause of delay.

Identity of parties

- (32) The court may require proof, in addition to the affidavit of the executor or administrator, of the identity of the deceased, or of the party applying for a grant.

Proof of search for will

- (33) On every application for administration it must be shown that a search for a will or testamentary paper has been made in all places where the deceased usually kept his or her documents, and the applicant must make inquiries of the deceased's lawyer(s) and banks used by the deceased to determine if a safety deposit box exists.

Search of will

- (34) The court may require an applicant for a grant of administration to make further efforts and give directions for the search of a will.

Renunciations

- (35) No person, other than the Public Guardian and Trustee, who renounces as executor of the will or who renounces the right to apply for administration of the estate of a deceased person in one capacity, shall be appointed the personal representative of the deceased in another capacity.

Caveats

- (36) A person intending to oppose the issue of a grant of probate or administration shall file a caveat in Form 79.

Contents of caveat

- (37) The caveator must declare in the caveat and verify by affidavit the nature of his or her interest in the property of the deceased, and state generally the grounds upon which the caveat is filed. The caveat shall be signed by the caveator and shall state an address for delivery in accordance with Rule 4.

Time caveat in force

- (38) Subject to subrule (43), a caveat remains in force for 6 months after being filed, unless it is sooner withdrawn by notice filed by the caveator, and then it expires and is of no effect, but by order of the court, it may be renewed from time to time.

No grant while caveat in force

- (39) Unless otherwise ordered by the court, no grant of administration or probate shall be made while a caveat is in force.

Notice to caveator

- (40) A person intending to apply for probate or administration or claiming an interest in an estate with respect to which a caveat has been filed, may file a notice to caveator in Form 80 and shall deliver a copy to the address for delivery set out in the caveat.

Contents of notice

- (41) The notice to caveator shall state the name and interest of the person on whose behalf it is issued and, if that person claims under a will or codicil, shall also state
 - (a) the date of the will or codicil, and
 - (b) the person's address for delivery under Rule 4.

Appearance to notice

- (42) An appearance to a notice to caveator shall be in Form 9.

Effect of failure to appear to notice

- (43) Where a notice to caveator has been filed and a copy delivered to the caveator and no appearance has been filed within the time stated in the notice, the court may cancel the caveat.

Subpoena to accept executorship

- (44) Where an executor fails to apply for the probate of a will, any person interested shall file a requisition in Form 4 and subpoena the executor to accept or refuse probate of the will, or to show cause why administration should not be granted to the executor or to some other person having a prior right who is willing to accept the grant, but no subpoena shall issue until 14 days after the testator's death.

Form of subpoena and answer

- (45) The subpoena shall be in Form 81 and an answer in Form 82.

Subpoena to apply

- (46) (a) Where there is or may be a document that may be alleged to be a will of a deceased person, a subpoena to apply for probate or administration of the document may be issued by any person interested.
- (b) The subpoena must
- (i) be in Form 83,
 - (ii) be supported by affidavit, and
 - (iii) be directed to the executor and any other person named in the document.
- (c) An answer shall be in Form 84.

Subpoena to bring in a will, document or asset

- (47) Where a testamentary document or asset of an estate may be in the possession or control of a person, a subpoena may be issued to the person calling on the person to deposit with the clerk or sheriff any testamentary document or asset in the person's possession or control, or to state under oath that no testamentary document or asset is in the person's possession or control.
- (48) The subpoena shall be in Form 85 and shall be supported by affidavit.

Filing and service of subpoena and answer

- (49) A subpoena shall be served personally, and Rules 11, 12 and 13 apply. An answer shall be filed and delivered.

Foreign grants

- (50) If probate or administration has been granted by a court of competent jurisdiction outside Yukon,
- (a) a grant of administration, limited to the estate of the deceased in Yukon, may be made to the lawyer of the personal representative appointed by the foreign court, or
 - (b) an ancillary grant of probate or administration may be made to the personal representative appointed by the foreign court.
- (51) The affidavit in support of an application for a limited or ancillary grant of probate or administration shall be in Form 86.

Foreign wills

- (52) A copy of a foreign will to be attached to a grant of administration must be certified by the court out of which probate or administration has been granted.

Application to reseal grant

- (53) An application to reseal a grant of probate or letters of administration may be made by the personal representative or the representative's lawyer.
- (54) The applicant for resealing shall file the grant of probate or administration, or a copy certified by the issuing court.

Affidavit on resealing

- (55) An application for resealing must be accompanied by an affidavit of the executor, administrator or lawyer, in Form 86.

Domicile of deceased on resealing

- (56) (a) If the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in a foreign grant, the court may require further evidence as to domicile.
- (b) If the court is satisfied that the deceased was not at the time of death domiciled within the jurisdiction of the court from which the foreign grant issued, the clerk shall mark the application accordingly.

Application of other rules on resealing

- (57) These rules apply to an application for resealing.

Grant to be resealed

- (58) No grant of probate or administration or certified copy shall be resealed unless it includes a copy of any testamentary paper admitted to probate.

Notice of resealing

- (59) Notice of a resealing of a grant shall be sent to the court from which the grant issued.
- (60) Where the clerk has notice of the resealing of a Yukon grant, the clerk shall give notice of the revocation of or any alteration in the grant to the court which resealed it.

Remuneration and passing of accounts

- (61) An application to the court for passing of accounts and remuneration shall be made by notice of application supported by an affidavit in Form 87.
- (62) On the application, the court shall give all necessary directions and may refer the matter to the clerk under Rule 32.

Affidavit required for passing of accounts and remuneration

- (63) As part of an application for the passing of accounts and remuneration, the applicant must file an affidavit in Form 88

(a) describing the assets and liabilities of the estate for which the statement is prepared, as at the later of

(i) the date of the deceased's death, and

(ii) the effective date of the most recent of any previous accounting done under this rule,

(b) describing capital transactions since the applicable date referred to in paragraph (a), including expenses related to and necessary for the maintenance of capital assets,

(c) describing income transactions, other than transactions included under paragraph (b), since the applicable date referred to in paragraph (a), including the payment of any liabilities of the estate,

(d) describing the assets and liabilities of the estate as at the effective date of the statement of account,

(e) including a calculation of the remuneration, if any, claimed by the applicant for

(i) the applicant, and

(ii) any previous trustee for whom a claim for remuneration has not yet been made,

(f) describing all distributions made or anticipated to be made out of the estate, and

(g) including, in any other schedules, details or information the court may require or the applicant may consider relevant.