



## **Amendments to the Rules of Civil Procedure, Tariff C and Forms in force July 1, 2012**

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At its meeting on April 11, 2012, the Civil Rules Committee endorsed amendments to the Rules of Civil Procedure, Tariff C and prescribed forms relating to estates matters, as proposed by the Estates Subcommittee of the Civil Rules Committee. The Estates Subcommittee had consulted with the Ontario Bar Association regarding the proposal to amend Tariff C. The amendments, as set out in O. Reg. 55/12, will be in force on July 1, 2012 and are available on the government's e-laws website at [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_900194\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900194_e.htm).

Amended forms under the regulation are available in both English and French at the following website: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca)

Please note that after July 1, 2012, the amended forms should be filed with the court office. If necessary, old forms will be accepted by the court office until July 1, 2013, with the exception of amended forms relating to passing of accounts and requests for increased costs (forms 74.44, 74.49.2 and 74.49.3), which have changed significantly.

### **Amendments to Tariff C**

Subrule 74.18 (9) provides that the court may grant a judgment on passing accounts without a hearing in certain circumstances. Subrule 74.18 (10) provides that, where the court grants judgment without a hearing, the costs awarded shall be assessed in accordance with Tariff C. The revised Tariff C amounts are as follows:

Current		As of July 1, 2012	
(1) <u>ESTATE TRUSTEE</u>	<u>Amount of costs</u>	(1) <u>ESTATE TRUSTEE</u>	<u>Amount of costs</u>
<u>Amount of receipts</u>		<u>Amount of receipts</u>	
Less than \$100,000	\$800	Less than \$300,000	\$2,500
\$100,000 or more, but less than \$300,000	1,750	\$300,000 or more, but less than \$500,000	3,000
\$300,000 or more, but less than \$500,000	2,000	\$500,000 or more, but less than \$1,000,000	3,500
\$500,000 or more, but less than \$1,000,000	2,500	\$1,000,000 or more, but less than \$3,000,000	5,000
\$1,000,000 or more, but less than \$1,500,000	3,000	\$3,000,000 or more	7,500
\$1,500,000 or more, but less than \$3,000,000	4,000		
\$3,000,000 or more	5,000		

### Passing of Accounts and Requests for Increased Costs

Currently, where an estate trustee or a person with a financial interest in the estate seeks costs greater than the amount allowed in Tariff C, he or she may serve and file a request for increased costs and a hearing shall take place. At the hearing the court may assess, or refer to an assessment officer, any bill of costs charged by the lawyers employed by the estate trustee.

The rule amendments permit persons with a financial interest in the estate to respond in writing to the request for increased costs. The rule changes also require the person making a request for increased costs to file additional materials including the following:

- costs outline (Form 57B)
- supplementary record including:
  - documents served on every other party to the application and affidavit of service,
  - affidavit containing the factors that contributed to the increased costs, a summary of the responses to the request for increased costs received, and a list of persons who failed to respond.

The rules have also been amended to give the judge discretion to:

- award increased costs without a hearing,
- order the requestor to provide additional materials, or
- require the hearing to proceed.

Timelines for serving and filing documents related to applications to pass accounts have been amended. Related forms 74.44, 74.49.2 and 74.49.3 have been amended.

### **New Forms for Applications for Succeeding Estate Trustee Limited to Assets Referred to in the Will**

Following the 1998 decision of Ontario's Superior Court of Justice in *Re Granovsky*, the use of multiple wills, with only one of those wills being submitted for probate, became more frequent. As a consequence, new forms were introduced to allow an application for, and issuance of, a Certificate of Appointment of Estate Trustee *Limited to the Assets Referred to in the Will*.

With the passage of time, the appointment of a succeeding estate trustee has become necessary in some estates where such a certificate was previously granted; for example, where the estate trustee has died. To accommodate such appointments, amendments have been made to Rule 74.06 and three new forms have been prescribed (Forms 74.21.1, 74.22.1, 74.23.1).

### **Judge's order required on applications for certificate of appointment of estate trustee limited to the assets referred to in the will**

Currently, prescribed Form 74.13.1 indicates that an order of a judge is required to grant a certificate of appointment of estate trustee limited to the assets referred to in the will. However, the Rules were silent in this regard. Amendments to the Rules now clarify that an order of a judge is required in these applications. A new form of order has also been prescribed (Form 74.13.2).

### **Facilitating the Issuance of Certificates of Appointment of Estate Trustee**

The Rules currently provide that a testator may deposit his or her will with the court for safekeeping. Before a certificate of appointment of estate trustee with or without a will can be issued by the court, the Registrar must conduct a search of the computerized estates system to determine whether a will of the testator has been deposited with the

court for safekeeping. This is necessary to ensure that the testator's will, or latest will, is being probated.

When the estates system finds a matching name, very often the testator of the will on deposit with the court and the deceased named in the application are two different people. The applicant must then take steps to satisfy the Registrar of this fact.

In order to address this situation, applicants will now be required to indicate the deceased's date of birth, if known. That way, the system can search both the name of the deceased as well as the date of birth. Dates of birth will be considered a "match" only if they are in the same month and within 5 years of the testator's date of birth provided when the will was deposited for safekeeping.

Nine application forms have been amended to add date of birth, if known (Forms: 74.04, 74.04.1, 74.05, 74.05.1, 74.07, 74.14, 74.15, 74.20.1, 74.30). New prescribed form 74.21.1 also requires this information.

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