

Surrogate Forms and Applications

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THE SURROGATE RULES

The 1995 Surrogate Rules Revision

The “new” Surrogate Rules were implemented in 1995 and after more than 15 years of use perhaps they should no longer be called the “**NEW**” Surrogate Rules. The 1995 revision of the Surrogate Rules was a joint project of the Surrogate Rules Committee and the Alberta Law Reform Institute (“ALRI”). Anne de Villars, Q.C. was counsel for the project. Madam Justice Bonnie L. Rawlins and Peter J.M Lown Q.C. were members of the ALRI sub-committee. The members of the Surrogate Rules Committee who worked on the project were Mr. Justice Roy V. Deyell, Mr. Justice Ernest A. Hutchinson, John C. Armstrong, Q.C., John A. Beckingham, Q.C., John H. Corbett, Q.C., Alan D. Fielding, Q.C., Donald T. Hatch, Q.C., and Brian M. Smith, Assistant Public Trustee. The CBA representatives were Johanne L. Amonson, Q.C., Jane C. Carstairs, Dennis Pelkie and Cheryl Daniel (as she was then). The extensive 1995 revisions to the Surrogate Rules were the product of many hours of effort from very distinguished and well respected experts in this area of the law.

The 1995 Surrogate Rules revision implemented significant changes to surrogate practice. The revisions consolidated most court actions respecting estates into the Surrogate Court of Alberta now known as Court of Queen’s Bench of Alberta (Surrogate Matters) and abolished the need for backers and introduced the use of banners.

In 1995 Schedules to the Rules were enacted which outlined the roles and responsibilities of a personal representative (which was a new term which included both administrators and executors) and which defined core and non-core duties of lawyers in estate matters.

Schedule 3 to the 1995 Surrogate Rules mandated 13 Accounting Forms, 13 Contentious Forms, and 49 Non-Contentious Forms. There was instituted User Notes which facilitated the completion of the new forms. A new standard of practise arose after the implementation of the 1995 Surrogate Rules revision whereby Affidavits of Witnesses to Will were completed at the time the Will was signed.

It was a new world for those practising in the area of wills and estates.

Principles of the 1995 Surrogate Rules Revision

One objective of the 1995 revision of the Surrogate Rules was to develop a system driven by the personal representative of an estate which limited court involvement in non-contentious matters.

Under the revised rules, notice had to be given to beneficiaries of their interest in an estate before the application for probate was filed whereby the beneficiaries could then supervise the administration of the estate and protect their interests. It was quite a departure from the standard practice of filing pleadings before they are served.

It was originally intended that the forms be completed with only affirmative information specific to the application being made and that one should not have to use negative statements. While this may have been the original intention it was determined very quickly that if there was no spouse the application should state "No Spouse" or the application would be rejected.

The forms were developed with the view that only the necessary information need be provided. The application for probate or administration served to provide the basic information. If there were any further court applications, it would not be necessary to repeat information already on record, but rather only give new information that is relevant to the issue to be decided.

The revised rules provided procedures which facilitated dealing with estate accounting issues. In an application for a passing of accounts the onus is now on the beneficiary to identify a specific accounting item to which there is an objection.

Certain sections of the ***Interpretation Act, RSA 2000 c. I-8*** are useful when working with the revised Surrogate Rules and mandated forms. Some relevant sections are as follows:

"Section 10 - An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

Section 26(1) - When a form is prescribed by or under an enactment, deviations from it not affecting the substance and not calculated to mislead do not invalidate the form used."

Accordingly the forms are not written in stone and as long as the necessary information is being provided, non-substantive variations to the forms is permitted. Section 26(1) of the ***Interpretation Act*** is particularly useful when using Affidavit of Witness to Wills from other jurisdictions.