

September 11, 2020

Consultation Memo to the Profession and Stakeholders

Re: Update to the Surrogate Forms & Application Procedures

The Surrogate Reform Committee:

As many of you may know, our current Surrogate forms are cumbersome, difficult for the public to understand, and include frequent repetition of information. This results in unnecessary costs to the profession, the public, and the Court system.

In the spring of 2019 the issue of the forms was raised at the Surrogate Court Town Hall meetings in both Calgary and Edmonton, and there was a consensus of members of the Bar that the forms are in need of an update.

A sub-committee was put together which includes Mr. Justice Jones and Mr. Justice Little as well as six lawyers (David Koski, Shelley Waite, Malkit Atwal, Shelly Chamaschuk, Victoria Jones and Lois MacLean). This committee is an *ad hoc* committee of the Surrogate Rules Advisory Committee which is the body which must approve any proposed changes to the Surrogate Court forms.

Since then, Alberta Justice has launched an initiative to improve access and processing times for court application through a program called Justice Digital.

Justice Digital

Justice Digital is a four year initiative aimed at significantly modernizing the court and justice system in Alberta by creating faster, cost effective and better services for Albertans, system users and stakeholders. Under this initiative, digital product teams consisting of digital designers, developers, architects, and user experience designers have been established to develop solutions for an initial select set of court processes. One of the first court processes that has been chosen to work on is the application for grant of probate.

The product team is consulting with key stakeholders to validate current processes and get feedback on the new structure of the online surrogate application(s). They have been meeting with Surrogate Clerks to better understand the review and approval processes to identify opportunities to streamline the feedback loop and decrease timelines. They have interviewed some Justices about their thoughts on the process. They are also very interested in learning from lawyers and legal assistants about how

the new simplified forms and digital application system can streamline data entry and support their work.

The two groups - the Surrogate Reform Committee and Justice Digital - are collaborating to produce a significant modernization of both our forms and processes - which will benefit the profession, the public and the Court system.

The Approach of the Surrogate Reform Committee:

The committee asked the following questions:

- what information is required in other jurisdictions?
 - it is clear that a number of provinces require considerably less information than what is required on the current Alberta forms.
- what does the Court actually need to know?
- what is the purpose of the application for a Grant?
 - under our current process, it has become an application for the approval of a distribution plan, while more correctly an application for a Grant should prove that:
 - someone has died,
 - that they were testate or intestate,
 - that the person applying for a Grant has the proper authority to administer the estate, and
 - that those people who should have notice of the application have been served.

The Proposed New Documents:

The forms are identified as GA forms which stands for Grant Application. This would match the existing NGA forms which are used where there is no Grant Application.

The new documents include:

1. GA 1 - Application for the Grant. It is a hybrid document in that it is a pleading which would open the Court file, and at the same time contains evidence in that the Applicant swears that all the information in the application is true.

2. GA 2 - This is a notice to beneficiaries and other interested parties which would go out to residual beneficiaries, potential claimants and the Public Trustee (as is appropriate). It would not be sent to beneficiaries who are to receive a specific gift.
3. GA 3 - Inventory. This would be sent to residual beneficiaries and persons with potential claims.
4. GA 4 - Notice to beneficiary (specific gift).
5. GA 5 - The Affidavit of Service.

The GA 2, 3 and 4 are **not** filed as stand-alone documents. They are filed as exhibits to the GA 5 which is the Affidavit of Service.

Please note that the recommendation of the committee is that the inventory would not be filed as part of the initial application (the GA 1). It would be attached to the Affidavit of Service as an Exhibit so that it would be on the Court record.

We are circulating a blank set of the documents which include the GA 1 through to the GA 5. The Committee has put together a sample Application package based on a fact scenario involving the death of Sam Daniels. The sample Will and documents will also be circulated, together with a working version of a table of concordance between the existing forms and the proposed new forms.

Many of the forms which are only used occasionally (such as the NC 9 Affidavit of Handwriting or the NC 18 Consent to waive bond) would not have any significant change with respect to the substance of the information contained, but would be renumbered and reformatted for consistency.

From the initial feedback it appears that the new forms will provide a significant improvement on our current forms. They are clear, and define what categories of information are needed, and by whom, without requiring the input of the same information in multiple places.

Input from the profession and stakeholders

We welcome input, suggestions and feedback. Please send your comments on the proposed new forms to: Imaclean@sagecounsel.com or to SurrogateReform@sagecounsel.com. Justice Digital will be providing separate contact information for feedback.

If anyone is interested in researching a jurisdiction which is using a similar set of forms, please go to the Ontario Ministry of the Attorney General website at attorneygeneral.jus.gov.on.ca/english/estates/how_to_apply_for_probate.php which contains all of the Ontario Surrogate application forms, and a user guide which provides information as to what forms are required. Most other provinces have their forms on the various court websites.

The Committee will be submitting a report to the Surrogate Rules Advisory Committee in September so we would appreciate your responses as soon as possible. We will provide further updates to the profession as the proposed updates proceed.

Lois MacLean,
on behalf of the Surrogate Reform Committee

Grant Application

Court File Number

Court Court of Queen's Bench of Alberta
(Surrogate Matter)

Court Stamp

Judicial Centre

Estate Name

Applicant's Name

Applicant's Address for Service (Omit lawyer information if not applicable)

Law Firm Name	<input type="checkbox"/> Not applicable
Law Firm Address	<input type="checkbox"/> Not applicable
Responsible Lawyer	<input type="checkbox"/> Not applicable
Lawyer's File Number	<input type="checkbox"/> Not applicable
Address for Service	<input type="checkbox"/> Use Law Firm Address <input type="checkbox"/> Use Applicant Address (shown below)

1. Information about the Deceased

Name	
Other Names	<input type="checkbox"/> Not applicable
Last Residence Address in Full	
Date of Birth	
Date of Death	
Province of Habitual Residence	
Did the Deceased own property in Alberta?	<input type="checkbox"/> Yes <input type="checkbox"/> No

2. Information about the will and codicil(s) attached to this Application

Date of Will	
Date(s) of Codicils	<input type="checkbox"/> Not applicable
Was the Deceased at least 18 years of age when the will was made?	<input type="checkbox"/> Yes <input type="checkbox"/> No Individuals under the age of 18 can only make a will if permitted to do so by the Court. Please confirm in Special or Unusual Matters section below that the Deceased had permission from the Court to make a will if he or she was under the age of 18 when the will was made.
Did the Deceased marry or enter into an adult interdependent partner agreement after the date of the will and before February 1, 2012?	<input type="checkbox"/> Yes <input type="checkbox"/> No If the Deceased married or entered into an adult interdependent partner agreement after the date of the will and before February 1, 2012, the will is revoked.

3. Information about the Applicant(s)

Name(s)	
	Explain in Special or Unusual Matters section below if the name of the Applicant differs from the name of the executor appointed in the will.
Address(es)	
Qualification to Apply	
Is the Applicant a former spouse or adult interdependent partner of the Deceased?	<input type="checkbox"/> Yes <input type="checkbox"/> No Provisions in a will appointing a spouse or adult interdependent partner as executor are void if, after the will is made and before the testator dies, the marriage is terminated or if the adult interdependent relationship ends, unless the Court in interpreting the will orders otherwise.
Age	<input type="checkbox"/> Over 18 <input type="checkbox"/> Under 18 - Date of Birth:
Person with Priority to Apply	<input type="checkbox"/> Yes <input type="checkbox"/> No Explain in the Special or Unusual Matters section below why the applicant is applying if the applicant is not the person with priority to apply.
Renunciations Attached (Use Forms GA12 as needed)	<input type="checkbox"/> Not applicable

4. Information about the net value of the Deceased's estate in Alberta

<p>Do not include the value of any jointly owned assets. Do not include the value of any assets to which a person is entitled by virtue of a beneficiary designation under a plan or life insurance policy.</p>	<p><input type="checkbox"/> \$10,000 or under</p> <p><input type="checkbox"/> Over \$10,000 but not more than \$25,000</p> <p><input type="checkbox"/> Over \$25,000 but not more than \$125,000</p> <p><input type="checkbox"/> Over \$125,000 but not more than \$250,000</p> <p><input type="checkbox"/> Over \$250,000</p>
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5. Special or Unusual Matters

5.1.

6. Applicant's oath or affirmation

The applicant swears or solemnly affirms as follows:

- 6.1. All information contained in this Application is true to the best of my knowledge and belief.
- 6.2. Attached is an original Death Certificate or Funeral Directors Statement of Death for the Deceased.
- 6.3. I believe the original will and codicils attached to this Application are the last will and codicils made by the Deceased. I do not know of any later wills or codicils.
- 6.4. I know of no reason why the attached will and codicils should not be admitted to probate.
- 6.5. I acknowledge that I am required by law to carry out the core tasks of a personal representative, which include
 - (a) identifying the estate assets and liabilities,
 - (b) administering and managing the estate,
 - (c) satisfying the debts and obligations the estate, and
 - (d) distributing and accounting for the administration of the estate.

I further acknowledge the core tasks of a personal representative may include those activities described in the Schedule to the *Estate Administration Act*.

- 6.6. I acknowledge that I am required by law to perform my role as personal representative
 - (a) honestly and in good faith,
 - (b) in accordance with the Deceased's intentions and with the will and codicils, and
 - (c) with the care, diligence and skill that a person of ordinary prudence would exercise in comparable circumstances where a fiduciary relationship exists.

I further acknowledge that I may be required by law to exercise a greater degree of skill if because of my profession, occupation or business, I possess or ought to possess a particular degree of skill that is relevant to the performance of my role of personal representative and that is greater than that which a person of ordinary prudence would be expected to exercise in dealing with the property of another person.

6.7. I acknowledge that as personal representative, I am required by law to distribute the estate as soon as practicable.

6.8. I undertake to give notice of this Application to all persons entitled to notice according to law.

SWORN OR AFFIRMED BEFORE A COMMISSIONER FOR OATHS AT EDMONTON, ALBERTA ON SEPTEMBER _____, 2020.

	A Commissioner for Oaths in and for Alberta:
	Appointment Expiry Date:

Please provide _____ certified copies.

ORDER: ISSUE THE GRANT OF PROBATE AS APPLIED FOR.

Justice of the Court of Queen’s Bench of Alberta	Date
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Notice to Beneficiaries and Other Interested Parties

Estate Name:

To: Residual Beneficiaries
 Potential Claimants – *Family Property Act*
 Potential Claimants – *Wills and Succession Act*
 Public Trustee

This notice is being sent to the residual beneficiaries of the estate as well as persons who may have a claim against the deceased's estate under the *Family Property Act* or Part 5 of the *Wills and Succession Act*. Persons (if any) who are to receive a specific gift under the will (if the deceased died leaving a will) are receiving a separate notice.

Enclosed with this notice is a copy of the grant application (Form GA1) and the inventory (Form GA3) prepared by the Personal Representative. The enclosed inventory is for your information and reference. **It is the responsibility of the beneficiaries and other parties receiving this notice to satisfy themselves with the accuracy and completeness of the inventory.** The Court does not review the content of the inventory prepared by the Personal Representative.

Once the court issues the grant, the Personal Representative will collect in the estate property, pay the debts, and complete the administration of the estate by distributing gifts to the beneficiaries. Beneficiaries should be aware that distribution of the estate may be delayed if a claim is made against the estate under the *Family Property Act* and/or Part 5 of the *Wills and Succession Act*. **Persons wishing to claim against the estate under the *Family Property Act* and/or Part 5 of the *Wills and Succession Act* must do so no later than six months after the grant has issued.** You should consult your own lawyer immediately if you believe you have a potential claim against the estate.

The Personal Representative is required by the *Estate Administration Act* to communicate regularly with beneficiaries and to maintain proper financial records. If you believe the Personal Representative is not complying with their duties, try to resolve the matter through discussion with the Personal Representative. If you are unable to resolve the matter you or your lawyer may apply to the Court, which may provide a remedy if it is satisfied that the Personal Representative is not complying with their duties.

You can contact the Personal Representative for any further information you may need.

 Personal Representative

Name:

Complete Address:

Date: _____

Beneficiaries and Other Interested Parties

1. Non-Residual Beneficiaries

The following persons are non-residual beneficiaries. (Non-Residual beneficiaries will not receive a copy of this Notice. Non-Residual beneficiaries will receive a separate form of notice.)

Not applicable

Name	
Address	
Gift	

Add Another Non-Residual Beneficiary

2. Residual Beneficiaries

The following persons are residual beneficiaries of the Deceased's estate:

Name	
Address	
Share of Residue	

Add Another Residual Beneficiary

3. Persons with Potential Claims against the Estate – *Family Property Act*

The following persons may have the right to make a claim against the Deceased's estate under the *Family Property Act*:

Not applicable

Name	
Address	

Add Another Potential Claimant

Claims under the Family Property Act must be commenced within six months of the grant being issued.

4. Persons with Potential Claims against the Estate – Part 5 of the *Wills and Succession Act*.

The following persons may have the right to make a claim against the Deceased's estate for family maintenance and support under Part 5 of the *Wills and Succession Act*:

Not applicable

Name	
Address	

Add Another Potential Claimant

Claims under Part 5 of the Wills and Succession Act must be commenced within six months of the grant being issued.

5. Persons acting in a Representative Capacity (Attorney or Trustee)

The following persons act in a representative capacity (either as attorney or as trustee) for a person who is either a residual beneficiary of the Deceased's estate or who has a potential claim against the Deceased's estate:

Not applicable

Name	
Address	
Capacity	
Represented Person	

Add Another Person acting in a Representative Capacity

6. Parents and Guardians of Minors

The following persons have been served because they are the parents or guardians of a minor who is either a residual beneficiary of the Deceased's estate or who has potential claim against the Deceased's estate:

Not applicable

Name	
Address	
Minor's Name	
Minor's Date of Birth	

Add Another Parent or Guardian

7. Public Trustee

The Public Trustee has been served because the following persons are minors:

Not applicable

Minor's Name	
Minor's Date of Birth	

Add Another Minor

The Public Trustee has been served because the Public Trustee acts in a representative capacity for the following persons:

Not applicable

Represented Person's Name	
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Add Another Represented Person's Name

The Public Trustee has been served because the following persons are missing persons:

Not applicable

Missing Person's Name	
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Add Another Missing Person's Name

8. Persons not been served

The following persons may be entitled to be served but have not been served for the reasons shown below:

Not applicable

Name	
Reason for Not Serving	

Add Another Person Not Served

Inventory

Estate Name:

Date of Death:

NOTICE TO READER

The Personal Representative has prepared this Inventory showing the Deceased's assets and liabilities as at the Deceased's date of death. Except as noted, the Personal Representative believes this Inventory to be accurate and complete in all material respects.

The Court does not review the content of this Inventory. It is your responsibility to satisfy yourself with the accuracy and completeness of this Inventory. Concerns about this Inventory should be put to the Personal Representative.

Summary

Value of Deceased's Assets & Liabilities	Amount
Land (net of mortgages)	\$0.00
Financial Assets	\$0.00
Other Assets	\$0.00
Total Assets	\$0.00
Total Liabilities (excluding mortgages)	\$0.00
Net Value of Estate	\$0.00

I. ASSETS

1. LAND

Not applicable

Municipal Address (if known)		
Legal Description (if known)		
Estimated Gross Value	\$0.00	
Mortgages and Other Financial Encumbrances	\$0.00	
Estimated Net Value		\$0.00

Add Another Land Holding

2. BANK & INVESTMENT ACCOUNTS Not applicable

Financial Institution	
Account Number (if known)	
Balance	\$0.00

 Add Another Account**3. SHARES IN PUBLIC COMPANIES** (excluding shares held in Investment Accounts) Not applicable

Company	
Number and Type of Shares (if known)	
Value	\$0.00

 Add Another Public Company**4. SHARES IN PRIVATE COMPANIES** Not applicable

Company:	
Number and Type of Shares (if known):	
Value	\$0.00

 Add Another Private Company**5. ANNUITIES, PENSIONS AND BENEFIT PLANS PAYABLE TO ESTATE** Not applicable

Annuity/Pension/Benefit Provider:	
Value	\$0.00

 Add Another Annuity, Pension or Benefit Plan

6. LIFE INSURANCE PAYABLE TO ESTATE Not applicable

Life Insurance Provider:	
Value	\$0.00

 Add Another Life Insurance Policy**7. HOUSEHOLD GOODS AND PERSONAL EFFECTS** Not applicable

Item	
Estimated Value	\$0.00

 Add Another Household Goods/Personal Effects Item**8. Other Property** Not applicable

Item	
Estimated Value	\$0.00

 Add Another Property Item

TOTAL ASSETS	\$0.00
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II. DEBTS Not applicable

Item	
Estimated Value	\$0.00

 Add Another Debt Item

TOTAL DEBTS	\$0.00
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III. NET VALUE

NET VALUE OF ESTATE (Total Assets – Total Debts)	\$0.00
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Notice to Beneficiary (Specific Gift)

Estate Name:

To:

You are named as a non-residuary beneficiary in the last will of _____.

The will gives you _____.

_____ has applied for a Grant of Probate.

Once the court issues the Grant, the Personal Representative will collect in the Estate property, pay the debts, and complete the administration of the Estate and anything else required of the Personal Representative. Then the Personal Representative will be able to distribute your gift to you, if it is not needed to pay for debts and expenses of the Estate. Beneficiaries should be aware that distribution of the estate may be delayed if a claim is made against the estate under the *Family Property Act* and/or Part 5 of the *Wills and Succession Act*.

Alberta's *Estate Administration Act* and other laws place duties on the Personal Representative, which include communicating regularly with beneficiaries and maintaining proper financial records. If you believe the Personal Representative is not complying with their duties, try to resolve the matter through discussion with the Personal Representative. If you are unable to resolve the matter you or your lawyer may apply to the Court, which may provide a remedy if it is satisfied that the Personal Representative is not complying with their duties.

You can contact the Personal Representative for any further information you may need.

Personal Representative

Name:

Complete Address:

Date: _____

Affidavit of Service – Grant Application

Court	Court of Queen's Bench of Alberta (Surrogate Matter)
Judicial Centre	
Estate Name	
Document	Affidavit of Service

Applicant's Address for Service (Omit lawyer information if not applicable)

Law Firm Name		<input type="checkbox"/> Not applicable
Law Firm Address		<input type="checkbox"/> Not applicable
Responsible Lawyer		<input type="checkbox"/> Not applicable
Lawyer File Number		<input type="checkbox"/> Not applicable
Address for Service	<input type="checkbox"/> Use Law Firm Address <input type="checkbox"/> Use Applicant Address	
Applicant Address		

THE DEPONENT SWEARS OR AFFIRMS THAT THE INFORMATION IN THIS AFFIDAVIT IS WITHIN THE DEPONENT'S KNOWLEDGE AND IS TRUE. WHERE THE INFORMATION IS BASED ON ADVICE OR INFORMATION AND BELIEF, THIS IS STATED.

1. Copies of the following documents were served on the persons indicated below using the manners of service indicated below:

Documents Served	
<input checked="" type="checkbox"/> GA 1 - Grant Application	Exhibit "A"
<input checked="" type="checkbox"/> GA 2 - Notice to Beneficiaries and Other Interested Parties	Exhibit "B"
<input checked="" type="checkbox"/> GA 3 - Inventory	Exhibit "C"

Person Served	
Name	
Address	
Date of Service	
Manner of Service	

Add Another Person Served

2. Copies of the following documents were served on the persons indicated below using the manners of service indicated below:

Documents Served	
<input checked="" type="checkbox"/> GA 4 – Notice to Beneficiary – Specific Gift	Exhibit "D"

Person Served	
Name	
Address	
Date of Service	
Manner of Service	

Add Another Person Served

SWORN OR AFFIRMED BY THE DEPONENT BEFORE A COMMISSIONER FOR OATHS AT _____, ALBERTA ON [DATE]

Deponent

A Commissioner for Oaths in and for Alberta