

NOTICE

COURT OF QUEEN'S BENCH OF MANITOBA

RE: AMENDMENTS TO COURT OF QUEEN'S BENCH RULES

The following amendments will come into force on January 1, 2013:

Rule 74.14 (Lawyers' Fees and Disbursements in Estate Matters) has been replaced with a new rule 74.14 which is intended to modernize practices related to, and the amount of fees payable to lawyers in estate matters.

By way of background, in September 2005, the Manitoba Law Reform Commission issued a report regarding cost awards in civil litigation. Thereafter, the Tariff Review Committee, comprised of both judges and lawyers, began its consideration of the Tariff. On the basis of that Committee's recommendations, the Queen's Bench Rules Committee approved a new Tariff A which came into force on January 1, 2011. Now, again based on the recommendations of the Tariff Review Committee as well as more recent input from both the bench and bar, the Queen's Bench Rules Committee has approved the following changes to the Estate Tariff Rule. These changes include a significant revision to Form 74AA.

The following is a summary only. The full text of the new Rule can be located on the Courts website at <http://www.manitobacourts.mb.ca/>. As well, the amendments have been posted on the Manitoba Laws website at <http://web2.gov.mb.ca/laws/regqs/2012/134.pdf> in English and French and will also be available at <http://web2.gov.mb.ca/laws/rules/qbr.pdf> on January 1, 2013 as part of the consolidated version of the *Queen's Bench Rules*. The amendments were published in the *Manitoba Gazette* (Part II) on November 17, 2012.

The revised Form 74AA is on the Courts website at <http://www.manitobacourts.mb.ca/> and on the Manitoba Laws website at <http://web2.gov.mb.ca/laws/regqs/2012/134.pdf> and after January 1, 2013, it will also be available at http://web2.gov.mb.ca/laws/rules/forms_e.php. The French version of Form 74AA will be available at http://web2.gov.mb.ca/laws/rules/forms_f.php.

Rule 74.14(1) - Application

The new Rule 74.14 applies in determining the fees and disbursements payable to a lawyer retained by a personal representative of an estate when a request for probate or administration is filed in the court on or after January 1, 2013.

Rule 74.14(2) – Amounts not included in fees

Fees under this Rule do not include disbursements or compensation to which a lawyer may be entitled as the personal representative.

Rule 74.14(3) – Lawyers not to accept excess fees

The lawyer retained by the personal representative must not accept payment for services to the personal representative or to the estate, except in accordance with this rule.

Rule 74.14(4) – Form 74AA served on personal representative and beneficiaries

The lawyer for the personal representative must serve a copy of Information for Personal Representatives and Beneficiaries (Form 74AA, which has been significantly modified from the former Form 74AA) on the personal representative and each beneficiary whose interest in the estate may be affected by the fees and disbursements no later than 60 days after the lawyer is retained.

Rule 74.14(5) – Total value of estate

For the purpose of calculating the fees payable to the lawyer, the total value of assets of the estate is as shown in the Request for Probate or Administration, but does not include:

- (a) gifts made by the deceased during his or her lifetime;
- (b) insurance, annuities and pensions not payable to the estate;
- (c) property held in joint tenancy where the beneficial interest is intended to pass by right of survivorship;
- (d) the death benefit under the *Canada Pension Plan*.

Rule 74.14(6) – Fees payable to lawyer for the personal representative

Subject to subrule (7), the fees payable to the lawyer for the personal representative for an estate of average complexity are calculated on the basis of the total value of the estate as set out in subrule (5), as follows:

- (a) 3% on the first \$100,000, or portion of that amount, of the total value of the estate, subject to a minimum fee of \$1,500;
- (b) 1.25% on the next \$400,000, or portion of that amount, of the total value of the estate;
- (c) 1% on the next \$500,000, or portion of that amount, of the total value of the estate;
- (d) 0.5% on the total value of the estate over \$1,000,000.

Rule 74.14(7) – Reduced fees for lawyer

If the personal representative is

- (a) an individual who is a lawyer and, while acting as the personal representative, also acts as the lawyer for the personal representative;
- (b) a trust company; or
- (c) The Public Trustee of Manitoba,

the lawyer for the personal representative is allowed only 40% of the fees calculated under subrule (6), subject to a minimum fee of \$1,500.

Rule 74.14(8) – Lawyer’s services – estate of average complexity

This subrule outlines, in considerable detail, the services for an estate of average complexity for which fees are payable under subrules (6) or (7).

Rule 74.14(9) – Additional services

This subrule outlines, again in some detail, the services for which the lawyer for the personal representative is entitled to fees in addition to those payable under subrules (6) or (7).

[Subrules (8) and (9) are largely based on the *Statement of Principles - Fees in Estate Matters* approved by the Law Society of Manitoba which is available on the Law Society Website at http://www.lawsociety.mb.ca/lawyer-regulation/law-society-practice-notice/Fees_in_Estate_Matters_Statement_of_Principles.pdf.]

Rule 74.14(10) – Consenting to lawyer’s final fees and disbursements

On completion of an estate, the lawyer for the personal representative is entitled to be paid the fees and disbursements that the lawyer requests if

- (a) all beneficiaries whose interests in the estate may be affected by the lawyer’s fees or disbursements
 - (i) are adults,
 - (ii) have been served with a copy of Information for Personal Representatives and Beneficiaries (Form 74AA), in accordance with subrule (4),
 - (iii) have been given an itemized statement setting out the lawyer’s fees and disbursements, with the fees and disbursements for the services for an estate of average complexity under subrule (8) set out separately from those for additional services under subrule (9), if any, and
 - (iv) consent, in writing to the fees and disbursements requested by the lawyer; and

- (b) the personal representative consents, in writing, to the fees and disbursements requested by the lawyer.

Rule 74.14(11) – Consenting to interim fees within allowable amount

The lawyer for the personal representative is entitled to be paid interim fees and disbursements if

- (a) the requested fees are within the fees allowed under subrule (6) or (7);
- (b) all beneficiaries whose interests in the estate may be affected by the lawyer’s fees or disbursements
 - (i) are adults,
 - (ii) have been served with a copy of Information for Personal Representatives and Beneficiaries (Form 74AA), in accordance with subrule (4), and
 - (iii) have been given an itemized statement setting out the lawyer’s fees and disbursements, with the fees and disbursements for the services for an estate of average complexity under subrule (8) set out separately from those for additional services under subrule (9), if any; and

- (c) the personal representative consents, in writing, to the fees and disbursements requested by the lawyer.

Rule 74.14(12) – Review of fees and disbursements by court

Unless the fees and disbursements of the lawyer for the personal representative have been consented to under subrule (10), they are subject to review by the court on a passing of accounts under Rule 74.12 or on an assessment of fees and disbursements referred to in subrule (13).

Rule 74.14(13) – Assessment of fees and disbursements

A notice of appointment for an assessment of the fees and disbursements payable to the lawyer for the personal representative may be obtained by the personal representative, the lawyer for the personal representative or a beneficiary whose interest may be affected by the lawyer's fees or disbursements.

Rule 74.14(14) – Rule 58 applies to assessment

Rule 58 applies to the assessment, except the notice of assessment must be served on the persons referred to in subrule (13) at least 30 days before the date of the hearing and, if a master is available, the master is to assess the fees and disbursements.

Rule 74.14(15) – Service of lawyer's statement

The lawyer for the personal representative must, at least 14 days before the date of the assessment hearing, file and serve on the persons referred to in subrule (13)

- (a) an itemized statement setting out the lawyer's fees and disbursements with the fees and disbursements for the services for an estate of average complexity under subrule (8) set out separately from those for additional services under subrule (9), if any; and
- (b) an affidavit setting out:
 - (i) that the lawyer has served a copy of Form 74AA as required by subrule (4);
 - (ii) the date of service of Form 74AA;
 - (iii) the fees and disbursements requested by the lawyer;
 - (iv) the lawyer's fees that are allowable under subrule (6) or (7);
 - (v) if the requested fees exceed those payable under subrule (6) or (7), the reasons why the increased fees should be allowed.

Rule 74.14(16) – Assessing lawyer's fees

This subrule sets out the factors to be considered at the hearing to assess the fees payable to the lawyer.

Rule 74.14(17) – Lawyer acting for a person other than personal representative

A lawyer for any person, other than the lawyer for the personal representative, who attends on an assessment of the fees and disbursements of the lawyer for the personal representative, or on a passing of accounts of the personal representative, may be allowed fees and disbursements in the discretion of the court.

Rule 74.14(18) – Fees and disbursements in contentious proceedings

In contentious proceedings, a lawyer's fees and disbursements are determined by the court.

Rule 74.14(19) – Payment of fees and disbursements from estate

The court may direct payment of fees and disbursements from the estate generally or by, or from the funds of the estate belonging to, any legatee, heir, beneficiary or other person interested in the estate.

ISSUED BY:

Original signed by

**The Honourable Justice Karen I. Simonsen
Chair, Queen's Bench Rules Committee
(Manitoba)**

DATE: November 20, 2012