

NOTICE

COURT OF QUEEN'S BENCH OF MANITOBA

RE: AMENDMENTS TO THE COURT OF QUEEN'S BENCH RULES

On June 1, 2022, the Statutory Rules Committee of the Court of Queen's Bench approved changes to:

1. Queen's Bench Rules 74 and 75 (along with new forms) that deal with probate practice and contested estates;
2. The Court of Queen's Bench Tariff;
3. Queen's Bench Rule 4.10(1) dealing with access to family proceeding files.

The full text of the amendments in Manitoba Regulation numbers 68/2022, 69/2022, and 70/2022, can be located at:

http://web2.gov.mb.ca/laws/regs/index_annual.php

Probate Rules 74 and 75

The amendments to Probate Rules 74 and 75 required significant effort by the Surrogate Practice Committee of the court and various sub-committees that included Masters, Judges, court staff and members of the Bar. One of the primary objectives was to eliminate jargon and use plain language to make the Queen's Bench Rules more understandable to members of the public and members of the profession. The objective was not to overhaul the existing probate practice in Manitoba, but rather to modernize the language and terminology in the rules that govern Probate practice. The new rules and forms are gender neutral and were drafted with a view to making them understandable to self-represented parties who are increasingly filing probate and administration applications.

The following is notable in the amended probate rules:

1. An extensive definition section is included to define some of the most commonly used terms in probate matters;
2. A "general requirements" section sets out a specific list of all the documents and forms that must be filed in the different kinds of probate and administration applications. Previously these requirements were set out throughout Queen's Bench Rule 74. They are now contained in a single provision for ease of reference;

3. There are now clear explanations for less common applications like double probate and resealing of foreign grants;
4. The Forms now spell out the limitation our court faces in dealing with estates governed by *the Indian Act*; covers more kinds of assets that are commonly included in estate inventories; addresses different scenarios for wills that have unattested alterations or interlineations that are now reflected in an affidavit of condition (formerly affidavit of plight and finding) and creates certain new forms including the double probate form; and
5. Queen's Bench 75 (contested estates) contains a significant change, insofar as it gives judges broad discretion to make orders when a contested estate matter first appears on the civil motions list or at any time thereafter. The discretion includes the ability to order that a matter may continue as an action and that it proceed to a pre-trial conference. New parties can also be added to the action and service can be ordered on any party that might have an interest in the estate.

The new probate rules and forms come into force on **October 1, 2022**.

Court of Queen's Bench Tariff

The issue of amendments to the Court of Queen's Bench Tariff was first addressed by the Civil Practice Committee. The recommendation from the Civil Practice Committee was made after consultation with the profession and after input from the Family Division to include new steps that were not specifically covered under the existing tariff.

The existing party and party costs scale is intended to equate to approximately 60% of the reasonable counsel fee in a typical case. The amendments to the tariff approved by the Statutory Rules Committee include:

1. An across the board tariff increase of approximately 25%;
2. The amount for preparation for trial is increased to the same amount as the lawyer's fee at the trial of an action (item (r));
3. A compensable tariff item is added for written argument following trial when such written argument is directed by the judge, in an amount equal to 33% of the amount allowed per half day of trial;
4. The addition of new tariff items for triage conferences, prioritized hearings and contested emergent motions and motions before the Master to compel a party to complete pre-requisites.

The amended Court of Queen's Bench Tariff comes into force on **July 1, 2022** and applies to any step in a proceeding that takes place on or after July 1, 2022. For any

step in a proceeding that took place before that date, the costs are to be assessed based on the previous tariff.

Queen’s Bench Rule 4.10, access to family proceeding files

Since passing amendments to the Queen’s Bench Rules respecting access to family proceeding files, the Statutory Rules Committee approved a minor change to Queen’s Bench Rule 4.10(1)(f) to add the lawyers and staff with the Manitoba Prosecution Service and the Public Guardian and Trustee to the list of parties that are entitled to access family proceeding files.

ISSUED BY:

“original signed by”

The Honourable Justice James Edmond
Chair, Queen’s Bench Rules Committee
(Manitoba)

DATE: June 16, 2022