

Edmonton protocol for expedited Surrogate applications

Introduction

Requests for grants of probate/administration on an expedited basis continue to challenge the efficient handling of Surrogate Clerk review of applications generally. Over the past few months the surrogate clerk's office together with the supervising Justice for surrogate practice matters have piloted an 'order protocol' aimed at diverting most expedited requests from the surrogate clerks, but equally providing timely authority to personal representatives pending receipt of a full grant in the ordinary course.

Based on our recent experience, the following protocol is strongly recommended for any application for expedited review of an application for a grant or probate or administration in a Surrogate matter. (While 'strongly recommended', if circumstances warrant, the protocol may still give way to an application for an expedited grant.) As with all aspects of surrogate practice, feedback regarding the protocol is welcomed.

Protocol

1. Consistent with long-standing practice in Edmonton, all requests for expedited handling of a surrogate matter are still to be made first to the supervising justice for surrogate practice matters, or in his absence, to the general Supervising Justice for the week in question (hereafter "the surrogate practice supervising Justice").
2. The applicant must show a good reason for expedited treatment by way of a written request to the surrogate practice supervising justice.
3. If good reason exists, the applicant must still file (or have filed) an application for a grant of probate/administration with the Surrogate Clerks; in either event, the Surrogate Clerks will confirm (or have confirmed) by way of a Clearance Certificate that no other applications are in the system. The grant application will then go (or remain) in queue to be dealt with in the ordinary course.
4. At the same time, if good reason has been shown to expedite, the applicant will be directed by the surrogate practice supervising justice to return an order substantially in the form of the C13 Template Order (attached, and available upon request, in Word format).
5. The C13 Template Order will be supported by appropriate affidavit or other evidence; most often this will include evidence of the following:
 - a. the reason for urgency;

- b. the detailed position of all beneficiaries and others interested in the Estate (including, for example, Adult Interdependent Partners) to the authority being sought (e.g., as most often is the case, the real estate transaction – but may be urgent authority to run the ordinary affairs of a deceased’s business, to obtain information from third parties as to estate assets, to close a corporate transaction, to bind insurance on estate assets, to protect a limitation period, etc. The C13 Template Order could easily be re-framed in such cases.)
 - c. any Dower Act concerns;
 - d. any concerns around minors and/or the Public Trustee’s position; and
 - e. any concerns for trusts applying to the property in question.
6. The affidavit requirements may be dealt with in NC2, or otherwise.
7. As noted in the Template Order, but for the sake of emphasis, required elements of the order include:
- a. That any estate assets realized from the authority given (eg, net sale proceeds in a real estate deal) will be held in trust pending receipt of a full grant;
 - b. That if the law firm is no longer acting, the law firm is obliged to pay those estate assets held trust into another retained law firm’s trust account, or into court;
 - c. That the personal representative has the same obligations/liabilities that he or she would have as if operating under a grant of probate/administration; and
 - d. That the Order must be served on any persons interested in the estate as they are disclosed in the grant application.
8. The draft Template Order and affidavit or other evidence may be provided directly to the surrogate practice supervising Justice via his judicial assistant; a copy of all materials should be forwarded also to the Surrogate Clerks’ office.
9. If or once acceptable, the Template Order will be signed by the surrogate practice supervising Justice and made available to be picked up via the 6th floor Orderlies, then to be filed with the Surrogate Clerks’ office.

The attached C13 Template Order, and this protocol, are current to April 28, 2017.

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