

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 332 , Approved and Ordered June 08, 2015


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, made after consultation with the Chief Justice of the Supreme Court, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective July 1, 2015, the Supreme Court Civil Rules, B.C. Reg. 168/2009, are amended as set out in the attached Schedule.

DEPOSITED
June 9, 2015
B.C. REG. 103/2015


Attorney General and Minister of Justice


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Court Rules Act, R.S.B.C. 1996, c. 80, s. 1*

Other: *OIC 302/2009*

May 14, 2015

Resub R/327/2015/27/96

SCHEDULE

- 1** *The title of Rule 20-5 of the Supreme Court Civil Rules, B.C Reg. 168/2009, is repealed and the following substituted:*

RULE 20-5 – PERSONS WHO ARE NOT REQUIRED TO PAY FEES .

- 2** *Rule 20-5 (1) is repealed and the following substituted:*

Court may order that no fees are payable

- (1) If the court, on application made in accordance with subrule (3) before or after the start of a proceeding, finds that a person
- (a) receives benefits under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*, or
 - (b) cannot, without undue hardship, afford to pay the fees under Schedule 1 of Appendix C in relation to the proceeding,
- the court may order that no fees are payable by the person to the government under Schedule 1 of Appendix C in relation to the proceeding unless the court considers that the claim or defence
- (c) discloses no reasonable claim or defence, as the case may be,
 - (d) is scandalous, frivolous or vexatious, or
 - (e) is otherwise an abuse of the process of the court.

- 3** *Rule 22-3 is amended by adding the following subrule:*

Exception

- (5.1) Subrule (5) does not apply to notices under Rule 25-2 (3) in Form P1.

- 4** *Rule 25-3 is amended by adding the following subrule:*

Copy must be attached

- (14.1) If, under subrule (14) (a) (ii) or (b) (ii), the applicant has found one or more testamentary documents that the applicant believes are invalid or otherwise not relevant to the application, a copy of those testamentary documents must be attached as an exhibit to the affidavit.

- 5** *Rule 25-4 (6) (b) is amended by striking out “a hearing by” and substituting “an order of”.*

- 6** *Rule 25-5 is amended*

(a) in subrule (1)

- (i) by striking out “, or on whose behalf a foreign grant is resealed,” and substituting “or on whose behalf a foreign grant is resealed, or who was issued an authorization to obtain estate information or an authorization to obtain resealing information,” and*

(ii) *by striking out* “the estate grant or resealed foreign grant” *and substituting* “the estate grant, resealed foreign grant, authorization to obtain estate information or authorization to obtain resealing information” *in both places*,

(b) *in subrule (2)*

(i) *by striking out* “an estate grant or a resealed foreign grant,” *and substituting* “an estate grant, a resealed foreign grant, an authorization to obtain estate information or an authorization to obtain resealing information,” *and*

(ii) *by striking out* “in the estate grant or resealed foreign grant” *and substituting* “in the estate grant, resealed foreign grant, authorization to obtain estate information or authorization to obtain resealing information”, *and*

(c) *in subrules (3) (a) and (5) (a) (i) by striking out* “original”.

7 Rule 25-14 is amended

(a) *in subrule (1)*

(i) *by striking out* “A person” *and substituting* “If there has been an application for estate grant, a person”,

(ii) *in paragraph (d) by adding* “subject to subrule (1.2),” *before* “removing or substituting”, *and*

(iii) *by repealing paragraph (g), and*

(b) *by adding the following subrules:*

How to apply by petition for orders

(1.1) If there has been no application for estate grant, a person may, with notice, apply by petition to the court for an order

- (a) passing over an executor,
- (b) appointing an administrator of the estate under section 132 of the *Wills, Estates and Succession Act*,
- (c) respecting production, delivery or filing of a testamentary document, and
- (d) subject to subrule (2), respecting any other matter referred to in subrule (1).

Substitution of personal representative in the event of death

(1.2) If a deceased’s personal representative dies, a person may apply in accordance with Part 8, subject to any directions given by the court under subrule (8) of this rule, to be substituted as the personal representative by filing

- (a) a copy of the death certificate of the personal representative,
- (b) an affidavit setting out the request to be substituted as the personal representative and specifying the right to be appointed as personal representative on the basis that the person is one of the following:
 - (i) the alternate executor;
 - (ii) entitled to apply for administration of the estate in accordance with section 130 of the *Wills, Estates and Succession Act*;

- (iii) entitled to apply for administration with will annexed in accordance with section 131 of that Act, and
- (c) an affidavit confirming delivery of the affidavit referred to in paragraph (b) to
 - (i) every person who was entitled to notice under the original application, and
 - (ii) any executors who
 - (A) did not receive notice of the original application, and
 - (B) have an equal or greater right to apply to be the personal representative.

8 *Forms 15 and 16 in Appendix A are amended in the first tick box of section 1 by striking out “notice of family claim” and substituting “notice of civil claim”.*

9 *Form 40 in Appendix A is amended by striking out “I undertake to pay all hearing fees payable under Appendix C, Schedule 1, Item 10.”*

10 *Form 80 in Appendix A is amended by repealing section 2 and substituting the following:*

2 I make this affidavit in support of my application for an order directing that I am not required to pay any fees to the government under Schedule 1 of Appendix C of the Supreme Court Civil Rules.

11 *Form P2 in Appendix A.1 is amended*

(a) by striking out “This submission for estate grant is submitted by:” and substituting “This submission for estate grant is submitted by/on behalf of:”,

(b) by striking out “I am/We are applying” and substituting “I am/We are/I, ...[name of lawyer for applicant(s)]...., am applying”,

(c) by adding the following before “This submission for estate grant has 4 Parts:”:

[Indicate how many court certified copies of the estate grant/authorization to obtain estate information you require.]

I/we request ...[number of copies]... copy(ies) of the estate grant.

I/we request ...[number of copies]... copy(ies) of the authorization to obtain estate information. ,

(d) by striking out “Part 2: Information about the Applicant(s)” and substituting “Part 2: Contact Information for the Applicant(s)”,

(e) in Part 2

(i) by striking out “INFORMATION ABOUT THE APPLICANT(S)” and substituting “CONTACT INFORMATION FOR THE APPLICANT(S)”,

(ii) by striking out “Applicant’s(s) address for service:”, and

(iii) **by adding** “This may be your lawyer’s office if you are represented by a lawyer.”
after “You must set out the street address of the address for service.”,

(f) in Part 3

(i) **in section 1 by striking out** “Set out” **and substituting** “Select” **in both places,**
and

(ii) **by repealing section 2 and substituting the following:**

2 [Check the box for whichever one of the immediately following section 2’s is correct and provide any required information.]

[] Filed with this submission for estate grant is/are the following Affidavit(s) of Delivery in Form P9 that confirms/collectively confirm that the documents referred to in Rule 25-2 were delivered to all of the persons to whom, under that rule, the documents were required to be delivered:

Affidavit of[name]..... sworn[dd/mmm/yyyy].....

Affidavit of[name]..... sworn[dd/mmm/yyyy].....

Affidavit of[name]..... sworn[dd/mmm/yyyy].....

[] No affidavit of delivery is attached. In accordance with Rule 25-2, no one, other than the applicant(s), is entitled to notice. ,

(iii) **in section 4 by striking out** “The applicant(s) cannot file the originally signed version of the will because[set out reasons why a copy is available but the original is not]..... .”,

(iv) **in section 6 by striking out** “one of the immediately following 3 boxes” **and substituting** “one or more of the immediately following 4 boxes”, **and**

(v) **in section 6 by adding the following before section 7:**

[] The will refers to one or more documents not attached to the will that cannot be obtained by the applicant(s). ,

(g) **in section 1 of the SCHEDULE FOR GRANT OF PROBATE OR GRANT OF ADMINISTRATION WITH WILL ANNEXED by adding** “and therefore is an executor whose right should be reserved on the grant” **after** “who meets all of the following criteria”,

(h) **in section 2 of the SCHEDULE FOR GRANT OF PROBATE OR GRANT OF ADMINISTRATION WITH WILL ANNEXED**

(i) **by adding** “Do not leave any paragraph blank or indicate “Not applicable”; clearly state why a paragraph does not apply.” **after** “List each named person on a separate line.”,

(ii) **in paragraph (a) by adding** “[Provide the appropriate response(s), as applicable: spouse [provide name of spouse]/no currently living spouse as defined by section 2 of the Wills, Estates and Succession Act [provide name of spouse and indicate “(deceased)”]/other former spouse(s) [provide name(s) of other former spouse(s) and indicate “(former spouse)”/never married.]” **after** “[see section 2 of the Wills, Estates and Succession Act]”,

- (iii) *in paragraph (b) by adding* “[Provide the appropriate response(s), as applicable: living child(ren) of deceased [provide name(s) of child(ren)]/any child(ren) of the deceased who died before the deceased [provide name(s) of child(ren) and indicate “(deceased)”]/no children.]” **after** “child(ren), if any, of the deceased”,
 - (iv) *in paragraph (c) by adding* “[List each living beneficiary and all beneficiaries who have died before the deceased in this application and indicate “(living)” or “(deceased)”, as applicable.]” **after** “not named in paragraph (a) or (b)”,
 - (v) *in paragraph (d) by adding* “[List all living persons who would be entitled to inherit on intestacy and their relationship to the deceased.]” **after** “not named in paragraph (a), (b) or (c)”, **and**
 - (vi) *in paragraph (e) by adding* “[List anyone who has filed a citation or indicate that no citation has been received.]” **after** “[see Rule 25-11]”,
- (i) **in section 1 of the SCHEDULE FOR GRANT OF ADMINISTRATION WITHOUT WILL ANNEXED**
- (i) *in paragraph (a) by adding* “[Provide the appropriate response(s), as applicable: spouse [provide name of spouse]/no currently living spouse as defined by section 2 of the Wills, Estates and Succession Act [provide name of spouse and indicate “(deceased)”]/other former spouse(s) [provide name(s) of other former spouse(s) and indicate “(former spouse)”]/never married.]” **after** “[see section 2 of the Wills, Estates and Succession Act]”,
 - (ii) *in paragraph (b) by adding* “[Provide the appropriate response(s), as applicable: living child(ren) of deceased [provide name(s) of child(ren)]/any child(ren) of the deceased who died before the deceased [provide name(s) of child(ren) and indicate “(deceased)”]/no children.]” **after** “child(ren), if any, of the deceased”,
 - (iii) *in paragraph (c) by adding* “[List all living persons who would be entitled to inherit on intestacy and their relationship to the deceased.]” **after** “[see section 23 of the Wills, Estates and Succession Act]”, **and**
 - (iv) *in paragraph (e) by adding* “[List anyone who has filed a citation or indicate that no citation has been received.]” **after** “[see Rule 25-11]”,
- (j) **in section 2 of the SCHEDULE FOR ANCILLARY GRANT OF PROBATE OR ANCILLARY GRANT OF ADMINISTRATION WITH WILL ANNEXED**
- (i) *in paragraph (a) by adding* “[Provide the appropriate response(s), as applicable: spouse [provide name of spouse]/no currently living spouse as defined by section 2 of the Wills, Estates and Succession Act [provide name of spouse and indicate “(deceased)”]/other former spouse(s) [provide name(s) of other former spouse(s) and indicate “(former spouse)”]/never married.]” **after** “[see section 2 of the Wills, Estates and Succession Act]”,
 - (ii) *in paragraph (b) by adding* “[Provide the appropriate response(s), as applicable: living child(ren) of deceased [provide name(s) of child(ren)]/any child(ren) of the deceased who died before the deceased [provide name(s) of

child(ren) and indicate “(deceased)”/no children.]” **after** “child(ren), if any, of the deceased”,

(iii) **in paragraph (c) by adding** “[List each living beneficiary and all beneficiaries who have died before the deceased in this application and indicate “(living)” or “(deceased)”, as applicable.]” **after** “not named in paragraph (a) or (b)”,

(iv) **in paragraph (d) by adding** “[List all living persons who would be entitled to inherit on intestacy and their relationship to the deceased.]” **after** “not named in paragraph (a), (b) or (c)”, **and**

(v) **in paragraph (e) by adding** “[List anyone who has filed a citation or indicate that no citation has been received.]” **after** “[see Rule 25-11]”, **and**

(k) in section 2 of the SCHEDULE FOR ANCILLARY GRANT OF ADMINISTRATION WITHOUT WILL ANNEXED

(i) **in paragraph (a) by adding** “[Provide the appropriate response(s), as applicable: spouse [provide name of spouse]/no currently living spouse as defined by section 2 of the Wills, Estates and Succession Act [provide name of spouse and indicate “(deceased)”/other former spouse(s) [provide name(s) of other former spouse(s) and indicate “(former spouse)”/never married.]” **after** “[see section 2 of the Wills, Estates and Succession Act]”,

(ii) **in paragraph (b) by adding** “[Provide the appropriate response(s), as applicable: living child(ren) of deceased [provide name(s) of child(ren)]/any child(ren) of the deceased who died before the deceased [provide name(s) of child(ren) and indicate “(deceased)”/no children.]” **after** “child(ren), if any, of the deceased”,

(iii) **in paragraph (c) by adding** “[List all living persons who would be entitled to inherit on intestacy and their relationship to the deceased.]” **after** “[see section 23 of the Wills, Estates and Succession Act]”, **and**

(iv) **in paragraph (e) by adding** “[List anyone who has filed a citation or indicate that no citation has been received.]” **after** “[see Rule 25-11]”.

12 Form P3 in Appendix A.1 is amended

(a) **by adding** “(SHORT FORM)” **immediately after the title,**

(b) **in the first section 4, in the bracketed, italicized text, by striking out** “immediately following 2 boxes” **and substituting** “immediately following 3 boxes”, **and**

(c) **in the first section 4 by adding the following after** “[] No other persons are named in the will as executor.”:

[] No other persons are named in the will as executor who are not parties to this application.

13 Form P4 in Appendix A.1 is amended

(a) **by adding** “(LONG FORM)” **immediately after the title,**

(b) *in the first section 3, in the bracketed, italicized text, by striking out “immediately following 2 boxes” and substituting “immediately following 3 boxes”,*

(c) *in the first section 3 by adding the following after “[] No other persons are named in the will as executor.”:*

[] No other persons are named in the will as executor who are not parties to this application. ,

(d) *in the second tick box of section 5 by adding “A copy of the testamentary document(s) is attached as an exhibit to the affidavit.” after “have been found,”*

(e) *in section 6 by adding the following paragraphs:*

(c.1) Copy of the Will

[Check whichever one of the immediately following 2 boxes is correct.]

[] The will being filed is the original.

[] The will being filed is a copy. The applicant(s) cannot file the originally signed version of the will. Attached is an affidavit explaining why a copy is available but the original is not.

(c.2) Foreign Will

[Check whichever one of the immediately following 3 boxes is correct.]

[] The will was made in British Columbia.

[] The will was made outside of British Columbia, but complies with the requirements for making a will that are set out in Division 1 of Part 4 of the *Wills, Estates and Succession Act*.

[] The will was made outside of British Columbia and does not comply with the requirements for making a will that are set out in Division 1 of Part 4 of the *Wills, Estates and Succession Act*, but the will was validly made in accordance with paragraph ... [set out paragraph] ... of section 80 of that Act. Attached is an affidavit explaining why section 80 applies. , *and*

(f) *in section 7, in the bracketed, italicized text following the second tick box, by striking out “complete the immediately following” and substituting “complete whichever one or more of the immediately following paragraphs that apply. Complete”.*

14 *Form P5 in Appendix A.1 is amended in the second tick box of section 5 by adding “A copy of the testamentary document(s) is attached as an exhibit to the affidavit.” after “have been found.”*

15 *Form P6 in Appendix A.1 is amended in the second tick box of section 5 by adding “A copy of the testamentary document(s) is attached as an exhibit to the affidavit.” after “have been found.”*

16 *Form P9 in Appendix A.1 is amended*

(a) *in section 2*

(i) **by adding** “on ...[date of delivery – dd/mmm/yyyy]...” **after** “[name of person who received delivery by ordinary mail].....” **in both places,**

(ii) **by adding** “on ...[date of delivery – dd/mmm/yyyy]...” **after** “[name of person who received personal delivery].....” **in both places, and**

(iii) **by adding** “on ...[date of delivery – dd/mmm/yyyy]...” **after** “[name of person who received delivery by e-mail, fax or other electronic means].....” **in both places, and**

(b) **by repealing section 3 and substituting the following:**

3 [Complete the following phrase for each person referred to in section 2 who received delivery of the notice on behalf of another person under Rule 25-3 (6), (9) or (11).]

I delivered the document(s) referred to in section 2 to[name].....in his/her capacity as the[identify capacity, e.g. parent, guardian, committee, etc.] of[name of person to whom, under Rule 25-3 (2), the document(s) referred to in section 2 was (were) required to be delivered and on whose behalf the person referred to in this section received delivery of the document(s)]..... .

17 **Form P10 in Appendix A.1 is amended in section 4**

(a) **by adding** “, or that information contained in this affidavit is incorrect or incomplete” **after** “Exhibit A”, **and**

(b) **by striking out** “disclose that information” **and substituting** “disclose the correct and complete information”.

18 **Form P14 in Appendix A.1 is amended in section 3 (a) by adding** “or was inaccurately disclosed” **after** “not disclosed”.

19 **Form P15 in Appendix A.1 is amended in section 5 by striking out** “domiciled estate grant in Form P14” **and substituting** “non-domiciled estate grant in Form P15”.

20 **Form P19 in Appendix A.1 is amended by adding** “This grant is issued pursuant to an order dated[dd/mmm/yyyy]....., a copy of which is attached.” **after** “This grant is limited pursuant to an order dated[dd/mmm/yyyy]....., a copy of which is attached.”

21 **Form P20 in Appendix A.1 is amended**

(a) **by striking out** “the following 7 choices” **and substituting** “the following 9 choices”, **and**

(b) **by adding** “/authorization to obtain resealing information/authorization to obtain estate information” **after** “resealing of a foreign grant”.

22 **Form P21 in Appendix A.1 is amended**

(a) **in section 1 of the SCHEDULE FOR RESEALING OF GRANT OF PROBATE OR GRANT OF ADMINISTRATION WITH WILL ANNEXED by striking out** “or is represented by an attorney who is an applicant under the submission for resealing”,

(b) in section 2 of the SCHEDULE FOR RESEALING OF GRANT OF PROBATE OR GRANT OF ADMINISTRATION WITH WILL ANNEXED

(i) in paragraph (a) by adding “[Provide the appropriate response(s), as applicable: spouse [provide name of spouse]no currently living spouse as defined by section 2 of the Wills, Estates and Succession Act [provide name of spouse and indicate “(deceased)”]other former spouse(s) [provide name(s) of other former spouse(s) and indicate “(former spouse)”]never married.]” **after** “[see section 2 of the Wills, Estates and Succession Act]”,

(ii) in paragraph (b) by adding “[Provide the appropriate response(s), as applicable: living child(ren) of deceased [provide name(s) of child(ren)]any child(ren) of the deceased who died before the deceased [provide name(s) of child(ren) and indicate “(deceased)”]no children.]” **after** “child(ren), if any, of the deceased”,

(iii) in paragraph (c) by adding “[List each living beneficiary and all beneficiaries who have died before the deceased in this application and indicate “(living)” or “(deceased)”, as applicable.]” **after** “not named in paragraph (a) or (b)”,

(iv) in paragraph (d) by adding “[List all living persons who would be entitled to inherit on intestacy and their relationship to the deceased.]” **after** “not named in paragraph (a), (b) or (c)”, **and**

(v) in paragraph (e) by adding “[List anyone who has filed a citation or indicate that no citation has been received.]” **after** “[see Rule 25-11]”,

(c) in section 1 of the SCHEDULE FOR RESEALING OF GRANT OF ADMINISTRATION WITHOUT WILL ANNEXED by striking out “or is represented by an attorney who is an applicant under the submission for resealing”, **and**

(d) in section 2 of the SCHEDULE FOR RESEALING OF GRANT OF ADMINISTRATION WITHOUT WILL ANNEXED

(i) in paragraph (a) by adding “[Provide the appropriate response(s), as applicable: spouse [provide name of spouse]no currently living spouse as defined by section 2 of the Wills, Estates and Succession Act [provide name of spouse and indicate “(deceased)”]other former spouse(s) [provide name(s) of other former spouse(s) and indicate “(former spouse)”]never married.]” **after** “[see section 2 of the Wills, Estates and Succession Act]”,

(ii) in paragraph (b) by adding “[Provide the appropriate response(s), as applicable: living child(ren) of deceased [provide name(s) of child(ren)]any child(ren) of the deceased who died before the deceased [provide name(s) of child(ren) and indicate “(deceased)”]no children.]” **after** “child(ren), if any, of the deceased”,

(iii) in paragraph (c) by adding “[List all living persons who would be entitled to inherit on intestacy and their relationship to the deceased.]” **after** “[see section 23 of the Wills, Estates and Succession Act]”, **and**

(iv) in paragraph (e) by adding “[List anyone who has filed a citation or indicate that no citation has been received.]” **after** “[see Rule 25-11]”.