
❧ FILING APPLICATION DOCUMENTS TOO EARLY ❧

Background

Pursuant to Rule 25-2(1) of the BC *Supreme Court Civil Rules*, the person who intends to apply for a grant must deliver to the recipients a Notice, in the form prescribed by the Probate Rules, at least **21** days before filing an application (see the **Notice** chapter).

In order to avoid that an application is filed prematurely – that is before 21 days required by Rule 25-2(1), you have to consider section 25(4) of the *Interpretation Act* that states: “*In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded.*” In other words, add 2 days to the 21 calculation.

Note: Rule 25-2(5)(a) waives the requirement to add 7 days pursuant to Rule 4-3-(2) of the *Supreme Court Civil Rules*, if a document is sent by **ordinary mail**. Notice is deemed to be delivered on the day it was mailed or transmitted.

Normally, if you file the documents through an agent, the first thing they are supposed to check is that the 21 days from the date the Notice is delivered have expired. If the application documents are delivered to them too early, they should either inform the person who submitted them, or not file them until the 21 days have expired. But mistakes do happen and the application may be delivered to the agent or the probate registry and then filed too early.

In such a case, all is not lost: you can remedy the situation by submitting:

1. a ***Form 35 – Order***; and
2. an ***Affidavit*** (it may sworn by the paralegal or the supervising lawyer;
3. a ***Form P41 – Requisition***.

As now you have the number allocated by the probate registry, include it in all these documents.

Procedure

By preparing and filing the documents set out below, the mistake was remedied:

1. ***Form 35 – Order***

Prepare the ***Order*** (see example below), have it signed by the supervising lawyer and attach to the ***Order*** a ***Backing Sheet*** (see chapter **Wills – Documents**).

2. ***Form 109 – Affidavit*** in support of the ***Order***

The Affidavit in support of the Order sets out the reason for the mistake. It may be sworn by the person who prepared the ***Affidavit of Delivery*** or the supervising lawyer

The examples in the Affidavit below are suggestions only. The supervising lawyer should review the file and decide what information should be included in the Affidavit.

Arrange for the Affidavit to be sworn.

3. **Form P41 – Requisition**

Prepare the *Requisition* (see example below).

Have the ***Requisition*** signed by the supervising lawyer.

File the documents in the usual manner.

ORDER

FORM 35 (RULES 8-4(1), 13-1(3) AND 17-1(2))

No. P{number}
{location} Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
RE: ESTATE OF {NAME OF DECEASED}, DECEASED

ORDER MADE AFTER APPLICATION

))
))
BEFORE)	A MASTER OF THE COURT)
))
)) _____ 20__

ON THE APPLICATION of {NAME OF APPLICANT} without a hearing and on reading the materials filed by {NAME OF LAWYER};

THIS COURT ORDERS that:

- the time to file the application be abridged to *{insert date on which the application documents were filed}*.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
 party lawyer for {NAME OF APPLICANT}

{NAME OF LAWYER}

BY THE COURT

Registrar

REQUISITION

FORM P41 (RULE 25-14(1))

No. P _____
{Location} Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
RE: ESTATE OF *{NAME OF DECEASED}*, DECEASED

REQUISITION – ESTATES

Filed by: *{NAME OF APPLICANT}*

Required:

- 4. The rules or other enactments relied on are Rules 22-4(2) and 25-2(1).
- 5. Attached to this requisition is a draft of the order required.
- 6. The evidence in support of the application is:
 - (a) Affidavit of *{Name of person who swore the Affidavit of Delivery}* sworn *{Date}* and filed on *{Date}*.

This requisition is filed by *{NAME OF APPLICANT}*, whose address for service is as follows:

Street address for service: *{address}*
 Fax number address for service (if any): *{fax number}*
 E-mail address for service (if any): *{email}*
 Telephone number: *{Tel. number}*

Date: *{date}*

 Signature of
 filing person
 lawyer for filing person
{NAME OF LAWYER}

AFFIDAVIT

This is the {2nd} affidavit of {Name} in this case and was made on _____ 20__.

No. P _____
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
RE: ESTATE OF {NAME OF DECEASED}, DECEASED**

AFFIDAVIT

I, {NAME}, {occupation}, of {address}, {City} Province of {Province},
SWEAR/AFFIRM THAT:

1. I am a partner/associate/paralegal with the law firm of {Name of law firm}, solicitors for {NAME OF APPLICANT}, applicant for an estate grant of the Deceased, and as such have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based upon information and belief, and where so stated, I verily believe them to be true.
2. On {date of delivery of documents shown in the Affidavit of Delivery}, I delivered a copy of the Notice, (along with a copy of the Will of the Deceased dated {date}) by mailing them to the following persons:
 - (a) {names from the Affidavit of Delivery}
3. I am aware that, the Notice of Proposed Application in Relation to Estate pursuant to section 121 of the *Wills, Estates and Succession Act* must be sent at least 21 days before the application for an estate grant is filed as required by Rule 25-2(1) of the *Supreme Court Civil Rules*.
4. Due to a clerical error, I filed the documents on {filing date stamped on the application documents by the registry}, well before the 21 days have expired. However, as of this date, we have not received any objections to the application from the people listed in paragraph 2 above.

SWORN BEFORE ME at Richmond,)
 Province of British Columbia, this ____)
 day of June, 2018.)
)
)
 _____)
 A commissioner for taking affidavits)
 in British Columbia)
)

_____)
{NAME}

