

PRACTICE NOTE 32

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GENERAL TOPICS

This Practice Note contains a series of practices that all members of the legal profession are asked to observe and follow.

1. **Closing Estates**
When filing the Executor's/Administrator's Final Accounts strict compliance with the general form of Final Accounts filed in the Estate of Alfred Pickard is required. If necessary, a draft of the Final Accounts may be submitted to the Court for general approval. If the Final Accounts are not in the approved form, the hearing will be adjourned.

2. **Costs**
Counsel are urged to make use of the procedure set forth in Practice Note #21 if costs of an application or motion are being sought. Without the information contemplated by Practice Note #21 being set forth, lesser costs than counsel might be entitled to may be awarded.

3. **Exhibits**
When filing an affidavit that has an exhibit attached, the exhibit stamp should be on the exhibit, not on a separate piece of paper attached to the exhibit.

4. **Filing Case Law**
When filing cases, those parts of the case which are relied on should be emphasized by a coloured marker or florescent pen.

 Duplicate Filing
A respondent should make every effort not to duplicate any of the materials filed by an applicant.

5. **Front Covers**
On a motion, the front page should indicate the purpose of the motion, i.e. summary judgment, amendments of pleadings, extension of time, etc. The name of counsel on any document with a front cover should be clearly stated, either by highlighting, underlining, or other means on the front cover.

6. **Motions and Applications - Grounds**
The form to be used on a motion or application requires the grounds of the motion or application to be set forth. The former states the "grounds to be argued" are to be specified "including a reference to any statutory provision or rule to be relied on."

In compliance with the directions contained in the Rules it is not appropriate to include in the grounds the detailed factual situation being relied on as this should be contained in the affidavit of the applicant. For example, an applicant who is seeking custody of a child would refer to the statutory provision under which the application is to be made and state it is in the best interest of the child that the applicant has custody. If support is being sought, it is sufficient to say that the applicant needs support and the respondent has the means to pay support.

7. **Motions and Applications - Record**
When filing materials for use on a motion or application there is no need to file the complete

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statute, regulation or rule. It is sufficient to file only the sections of the statute, regulation or rule being relied on.

8. **Pre-Trial Conference Memorandums**
Rule 50.01(3) requires the filing of a pre-trial conference memorandum at least seven days before the date set for the conference. Breach of this requirement may result in costs being awarded against the offending party.
9. **Pre-Trial Brief**
Rule 48.12 requires the filing of a pre-trial brief at least seven days prior to the date for the trial. Failure to comply with this rule will result in costs being awarded against the offending party and may result in an adjournment.
10. **Quieting Title**
Counsel are reminded that a Petition for Quieting Titles is not to be used as a substitute for probating an estate.

The abstract of title should be in the following general form:

Conveyance

John Brown to Harry Black	Document #7403 Liber 110, Folio 242 Dated: October 26, 1998 Registered: October 27, 1998 Locus
Harry Black to Robert White Conveyance	Document #8842 Liber 110, Folio 248 Dated: November 2, 1998 Registered: November 4, 1998 Land including locus
<u>Mortgages</u> Robert White to Bank of Montreal	Document #3333 Liber 346, Folio 720 Date: November 2, 1998 Registered: November 5, 1998 Locus

This form of an abstract is easier to read than some of the forms that are presently used. Each entry should state whether the land being transferred is the locus, part of the locus or less than the locus.

Counsel are reminded that Quieting Title of property should not be used as a substitute for probating estates. If any questions should arise as to the proper procedure to follow to obtain title to land, prior to the proceeding being commenced, counsel should seek the opinion of the Court.

11. **Service of Documents**
When a particular document is served on more than one lawyer, there shall be filed only one document showing the acknowledgement of receipt. For example, in a recent case the Application Record had to be served on three lawyers. The Application Record exceeded 100 pages. A separate Application Record was served on each of the three lawyers and then filed in the Court, resulting in four Application Records being in the file.
12. **Simplified Procedure**
(a) Rule 75.1.07(2) requires the filing of a pre-trial conference memorandum in the format of Form 75.1A. **Please follow this form.**
13. **Spousal Support**
The amount of spousal support being requested should be clearly set forth. The fact that the party seeking support does not know the exact income of the intended payor spouse does not mean an estimate of income cannot be made so that an amount for spousal support can be suggested.
14. **Trial Record**
Rule 48.02 requires the filing of a trial record. Henceforth, no trial will proceed unless the plaintiff files a trial record. Failure to comply with this rule shall result in costs being awarded against the plaintiff.

Dated September 1, 1999