

Rules of the Supreme Court of Newfoundland, 1986

PRACTICE NOTE

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The following Practice Note was filed with the Registrar, as Secretary of the Rules Committee of the Trial Division, and is published pursuant to rule 4.04 of the *Rules of the Supreme Court, 1986*:

DISPENSING WITH ADMINISTRATION BONDS

Background

1. Section 120 of the Judicature Act provides that Letters of Administration shall not be granted until “security” is given by the person seeking the appointment as administrator, “unless the court otherwise orders”.
2. Rule 56.14(2) requires that applications for Letters of Administration d.b.n. and Letters of Administration c.t.a., d.b.n. be “similar in form” to the original application; accordingly, security is also required in respect of such applications.
3. The “security” to be furnished in satisfaction of this obligation normally takes the form of the execution and delivery of a personal bond by the applicant, supported by two sureties, in Form 56.21A or 56.21B. Rule 56.21(2) provides, however, that in lieu of a personal bond, the Court may accept the bond of an insurer licenced under the Corporations Guarantees Act to undertake guarantee insurance.

4. Subsection 120(2) of the Judicature Act provides that where the Registrar or a trust company authorized to do business in the province is the applicant for administration, no security is required.
5. The purposes of requiring an administration bond are twofold: (i) to act as a deterrent, by the imposition of a penalty by means of forfeiture of the bond, against the administrator failing to perform his or her lawful duties; and (ii) to provide a fund for compensation for creditors and beneficiaries in the event of a defalcation or devastavit by the administrator.
6. There will be circumstances under which requiring the furnishing of an administration bond will not be necessary to advance the purposes for which a bond would normally be required. In such circumstances the Court will be justified in dispensing with the requirement of a bond in exercise of its statutory power to “otherwise order”.
7. Inasmuch as protection of estate creditors and beneficiaries is the underlying rationale for requiring security, an application to dispense with an administration bond must be grounded in the submission that creditors and beneficiaries will not be put at risk if security is not provided.
8. Rule 56.22 requires, as a minimum, that an application must be accompanied by an affidavit either by the applying administrator or “by some person having personal knowledge of the affairs of the deceased, stating either (i) so far as can be ascertained there are no debts for which the estate is or may be liable; or (ii) adequate provision has been made for the payment of any unpaid debts. The affidavit must also set out the deponent’s sources of information and the inquiries which have been made to ascertain the facts.
9. Other circumstances may require different or additional affidavit evidence before the Court will be satisfied that the risk to creditors and beneficiaries does not require security.
10. An application to dispense with security must be included in the petition for administration. It must substantially address the rationale for dispensation with security as it applies to the specifics of the case.
11. Frequently, applications to dispense with security have consisted of nothing more than a request that Letters of Administration be granted “without bond”, leaving it to

the

judge to devine why the rationale for requiring security does not apply. On other occasions, all that is provided is the written consent of beneficiaries or persons with an equal entitlement to a grant who are resident in the jurisdiction. On still other occasions the rationale given is simply that administration of the estate is required to facilitate a conveyance or a confirmation of a conveyance (often for a nominal amount) of property comprising the bulk or all of the estate assets to a third party or a beneficiary without explaining what impact that transaction would have on estate creditors or remaining beneficiaries.

12. In light of apparent confusion on the part of practitioners as to what is required to justify the dispensing with security, it is appropriate to issue this Practice Note clarifying the types of circumstances under which security will not be required and the type of information that should be provided to the Court in support of such an application.

Practice Note

13. **The Court will normally require an applicant for Letters of Administration to furnish security with the application. The burden is on the applicant to satisfy the Court that it should “otherwise order”.**
14. **Before the Court will order that security on an application for Letters of Administration be dispensed with, it must be satisfied that there will be no risk, or a minimal acceptable level of risk, to estate creditors and beneficiaries in the event of improper estate administration or the commission of devastavit by the administrator.**
15. **Examples of circumstances where the Court would likely be so satisfied include:**
 - a) **as to the risk to estate creditors, where**
 - i) **there are no creditors of the estate;**
 - ii) **because of the effluxion of time since the death of the deceased, claims against the estate would be statute-barred and there are no proceedings pending against the estate;**

- iii) **other arrangements have been made to ensure that creditors will be paid;**
- iv) **the applicant is a “professional administrator”, such as a trust company or other credit-worthy financial institution whose business it is to administer estates; or**
- v) **the estate is insolvent or contains no identifiable assets and administration is being sought for some collateral purpose such as to execute a deed of confirmation to rectify a title defect in a real estate transaction;**

and

b) as to the risk to estate beneficiaries, where:

- i) **all beneficiaries are in existence and of the age of majority and, whether resident within or without the jurisdiction, consent to the grant without security;**
- ii) **there is only one beneficiary and that person is applying for administration;**
- iii) **some beneficiaries are not yet in existence or a class of beneficiaries contains members not yet born, and the applicant for administration is a “professional administrator”; or**
- iv) **the estate is insolvent or contains no identifiable assets and administration is being sought for some collateral purpose such as to execute a deed of confirmation to rectify a title defect in a real estate transaction.**

16. Inability to obtain sureties or inability to afford the cost of providing a commercial bond is not a sufficient justification for dispensing with security. In such circumstances, the appointment of the Registrar may be considered as an

alternative.

17. **An application to dispense with security must be supported by an explanation in the application as to why, supported by affidavit evidence (indicating the source of the information and the extent of the inquiries made) from which a reasonable inference can be drawn that, in all the circumstances, there is no, or only a minimal acceptable, risk to creditors and beneficiaries if no security is granted. Broad conclusory statements seeking to bring the case within one or more of the categories listed above, or in some analogous category, will in themselves not be sufficient; the information provided and the nature of the inquiries made must be such as to provide the Court with a basis for reaching a conclusion, on the evidence, as to the degree of risk involved.**

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