

# Index

## ABSENTEES ACT

- See also Presumption of death
- Order declaring person an absentee, **10:10**

## ACCOUNTANT OF ONTARIO SUPERIOR COURT

- Payment into court, **11:6**

## ACCOUNTS

- See also Passing of accounts
- Requirement to maintain, **5:2, 5:4**

## APPENDICES

- Applications for direction
  - affidavit in support of application for interpretation, **APP 12A § 12A:2**
  - factum of executor and trustee—application for interpretation, **APP 12A § 12A:3**
  - notice of application—rule 14.05(3)—interpretation, **APP 12A § 12A:1**
  - order—application for interpretation, **APP 12A § 12A:4**
- Ascertaining heirs
  - affidavit in support of application to ascertain heirs, **APP 14A § 14A:2, APP 14A § 14A:9**
  - affidavit in support of motion to confirm report, **APP 14A § 14A:8, APP 14A § 14A:9**
  - judgment confirming report and awarding costs, **APP 14A § 14A:9**
  - notice of application to ascertain heirs, **APP 14A § 14A:1, APP 14A § 14A:9**
  - notice of hearing for directions, **APP 14A § 14A:4, APP 14A § 14A:9**
  - notice of motion to confirm report of master, **APP 14A § 14A:7, APP 14A § 14A:9**
  - order directing reference to master, **APP 14A § 14A:3**
  - order giving directions, **APP 14A § 14A:5, APP 14A § 14A:9**
  - report of master, **APP 14A § 14A:6, APP 14A § 14A:9**

## APPENDICES—Cont'd

- Challenging validity of wills
  - affidavit in support of application for order for return of certificate of appointment of estate trustee, **APP 2A § 2A:1, APP 2A § 2A:16**
  - affidavit in support of application for order for revoking certificate of appointment of estate trustee, **APP 2A § 2A:1, APP 2A § 2A:16**
  - affidavit in support of motion for directions, **APP 2A § 2A:1, APP 2A § 2A:16**
  - judgment, **APP 2A § 2A:3, APP 2A § 2A:16**
  - notice of appearance, **APP 2A § 2A:4**
  - notice of motion for directions, **APP 2A § 2A:8, APP 2A § 2A:16**
  - notice of objection, **APP 2A § 2A:5**
  - notice of settlement, **APP 2A § 2A:11**
  - notice to applicant for certificate of estate trustee that objection has been filed, **APP 2A § 2A:2**
  - notice to objector by applicant for certificate of estate trustee, **APP 2A § 2A:6**
  - order for return of certificate of appointment (Rule 75.05), **APP 2A § 2A:2, APP 2A § 2A:16**
  - order giving directions where issues are directed, **APP 2A § 2A:11, APP 2A § 2A:16**
  - order giving directions where pleadings are directed, **APP 2A § 2A:10**
  - order revoking a certificate of appointment of estate trustee (rule 75.04), **APP 2A § 2A:2, APP 2A § 2A:16**
  - rejection of settlement, **APP 2A § 2A:14, APP 2A § 2A:16**
  - statement of claim pursuant to order giving directions, **APP 2A § 2A:9, APP 2A § 2A:16**
  - statement of submission of rights to the court, **APP 2A § 2A:12**
- Children's Lawyer, Role of
  - affidavit of verification and execution, **APP 6B § 6B:5, APP 6B § 6B:22**

**APPENDICES—Cont'd**

Children's Lawyer, Role of—Cont'd  
 affidavit of verification of personal representative, **APP 6B § 6B:1, APP 6B § 6B:22**  
 applications for payment out of court, **APP 6A**  
 caution, **APP 6B § 6B:5**  
 certificate of appointment of estate trustee without a will, **APP 6B § 6B:2**  
 charge/mortgage of land, **APP 6B § 6B:19**  
 condition in agreement of purchase and sale with regard children's lawyer or court approval, **APP 6B § 6B:3**  
 consent of adult beneficiaries, **APP 6B § 6B:8**  
 consent of Children's Lawyer of late filing of caution, **APP 6B § 6B:6**  
 consent of minor, **APP 6B § 6B:13**  
 consent of minor sixteen and over, **APP 6B § 6B:4**  
 judgment where property is vested, **APP 6B § 6B:14, APP 6B § 6B:22**  
 solicitor's account, **APP 6B § 6B:11**  
 statement of adjustments, **APP 6B § 6B:7**  
 statement of adjustments and distribution, **APP 6B § 6B:16**  
 statement of distribution, **APP 6B § 6B:12**  
 title of proceedings where property held in estate, **APP 6B § 6B:15**  
 transfer in preparation, **APP 6B § 6B:10, APP 6B § 6B:18**  
 Claims against estates (summary procedure)  
 claim against estate, **APP 8A § 8A:2**  
 notice of contestation, **APP 8A § 8A:1**  
 Constructive trust claim  
 statement of claim, **APP 25A § 25A:2**  
 Dependant support proceedings  
 affidavit—child as claimant, **APP 4A § 4A:1, APP 4A § 4A:5**  
 affidavit—spouse or common law spouse as claimant, **APP 4A § 4A:1, APP 4A § 4A:5**  
 notice of application, **APP 4A § 4A:1**  
 order, **APP 4A § 4A:2, APP 4A § 4A:5**

**APPENDICES—Cont'd**

Family law act applications  
 affidavit in support of application re equalization payment, **APP 16A § 16A:6, APP 16A § 16A:9**  
 affidavit in support of motion to extend time, **APP 16A § 16A:3, APP 16A § 16A:9**  
 election, **APP 16A § 16A:1**  
 judgment, **APP 16A § 16A:6, APP 16A § 16A:9**  
 notice of application re equalization payment, **APP 16A § 16A:5, APP 16A § 16A:9**  
 notice of motion to extend time, **APP 16A § 16A:2, APP 16A § 16A:9**  
 order—application commenced but adjourned—time extended, **APP 16A § 16A:8, APP 16A § 16A:9**  
 order extending time, **APP 16A § 16A:4, APP 16A § 16A:9**  
 statement of claim, **APP 16A § 16A:7, APP 16A § 16A:9**  
 Mentally incapable persons  
 guardianship of property  
 affidavit of applicant, **APP 9A § 9A:2, APP 9A § 9A:15**  
 consent of applicant, **APP 9A § 9A:5**  
 consent of relative, **APP 9A § 9A:8**  
 judgment  
 standard procedure, **APP 9A § 9A:4, APP 9A § 9A:15**  
 summary procedure, **APP 9A § 9A:4, APP 9A § 9A:15**  
 letters  
 assessor, to, **APP 9A § 9A:11**  
 specified relation, to, **APP 9A § 9A:9**  
 management plan, **APP 9A § 9A:6, APP 9A § 9A:7**  
 notice of appearance, **APP 9A § 9A:10, APP 9A § 9A:15**  
 notice of application, **APP 9A § 9A:1, APP 9A § 9A:15**  
 physician's affidavit, **APP 9A § 9A:2, APP 9A § 9A:15**  
 guardianship of the person  
 affidavit of applicant, **APP 9A § 9A:2, APP 9A § 9A:15**  
 guardianship plan, **APP 9A § 9A:12**

## APPENDICES—Cont'd

- Mentally incapable persons—Cont'd
  - guardianship of the person—Cont'd
    - judgment
      - standard procedure, **APP 9A § 9A:4, APP 9A § 9A:15**
      - summary procedure, **APP 9A § 9A:4, APP 9A § 9A:15**
    - notice of application, **APP 9A § 9A:11, APP 9A § 9A:15**
    - optional statement, **APP 9A § 9A:13**
    - physician's affidavit, **APP 9A § 9A:12, APP 9A § 9A:15**
- Orders for assistance
  - affidavit in support of motion for order to accept or refuse appointment as estate trustee without a will, **APP 3A § 3A:1, APP 3A § 3A:11**
  - affidavit in support of motion for order to accept or refuse appointment as estate trustee with will, **APP 3A § 3A:1, APP 3A § 3A:11**
  - affidavit in support of motion for order to beneficiary witness, **APP 3A § 3A:1, APP 3A § 3A:11**
  - affidavit in support of motion for order to bring in testamentary document, **APP 3A § 3A:1, APP 3A § 3A:11**
  - affidavit in support of motion for order to consent or object to proposed appointment of estate trustee, **APP 3A § 3A:1, APP 3A § 3A:11**
  - affidavit in support of motion for order to file statement of Assets of estate, **APP 3A § 3A:1, APP 3A § 3A:11**
  - affidavit in support of motion for order to former spouse, **APP 3A § 3A:1, APP 3A § 3A:11**
  - order to accept or refuse appointment as estate trustee without a will, **APP 3A § 3A:4**
  - order to accept or refuse appointment as estate trustee with will, **APP 3A § 3A:3**
  - practice direction Toronto region, **APP 1A**

## ASSISTANCE, ORDERS FOR

- Affidavit in support of motion for order to accept or refuse appointment as estate trustee without will, **APP 3A § 3A:1, APP 3A § 3A:11**

## ASSISTANCE, ORDERS FOR—Cont'd

- Affidavit in support of motion for order to accept or refuse appointment as estate trustee with will, **APP 3A § 3A:1, APP 3A § 3A:11**
- Affidavit in support of motion for order to beneficiary witness, **APP 3A § 3A:1, APP 3A § 3A:11**
- Affidavit in support of motion for order to bring in testamentary document, **APP 3A § 3A:1, APP 3A § 3A:11**
- Affidavit in support of motion for order to consent or object to proposed appointment, **APP 3A § 3A:1, APP 3A § 3A:11**
- Affidavit in support of motion for order to file statement of assets of estate, **APP 3A § 3A:1, APP 3A § 3A:11**
- Affidavit in support of motion for order to former spouse, **APP 3A § 3A:1, APP 3A § 3A:11**
- Challenging "joint with right of survivorship" entitlement, **26:13**
- Introduction, **3:1**
- Order to accept or refuse appointment, **3:2**
- Order to accept or refuse appointment as estate trustee without will, **APP 3A § 3A:4**
- Order to accept or refuse appointment as estate trustee with will, **APP 3A § 3A:3**
- Order to beneficiary witness, **APP 3A § 3A:7, 3:6**
- Order to bring in testamentary document, **APP 3A § 3A:2, APP 3A § 3A:11, 3:3**
- Order to consent or object to proposed appointment, **APP 3A § 3A:5, 3:4**
- Order to file statement of assets of estate, **APP 3A § 3A:6, 3:5**
- Order to former spouse, **APP 3A § 3A:8**
- Order to former spouse named as estate trustee, **3:7**
- Order to pass accounts, **3:8**
  - see also Passing of Accounts
- Other orders for assistance, **3:9**
- Precedents, see Assistance, Orders for—Precedents

## CHILDREN'S LAWYER, ROLE OF

- Applications to approve sale of property to trustees
  - costs, **6:41**

## CHILDREN'S LAWYER, ROLE OF

### —Cont'd

- Applications to approve sale of property to trustees—Cont'd
  - jurisdiction, **6:38**
  - previous acquisitions by trustee or personal representative, **6:40**
  - procedure, **6:39**
- Guardians of property, **6:10**
- Historical background, **6:2**
- Introduction, **6:1**
- Litigation guardian of last resort
  - minors, **6:3**
  - unborn and unascertained issue, **6:4**
- Litigation records at Office of Children's Lawyer, **6:61**
- Minors' funds, **6:5 to 6:9**
- Mortgaging property owned by minor, **6:58, 6:59**
- Passing of accounts/audits
  - costs, **6:20**
  - guardian of minor's property, **6:21**
  - jurisdiction, **6:17**
  - procedure, **6:18**
  - protocol with Public Guardian and Trustee, **6:19**
- Payments into court, **6:6**
- Payments out of court
  - ex parte "fiat" procedure, **6:8**
  - motion for payment out of court, **6:7**
  - real property, **6:9**
- Practice and procedure for sale of land (Estates Administration Act), **6:42 to 6:51**
  - application for approval of Children's Lawyer, **6:51**
  - approval of Children's Lawyer not required, **6:46**
  - approval of Children's Lawyer required, **6:48**
  - duties of estate trustee with no power to sell real property, **6:45**
  - duties of estate trustee without will, **6:45**
  - minors age sixteen and over, **6:49**
  - persons on whose behalf Children's Lawyer approves, **6:43**
  - purpose of Act is protection of mentally incapable persons, **6:44**
  - purpose of Act is protection of minors, **6:44**

## CHILDREN'S LAWYER, ROLE OF

### —Cont'd

- Practice and procedure for sale of land (Estates Administration Act), **6:42 to 6:51**—Cont'd
  - purpose of Act is protection of non-concurring persons, **6:44**
  - vested real property, **6:50**
  - where all beneficiaries are minors, **6:47**
- Practice and procedure for sale of land owned by minors (Children's Law Reform Act), **6:52 to 6:57**
  - application for court approval, **6:54**
  - mortgages, **6:57**
  - procedure following judgment, **6:55**
  - procedure following registration, **6:56**
  - purpose of Act, **6:53**
- Precedents, see Children's Lawyer, Role of—Precedents
- Proceedings about will—validity and interpretation
  - jurisdiction, **6:13**
  - procedure, **6:16**
- Removal/replacement of trustees
  - encroachment on capital, **6:25**
  - intention of testator, **6:24**
  - jurisdiction, **6:22**
  - misconduct, **6:27**
  - mismanagement, **6:27**
  - passing of accounts, **6:28**
  - procedure, **6:23**
  - qualifications of new trustees, **6:26**
- Settlement on behalf of minors
  - jurisdiction, **6:11**
  - procedure, **6:12**
- Solicitor-client privilege and litigation records, **6:61**
- Sufficiency of support and entitlement, **6:29 to 6:37**
  - applications against estate where there is minor beneficiary, **6:31**
  - applications on behalf of minor, **6:30**
  - assets, **6:35**
  - conflict of interest, **6:33**
  - dependent child, posthumously conceived, **6:37**
  - limitation period of six months, **6:32**
  - passing of accounts, **6:34**
  - settlement for benefit of minors, **6:36**
- Variations of trusts, **6:60, 15:13**

## **CHILDREN'S LAWYER, ROLE OF - PRECEDENTS**

Acknowledgement and direction, **APP 6B § 6B:9, APP 6B § 6B:17**

Affidavit of verification and execution, **APP 6B § 6B:11, APP 6B § 6B:22**

Affidavit or declaration of personal representative, **APP 6B § 6B:1, APP 6B § 6B:22**

Applications for payment out of court, **APP 6A**

Caution, **APP 6B § 6B:5**

Certificate of appointment of estate trustee without will, **APP 6B § 6B:2**

Charge/mortgage, **APP 6B § 6B:19**

Condition in agreement of purchase and sale with regard to Children's Lawyer or court approval, **APP 6B § 6B:3**

Consent, **APP 6B § 6B:20**

Consent of adult beneficiaries, **APP 6B § 6B:8**

Consent of Children's Lawyer of late filing of caution, **APP 6B § 6B:6**

Consent of minor, **APP 6B § 6B:13**

Consent of minor sixteen and over, **APP 6B § 6B:4**

Judgment, **APP 6B § 6B:14, APP 6B § 6B:22**

Judgment where property is vested, **APP 6B § 6B:14, APP 6B § 6B:22**

Solicitor's account, **APP 6B § 6B:11**

Statement of adjustments, **APP 6B § 6B:7, APP 6B § 6B:16**

Statement of distribution, **APP 6B § 6B:12, APP 6B § 6B:16**

Title of proceedings where property held in estate, **APP 6B § 6B:15**

Transfer in preparation, **APP 6B § 6B:10, APP 6B § 6B:18**

## **CLAIMS BY COMMON LAW SPOUSES**

Charter of Rights cases—common law spouses

droit de la famille case, **23:11**

introduction, **23:7**

Johnson v. Sand, **23:9**

Miron v. Trudel, **23:8**

R v. Nguyen, **23:12**

Walsh v. Bona, **23:10**

## **CLAIMS BY COMMON LAW SPOUSES**

### **—Cont'd**

Charter of Rights cases—same-sex couples

Johnson v. Sand, **23:9**

M. v. H., **23:2**

Conclusion, **23:15**

Constructive trust claims, **23:6**

Costs for constitutional challenge, **23:13**

Introduction, **23:1**

marriage defined, **23:2**

Quantum meruit claims, **23:6**

Relevant estate legislation, **APP 23A**

Remedies, **23:14**

Rights with respect to estates, **23:4**

Spouse defined, **23:2, 23:3**

State of law in Ontario, **23:3**

Support obligations, **23:5**

Unjust enrichment claims, **23:6**

## **CONSTRUCTIVE TRUST AWARDS**

Generally, **25:10**

Constructive trust claim, **APP 25A § 25A:2**

## **COSTS**

Allegations of misconduct, **19:15**

Appointment of estate trustee during litigation, **24:11**

Challenges to validity of will, **19:8**

Challenging "joint with right of survivorship" entitlement, **26:16**

Children's Lawyer and applications to approve sale of property to trustees, **6:41**

Conclusion, **19:19**

Conduct, out of court, **19:9**

Constitutional challenge, **23:4 to 23:12**

Costs ordered against solicitor for estate trustees, **19:17**

Court appointed guardians of property and of the person, **9:16**

Current costs guidelines, **19:4**

Dependant support claims, **4:16, 4:17, 19:11**

Dispute between beneficiaries, **19:14**

Dispute over estate asset, **19:16**

Former costs grid, **19:3**

Guardianship, **19:13**

Information for profession, **APP 19B**

Interpretation of will, **19:9**

Introduction, **19:1**

**COSTS—Cont'd**

- Passing of accounts, **6:20, 19:12**
- Precedent costs outline, **APP 19C**
- Proper liability, principle of, **19:11**
- Public Guardian and Trustee and legal costs, **7:34**
- Social media, use of, **19:9**
- Tariffs, **APP 19A**
- Traditional position, **19:2**
- Trend of not awarding all costs out of estate, **19:5**
- Will variation, **19:9**

**COURT APPOINTED GUARDIANS OF PROPERTY AND OF THE PERSON**

- See also Public Guardian and Trustee, Roles of
- Case law, **9:55**
- Choice of guardian
  - appointment of Public Guardian and Trustee, **9:9**
  - generally, **9:7**
  - guardians of the person, **9:8**
- Compensation
  - guardians of property, **9:14**
  - guardians of the person, **9:15**
- Costs, **9:16**
  - evidence in applications for appointment of guardian of property, **18:10**
- Guardian of property—standard procedure, **9:17 to 9:25**
  - court hearing and judgment, **9:25**
  - initial documentation to be prepared
    - affidavit of applicant, **9:19**
    - management plans, **9:20**
    - medical affidavits, **9:21**
    - notice of application, **9:18**
    - response to service of application record, **9:23, 9:24**
  - service of application record, **9:22**
- Guardian of property—summary disposition procedure, **9:26 to 9:37**
  - assessments are conducted, **9:29**
  - disposition by court, **9:37**
  - initial documentation to be prepared, **9:27**
  - involves either two assessors or one assessor and one non-assessor, **9:28**

**COURT APPOINTED GUARDIANS OF PROPERTY AND OF THE PERSON—Cont'd**

- Guardian of property—summary disposition procedure, **9:26 to 9:37**
  - Cont'd
    - issue notice of application and send copies to assessors and non-assessors, **9:31**
    - notice from assessor(s), **9:30**
    - preparing application record, **9:33**
    - receipt of statements from assessors and non-assessors, **9:32**
    - response to service of application record, **9:35**
    - service of application record, **9:34**
    - submission of material to judge by registrar, **9:36**
- Guardian of the person—standard procedure, **9:38 to 9:42**
  - court hearing and judgment, **9:42**
  - initial documentation to be prepared, **9:39**
  - response to service of application record, **9:41**
  - service of application record, **9:40**
- Guardian of the person—summary disposition procedure, **9:43 to 9:54**
  - assessments are conducted, **9:46**
  - disposition by court, **9:54**
  - initial documentation to be prepared, **9:44**
  - issue notice of application and send copies to assessors, **9:48**
  - notice from assessor(s), **9:47**
  - preparing application record, **9:50**
  - receipt of statements from assessors, **9:49**
    - response to service of application record, **9:52**
  - service of application record, **9:51**
  - submission of material to judge by registrar, **9:53**
  - two assessors meet with allegedly mentally incapable person, **9:45**
- Introduction, **9:1**
- Powers and duties, **9:10**
  - anti-ademption, **9:11**

**COURT APPOINTED GUARDIANS OF PROPERTY—PRECEDENTS**

- Affidavit of applicant, **APP 9A § 9A:2, APP 9A § 9A:15**



## **COURT APPOINTED GUARDIANS OF PROPERTY—PRECEDENTS**

### **—Cont’d**

- Consent of applicant, **APP 9A § 9A:5**
- Consent of relative, **APP 9A § 9A:8**
- Judgment after hearing for appointment of Guardian, **APP 9A § 9A:4, APP 9A § 9A:15**
  - summary procedure, **APP 9A § 9A:4, APP 9A § 9A:15**
- Letter to assessor(s) (summary procedure), **APP 9A § 9A:11**
- Management plan, **APP 9A § 9A:6, APP 9A § 9A:7**
- Notice of appearance, **APP 9A § 9A:10, APP 9A § 9A:15**
- Notice of application, **APP 9A § 9A:1, APP 9A § 9A:15**
- Physician’s affidavit, **APP 9A § 9A:2, APP 9A § 9A:15**
- Service by ordinary mail upon specified relatives, **APP 9A § 9A:9**

## **COURT APPOINTED GUARDIANS OF THE PERSON—PRECEDENTS**

- Affidavit of applicant—guardian of the person, **APP 9A § 9A:2, APP 9A § 9A:15**
- Guardianship plan, **APP 9A § 9A:12**
- Judgment after hearing for appointment of guardian, **APP 9A § 9A:4, APP 9A § 9A:15**
  - summary procedure, **APP 9A § 9A:4, APP 9A § 9A:15**
- Notice of application, **APP 9A § 9A:1, APP 9A § 9A:15**
- Optional statement, **APP 9A § 9A:13**
- Physician’s affidavit, **APP 9A § 9A:2, APP 9A § 9A:15**

## **DEPENDANT SUPPORT CLAIMS**

- Adequate provision determination, **4:10**
- Case law, **4:19**
- Claims by adult children, **4:8**
- Costs, **4:16, 19:9**
- “Dependant”
  - defined, **4:4**
  - separate spouse, **4:7**
- Effect of Family Law Act, **4:14**
- Equalization payment and dependant support order, **16:23**

## **DEPENDANT SUPPORT CLAIMS**

### **—Cont’d**

- Estate, expanded definition for dependant claims
  - insurance policies, **4:12**
  - pre-retirement death benefit, **4:13**
- Evidence, **18:9**
- Initiation of proceedings, **4:2**
- Integration of unjust enrichment and dependant support claims, **25:13**
- Interim orders, **4:6**
- Limitation period, **4:5**
- Moral obligation of testator to dependant, **4:17**
  - arrears of support, **4:17**
  - costs order, **4:17**
  - quantum of dependant support under Succession Law Reform Act, **4:17**
- Nature of relief, **4:1**
- Precedents, see *Dependant Support Claims—Precedents*
- Preserving estate pending hearing, **4:9**
- Public Guardian and Trustee, **7:5**
- Separated spouse as “dependant,” **4:7**
- Status to bring application, **4:3**
- Variation of order, **4:15**
- Who is “dependant”?, **4:4**
- Wills Variation Act (B.C.), contrasting statutory framework, **4:4**

## **DEPENDANT SUPPORT CLAIMS—PRECEDENTS**

- Affidavit—child as claimant, **APP 4A § 4A:1, APP 4A § 4A:5**
- Affidavit—spouse or common law spouse as claimant, **APP 4A § 4A:1, APP 4A § 4A:5**
- Notice of application, **APP 4A § 4A:3, APP 4A § 4A:5**
- Order, **APP 4A § 4A:2, APP 4A § 4A:5**
- Statutory framework, contracting (B.C.), **4:18**

## **DEVELOPMENTS IN ESTATE LITIGATION**

- Amendments to Trustee Act, **1:3**
- Elimination of “Surrogate Court,” **1:1**
- Merger of Ontario Courts, **1:1**
- New rules of procedure, **1:4**
- Substitute Decisions Act, 1992, **1:2**

## **ESTATES, CLAIMS AGAINST (SUMMARY PROCEDURE)**

- See also Claims by Common Law Spouses
- Conclusion, **8:5**
- Evidence and corroboration, **18:12**
- Introduction, **8:1**
- Major problem with summary procedure available, **8:4**
- Nature of claim, **8:3**
- Precedents, see Estates, Claims against (Summary Procedure)—Precedents Procedure, **8:2**

## **ESTATES, CLAIMS AGAINST (SUMMARY PROCEDURE)—PRECEDENTS**

- Claim against estate, **APP 8A § 8A:2**
- Notice of contestation, **APP 8A § 8A:1**

## **ESTATE TRUSTEE DURING LITIGATION**

- Appointment—law
  - alternatives to corporate estate trustee, **24:8**
  - exception, **24:7**
  - “rule” for appointment, **24:6**
  - statutory basis, **24:4**
  - when to appoint estate trustee, **24:5**
- Appointment—procedure
  - certificate of appointment, **24:12**
  - costs, **24:11**
  - motion/application, **24:9**
  - order, **24:10**
- Compensation, **24:19**
- Conclusion, **24:21**
- Duties and authority, **24:13 to 24:18**
  - dealing with assets, **24:14**
  - information gathering, **24:15**
  - paying debts and liabilities, **24:16**
  - resolving the litigation, **24:17**
  - termination of duties, **24:18**
- Introduction, **24:1**
- Liability, **24:20**
- Order for assistance to former spouse named as estate trustee, **3:7**
- Practice and procedure for sale of land (Estates Administration Act)
  - duties of estate trustee with no power to sell real property, **6:45**
  - duties of estate trustee without will, **6:45**

## **ESTATE TRUSTEE DURING LITIGATION—Cont’d**

- Procedure for challenging validity of wills
  - estate trustee during litigation, **2:12**
  - order to accept or refuse appointment as estate trustee, **2:14**
  - order to revoke certificate of appointment of estate trustee, **2:15**

## **EVIDENCE**

- Applications for appointment of guardian of property, **18:10**
- Applications for opinion, advice and direction of court, **12:6**
- Appointment of guardians of property and of the person, **9:4**
- Case law, **18:13**
- Challenges to “joint with right of survivorship” entitlement
  - insufficient evidence, **26:10**
  - onus of proof, **26:7**
  - s. 13 of Evidence Act, **26:9**
  - standard of proof, **26:8**
- Claims against estate and corroboration, **18:12**
- Contents of lost will, **18:8**
- Contested passing of accounts, **18:11**
- Dependant support cases, **18:9**
- Due execution of will, **18:2**
- Expert evidence, see Expert Evidence
- Interpretation of will and admissibility of extrinsic evidence, **18:6**
- Introduction, **18:1**
- Lost will and admissible evidence rebutting presumption of revocation, **18:7**
- Pretrial examination of witnesses to will, **18:5**
- Solicitor and client privilege, **18:4**
- Solicitor and duty to record and maintain evidence, **21:9**
- Suspicious circumstances, **18:3**
- Testamentary capacity, **18:3**
- Undue influence, **18:3**

## **EXECUTORS’ COMPENSATION**

- See also Passing of Accounts
- Agents, use of, **5:29**
- Amount, determination of, **5:19**
- Basis of, **5:18**
- Charging against estate, **5:27**
- Claims, **5:31 to 5:34**
  - beneficiary, representation of, **5:32**



## EXECUTORS' COMPENSATION

### —Cont'd

- Claims, **5:31 to 5:34**—Cont'd
  - costs, **5:34**
  - estate trustee, representation of, **5:33**
  - general procedure, **5:31**
  - offers to settle, **5:34**
- Considerations, **5:22 to 5:26**
  - assets transferred in specie, **5:25**
  - compensation agreements, **5:26**
  - large estates, **5:23**
  - solicitor, **5:24**
  - special fee, **5:22**
- Co-trustees, **5:28**
- Pre-taking, **5:30**
- Tariff guideline, **5:20, 5:21**

## EXPERT EVIDENCE

- See also Evidence
- Conclusions, **27:21**
- Expert, **27:9**
  - choosing an expert, **27:10**
  - expert's fees, **27:12**
  - retaining expert, **27:11**
- Expert's duty, **27:3**
- Expert's evidence, **27:14 to 27:17**
  - "best behaviour," **27:17**
  - cross examination, **27:16**
  - direct examination, **27:15**
  - presenting expert to court, **27:14**
- Expert's report, **27:4 to 27:8**
  - contents, **27:4**
  - discoverability, **27:8**
  - filing report, **27:6**
  - medical reports, **27:7**
  - time for service, **27:5**
- Introduction, **27:1**
- Preparing expert (initial stages), **27:13**
- Preventing expert "overkill," **27:2**
- Specific expert evidence
  - forensic experts (document examination), **27:19**
  - legal expert evidence, **27:20**
  - medical experts, **27:18**

## FAMILY LAW ACT APPLICATIONS

- Case law, **16:30**
- Court procedure
  - continuation of application by or against estate, **16:22**

## FAMILY LAW ACT APPLICATIONS

### —Cont'd

- Court procedure—Cont'd
  - court orders and unconscionability, **16:21**
  - court orders and value of net family property, **16:20**
  - equalization payment and dependant support order, **16:23**
  - initiation of actions, **16:18**
  - initiation of applications, **16:17**
  - specific statements to be served and filed, **16:19**
- Deemed severance of joint tenancy in matrimonial home with third party, **16:26**
- Determination of possession of matrimonial home, **16:28**
- Effect of Family Law Act on dependant support claims, **4:14**
- Election and consequences of electing application of election to last valid will, **16:6**
  - election on behalf of last surviving spouse, **16:7**
  - income tax liability, **16:11**
  - interpretation of will, **16:14**
  - liability for equalization payment, **16:15**
  - life insurance, **16:10**
  - limitation periods and extensions of time, **16:5**
  - nature of election, **16:3**
  - property as interest in estate, **16:13**
  - revoking election, **16:4**
  - testamentary and administrative expenses, **16:12**
  - treatment of joint property, **16:9**
- Introduction, **16:1**
- Limitations Act, 2002 and Family Law Act
  - extension of time periods, **22:12**
  - limitation in equalization calculations, **22:11**
- Precedents, see Family Law Act Applications—Precedents
- Preservation orders, **16:29**
- Responsibilities of personal representative of estate, **16:2**
- Support orders, **16:27**
- Title issues between spouses, **16:25**

## **FAMILY LAW ACT APPLICATIONS**

### **—Cont’d**

Working with Succession Law Reform Act and Family Law Act, **16:31**

## **FAMILY LAW ACT**

### **APPLICATIONS—PRECEDENTS**

Affidavit in support of application re equalization payment, **APP 16A § 16A:6, APP 16A § 16A:9**

Affidavit in support of motion to extend time, **APP 16A § 16A:3, APP 16A § 16A:9**

Election, **APP 16A § 16A:1**

Judgment, **APP 16A § 16A:6, APP 16A § 16A:9**

Notice of application re equalization payment, **APP 16A § 16A:5, APP 16A § 16A:9**

Notice of motion to extend time, **APP 16A § 16A:2, APP 16A § 16A:9**

Order—application adjourned and time extended, **APP 16A § 16A:8, APP 16A § 16A:9**

Order extending time, **APP 16A § 16A:4, APP 16A § 16A:9**

Statement of claim, **APP 16A § 16A:7, APP 16A § 16A:9**

## **GUARDIANS OF PROPERTY**

See also Public Guardian and Trustee, Roles of

See Court Appointed Guardians of Property and of the Person

## **GUARDIANS OF THE PERSON**

See Also Public Guardian And Trustee, Roles Of

See Court Appointed Guardians Of Property And Of The Person

## **HEIRS OF ESTATE, PROCEEDINGS TO ASCERTAIN**

Cost considerations, **14:11**

DNA testing, **14:8**

Evidentiary issues, **14:6**

Initiation of proceedings, **14:2**

Introduction, **14:1**

Limitation periods, **14:3**

Onus of proof and case law, **14:4**

Post-trial procedures, **14:10**

Precedents, see Heirs of Estate, Proceedings to Ascertain—Precedents

## **HEIRS OF ESTATE, PROCEEDINGS**

### **TO ASCERTAIN—Cont’d**

Presumption of paternity, **14:7**

Pre-trial procedure, **14:5**

Proper position of personal representative, **14:7**

Untraceable beneficiaries position of personal representative, **14:12**

## **HEIRS OF ESTATE, PROCEEDINGS TO ASCERTAIN—PRECEDENTS**

Affidavit in support of application to ascertain heirs, **APP 14A § 14A:2, APP 14A § 14A:9**

Affidavit in support of motion to confirm report, **APP 14A § 14A:2, APP 14A § 14A:9**

Judgment confirming report and awarding costs, **APP 14A § 14A:7, APP 14A § 14A:9**

Notice of application to ascertain heirs, **APP 14A § 14A:1, APP 14A § 14A:9**

Notice of hearing for directions, **APP 14A § 14A:4, APP 14A § 14A:9**

Notice of motion to confirm report of master, **APP 14A § 14A:6, APP 14A § 14A:9**

Order directing reference to master, **APP 14A § 14A:3, APP 14A § 14A:9**

Order giving directions, **APP 14A § 14A:3, APP 14A § 14A:9**

Report of master, **APP 14A § 14A:5, APP 14A § 14A:9**

## **“JOINT WITH RIGHT OF SURVIVORSHIP” ENTITLEMENT, CHALLENGING**

Beneficiary designations, **26:11**

Conclusion, **26:17**

Evidentiary presumptions, **26:2**

advancement, **26:4**

resulting trust, **26:3**

undue influence, **26:5**

when court will apply presumptions, **26:6**

Introduction, **26:1**

Procedure, **26:12**

availability of summary judgment, **26:15**

costs, **26:16**

orders for assistance, **26:13**

**“JOINT WITH RIGHT OF SURVIVORSHIP” ENTITLEMENT, CHALLENGING—Cont’d**

- Procedure, **26:12**—Cont’d
  - passing of accounts, **26:14**
- Rebutting evidentiary presumptions
  - insufficient evidence, **26:10**
  - onus of proof, **26:7**
  - s. 13 of Evidence Act, **26:9**
  - standard of proof, **26:8**

**LIMITATION PERIODS**

- Basic and ultimate limitation periods, **22:3**
- Case law, **22:18**
- Dependant support claims, **4:5**
- Elections under Family Law Act, **16:5**
- Estates statutes and Limitations Act, 2002, **22:6 to 22:15**
  - Estates Act, **22:7**
  - Estates Administration Act
    - intestate distributions, **22:9**
    - real property in estates, **22:8**
  - Family Law Act
    - extension of time periods, **22:12**
    - limitation in equalization calculations, **22:11**
  - Limitations Act, passing of accounts, **22:15**
  - Succession Law Reform Act, **22:13**
  - Trustee Act, **22:14**
- Introduction, **22:1**
- Limitations Act, 2002, **22:2**
- Minors and incapable persons under Limitations Act, 2002, **22:5**
- Proceedings to ascertain heirs of estate, **14:3**
- Rule of “discoverability,” **22:3**
- Summary of limitation periods, **22:17**
- Transition provisions, **22:16**
- Will challenges, **22:4**

**LOST WILLS, PROVING IN COURT**

- See Also Wills, Challenging Validity
- Elements to be proved
  - due extension, **17:4**
  - proof of contents of will, **17:7**
  - rebuttal of presumption of destruction, **17:6**
  - tracing possession, **17:5**

**LOST WILLS, PROVING IN COURT**

**—Cont’d**

- Evidence
  - admissible evidence rebutting presumption of revocation, **18:7**
  - evidence of contents, **18:8**
- Introduction, **17:1**
- Precedents, see Lost Wills, Proving In Court—Precedents
- Procedure, **17:2**
- Public Guardian and Trustee, **7:7**

**LOST WILLS, PROVING IN COURT—PRECEDENTS**

- Affidavit in support of notice of application for directions, **APP 17A § 17A:2, APP 17A § 17A:6**
- Judgment, **APP 17A § 17A:4, APP 17A § 17A:6**
- Notice of application for directions, **APP 17A § 17A:1, APP 17A § 17A:6**
- Order giving directions, **APP 17A § 17A:3, APP 17A § 17A:6**

**MEDIATION OF ESTATE DISPUTES**

- Conclusion, **20:19**
- Encouraging mediation, **20:17**
- Fundamentals
  - advantages of mediation, **20:7**
  - dispute resolution, **20:2**
  - how to get started, **20:9**
  - mediation as form of dispute resolution, **20:3**
  - mediation process, **20:6**
  - mediator’s role, **20:5**
  - position-based vs. interest-based bargaining, **20:4**
  - when to mediate, **20:8**
  - “win-win” results, **20:10**
- Introduction, **20:1**
- Mandatory mediation in Ontario, **20:18**
- Mediation clauses in wills, **20:12**
  - damage clauses, **20:15**
  - engaging executor, **20:16**
  - forfeiture clauses, **20:14**
  - precatory statements, **20:13**
- Why estate disputes are well suited to mediation, **20:11**

**OPINION, ADVICE AND DIRECTION OF COURT, APPLICATIONS FOR**

- Admissibility Of Extrinsic Evidence, **12:6**

**OPINION, ADVICE AND DIRECTION  
OF COURT, APPLICATIONS FOR  
—Cont'd**

- Application by Public Guardian and Trustee, **7:6**
- Application record, **12:4**
- Applications pursuant to Rule 14.05(3), **12:1**
- Court documents required, **12:2**
- Position of trustee on application, **12:5**
- Precedents, see Opinion, Advice and Direction of Court, Applications for—Precedents
- Questions that may or may not be asked of court, **12:3**

**OPINION, ADVICE AND DIRECTION  
OF COURT, APPLICATIONS  
FOR—PRECEDENTS**

- Affidavit in support of application for interpretation, **APP 12A § 12A:2**
- Factum of executor or trustee—application for interpretation, **APP 12A § 12A:3**
- Notice of application for interpretation, **APP 12A § 12A:1**
- Order—application for interpretation, **APP 12A § 12A:4**

**PASSING OF ACCOUNTS**

- Case law, **5:35 to 5:43**
  - general, **5:35**
- Challenging “joint with right of survivorship” entitlement, **26:14**
- Children’s Lawyer, **6:17 to 6:21**
- Compelling passing of accounts, **5:3**
- Evidence, **18:11**
- Executors’ compensation, see Executors’ Compensation
- Form of accounts, **5:4**
- General, **5:1**
- Limitation defence, **5:11**
- Order to pass accounts, **3:8**
- Precedents, see Passing of Accounts—Precedents
- Procedure on passing accounts
  - application
    - material required, **5:13**
    - responding to, **5:15**
    - service of, **5:14**
  - contested hearing, **5:12, 5:17**
  - unopposed order, **5:12, 5:16**

**PASSING OF ACCOUNTS—Cont’d**

- Public Guardian and Trustee, **7:10**
- Specific account entry problems
  - accrued interest to date of death, **5:7**
  - depreciation, **5:10**
  - ex dividends, **5:5**
  - funeral expenses, **5:8**
  - legal fees, **5:9**
  - mortgage payments, **5:6**
- When necessary to pass accounts, **5:2**

**PASSING OF  
ACCOUNTS—PRECEDENTS**

- Affidavit supporting unopposed judgment, **APP 5B § 5B:8**
- Affidavit verifying accounts, **APP 5B § 5B:2**
- Costs, request for, **APP 5B § 5B:10 to APP 5B § 5B:13**
- Headings, **APP 5B § 5B:16**
- Judgment, **APP 5B § 5B:14, APP 5B § 5B:15**
- Notice of
  - application, **APP 5B § 5B:3**
  - non-participation, **APP 5B § 5B:7**
  - no objection, **APP 5B § 5B:6**
  - objection, **APP 5B § 5B:4, APP 5B § 5B:5**
  - withdrawal of objection, **APP 5B § 5B:9**
- Order to pass accounts, **APP 5B § 5B:1**
- Statement of accounts, **APP 5A**

**PAYMENT OF MONEY INTO AND  
OUT OF COURT BY TRUSTEES**

- General principles, **11:1**
- Legislation respecting payment into court, **11:2**
  - affidavit, **11:3**
  - draft order, **11:5**
  - notice of application or petition, **11:4**
- Minors’ funds, **6:5 to 6:9**
  - office of Accountant of Superior Court of Justice, **11:6**
  - payments into court, **6:6**
  - payments out of court, **6:7 to 6:9**
  - precedents, see Payment of Money into and Out of Court by Trustees—Precedents

**PAYMENT OF MONEY INTO AND OUT OF COURT BY TRUSTEES—PRECEDENTS**

**Affidavit**

- for payment into court
  - insurance proceeds, **APP 11B § 11B:1, APP 11B § 11B:7**
  - minor's interim interest in estate, **APP 11B § 11B:1, APP 11B § 11B:7**
  - missing minor's interest in joint account, **APP 11B § 11B:1, APP 11B § 11B:7**
  - missing minor's residual interest, **APP 11B § 11B:1, APP 11B § 11B:7**
- for payment out of court
  - minor now of age of majority, **APP 11B § 11B:1, APP 11B § 11B:7**
  - to guardian, **APP 11B § 11B:1, APP 11B § 11B:7**

Comparative legislation chart, **APP 11A**

**Notice of application**

- for payment into court
  - insurance proceeds, **APP 11B § 11B:3, APP 11B § 11B:7**
  - missing minor's residual interest, **APP 11B § 11B:3, APP 11B § 11B:7**

Notice of motion for payment out of court—to guardian, **APP 11B § 11B:5**

**Order for payment into court**

- by estate trustee, **APP 11B § 11B:4, APP 11B § 11B:7**
- by financial institution, **APP 11B § 11B:4, APP 11B § 11B:7**
- insurance proceeds, **APP 11B § 11B:4, APP 11B § 11B:7**

Order for payment out of court to guardian, **APP 11B § 11B:4, APP 11B § 11B:7**

**PRECEDENTS**

See Court Appointed Guardians of Property—Precedents; Court Appointed Guardians of the Person—Precedents

**PRECEDENTS, SEE COURT**

**APPOINTED GUARDIANS OF PROPERTY—PRECEDENTS; COURT APPOINTED GUARDIANS OF THE PERSON—PRECEDENTS**

Rights of incapable person's beneficiaries, **9:12**

Standard of care, **9:13**

When appointment will be made, **9:2**

capacity, **9:3**

capacity assessment, **9:5**

effect of power of attorney, **9:6**

evidence, **9:4**

**PRESUMPTION OF DEATH, PROCEEDINGS RELATING TO**

Absentees Act, **10:10**

Canada Pension Plan Act, **10:11**

Common law rules

inference of death, **10:8**

presumption of death, **10:7**

time of death, **10:9**

Declarations of Death Act, 2002

applications under Act, **10:3**

regime before Act, **10:2**

Introduction, **10:1**

Other possible applications

precedents, see Presumption of Death, Proceedings Relating to—Precedents

under Insurance Act, **10:4**

under Marriage Act, **10:6**

under Rules of Civil Procedure, **10:5**

**PRESUMPTION OF DEATH, PROCEEDINGS RELATING TO—PRECEDENTS**

**Affidavit**

applicant

declaration for death, **APP 10A § 10A:2**

Insurance Act, under, **APP 10A § 10A:2, APP 10A § 10A:5**

third person, facts regarding disappearance, **APP 10A § 10A:2, APP 10A § 10A:5**

**Notice of**

application

declaration of death, **APP 10A § 10A:1, APP 10A § 10A:5**

Insurance Act, under, **APP 10A § 10A:1, APP 10A § 10A:5**

**PRESUMPTION OF DEATH,  
PROCEEDINGS RELATING  
TO—PRECEDENTS—Cont'd**  
Order, **APP 10A § 10A:3, APP 10A  
§ 10A:5**

death of individual, **APP 10A § 10A:3,  
APP 10A § 10A:5**

**PUBLIC GUARDIAN AND TRUSTEE,  
ROLE OF—PRECEDENTS**

Application under ss. 22 & 55 of  
Substitute Decisions Act, 1992, **APP  
7A § 7A:1**

Motion for order appointing litigation  
guardian for incapable person, **APP  
7A § 7A:2**

Questions to consider when representing  
incapable person in personal injury  
litigation, **APP 7A § 7A:3**

**PUBLIC GUARDIAN AND TRUSTEE,  
ROLES OF**

See also Court Appointed Guardians of  
Property and of the Person

Accountant of the superior court of  
justice, **7:29**

Administrator, personal representative, or  
trustee, **7:3 to 7:11**

application for advice and directions,  
**7:6**

application for variations of trusts, **7:8**

application to pass accounts, **7:10**

application to prove or challenge will,  
**7:7**

application to replace or remove  
personal representative, **7:9**

dependants' claim, **7:5**

other civil litigation, **7:11**

quantum meruit claim, **7:4**

Capacity assessment office, **7:31**

Case law

general, **7:36**

PGT and charitable organizations, **7:40**

PGT as guardian of property, **7:37**

PGT as litigation guardian, **7:38**

PGT's capacity to commence or  
continue action, **7:39**

Charitable property roles, **7:23 to 7:28**

charitable bequests by will, **7:24**

complaints about charities, **7:26**

incorporation of charities, **7:25**

maintaining trust accounts, **7:30**

**PUBLIC GUARDIAN AND TRUSTEE,  
ROLES OF—Cont'd**

Charitable property roles, **7:23 to 7:28**

—Cont'd

other estate litigation, **7:28**

regulations and orders under Charities  
Accounting Act, **7:27**

Committee of absentee, **7:19**

Conclusion, **7:35**

Guardian of property or guardian of  
personal care of incapable person  
application by person to replace PGT as  
statutory guardian of property,  
**7:15**

application for temporary guardianship,  
**7:14**

application under Substitute Decisions  
Act, 1992 by PGT, **7:13**

other actions on behalf of incapable  
persons, **7:16**

Introduction, **7:1**

Legal costs, **7:34**

Litigation guardian of incapable person or  
absentee

civil litigation, **7:20**

motions by counsel under Rule 15.04,  
**7:21**

Meditation, **7:33**

Precedents, see Public Guardian and  
Trustee, Role of—Precedents

Protecting interests of incapable persons  
under Substitute Decisions Act, 1992  
arranging counsel, **7:17**

reviewing private applications, **7:18**

Providing assistance to Superior Court  
under Rule 7.08(5), **7:22**

Service on PGT, **7:32**

**QUANTUM MERUIT**

See Unjust Enrichment, Constructive  
Trust and Quantum Meruit Claims

**SAME-SEX PARTNERS, CLAIMS  
AGAINST ESTATE**

See Claims by Common Law Spouses

**SOLICITORS' NEGLIGENCE**

Administration of estate, **21:11**

Ascertaining capacity and independence  
of testator, **21:9**

Conclusion, **21:17**

Discoverability of claims against a solici-  
tor, **21:15**



**SOLICITORS' NEGLIGENCE—Cont'd**

- Drafting errors, **21:7**
- Duty of care, **21:2**
- Estate litigation, **21:13**
- Improper execution of will, **21:3**
- Potential for liability, **21:1**
- Recording and maintaining evidence, **21:9**
- Suggestions to avoid potential liability, **21:4 to 21:14**
- Timely completion of will, **21:5**

**TRUSTEES, RETIREMENT AND REMOVAL OF**

- Basic concepts, **13:2**
- Children's Lawyer, role of
  - encroachment on capital, **6:25**
  - intention of testator, **6:24**
  - jurisdiction, **6:22**
  - misconduct, **6:27**
  - mismanagement, **6:27**
  - passing of accounts, **6:28**
  - procedure, **6:23**
  - qualifications of new trustees, **6:26**
- Court removal, **13:6**
- Introduction, **13:1**
- Passing over, **13:5**
- Precedents, see Trustees, Retirement and Removal of—Precedents
- Renunciation, **13:3**
- Retirement by deed, **13:4**

**TRUSTEES, RETIREMENT AND REMOVAL OF—PRECEDENTS**

- Affidavit—trustee consenting to removal, **APP 13A § 13A:2, APP 13A § 13A:6**
- Affidavit—trustee resisting removal, **APP 13A § 13A:2, APP 13A § 13A:6**
- Application—trustee consenting to removal, **APP 13A § 13A:1, APP 13A § 13A:6**
- Judgment—trustee consenting to removal, **APP 13A § 13A:3, APP 13A § 13A:6**
- Order, **APP 13A § 13A:4, and 13:6**

**TRUSTS, VARIATION OF**

- Case law, **15:16**
- Criteria relevant to applications under Variation of Trusts Act
  - benefit to minors, unborn or incapable beneficiaries, **15:9**

**TRUSTS, VARIATION OF—Cont'd**

- Criteria relevant to applications under Variation of Trusts Act—Cont'd
  - discretion of court, **15:11**
  - intention of testator/settlor, **15:8**
  - sufficiency of benefit—"prudent adult" test, **15:10**
- Introduction, **15:1**
- Methods of varying trust
  - inherent jurisdiction, **15:4**
  - power to encroach or resettle, **15:3**
  - proceedings under Charities Accounting Act, **15:6**
- Rule in Saunders v. Vautier, **15:2**
- Trustee Act applications, **15:5**
- variations of trusts legislation, **15:7**
- Practice on variation of trust application
  - application and supporting documentation, **15:15**
  - Children's Lawyer, **6:60, 15:13**
  - commencing application, **15:12**
  - deed of arrangement, **15:14**
  - Public Guardian and Trustee, **7:8**
- Precedents, see Trusts, Variation of—Precedents

**TRUSTS, VARIATION OF—PRECEDENTS**

- Affidavit, **APP 15A § 15A:3, APP 15A § 15A:6**
- Deed of arrangement, **APP 15A § 15A:1**
- Judgment, **APP 15A § 15A:4, APP 15A § 15A:6**
- Notice of application, **APP 15A § 15A:2, APP 15A § 15A:6**

**UNJUST ENRICHMENT, CONSTRUCTIVE TRUST AND QUANTUM MERUIT CLAIMS**

- Common law and same-sex spousal claims against estates, **23:6**
- Conclusion, **25:14**
- Constructive trust awards, **25:10**
- Constructive trust claim, **APP 25A § 25A:2**
- Corroboration of claim, **25:12**
- Integration of unjust enrichment and dependant support claims, **25:13**
- Introduction, **25:1**
- Part performance of oral contract, **25:14**
- Precedents, see Unjust Enrichment, Constructive Trust and Quantum

**UNJUST ENRICHMENT,****CONSTRUCTIVE TRUST AND  
QUANTUM MERUIT CLAIMS****—Cont'd**

Meruit Claims—Precedents

Presumption of advancement and  
presumption of resulting trust, **25:2**Pecore v. Pecore, **25:3**Saylor v. Madsen Estate, **25:4**Presumption of resulting trust, recent  
applications, **25:5**Priority between constructive trust benefi-  
ciary and creditors of deceased,  
**25:11**Proprietary estoppel, **25:15**Public Guardian and Trustee, **7:4**Quantum meruit awards, **25:7**Quantum meruit claim, **APP 25A § 25A:1**Unjust enrichment, **25:6**dependant support claims, **25:13**monetary awards, **25:7 to 25:9**joint family venture, “value surviv-  
ing” approach, **25:9**mutual conferring of benefits, **25:8**quantum meruit, **25:7**part performance of oral contract,  
**25:14**proprietary estoppel, **25:15****WILLS, CHALLENGING VALIDITY**

See Also Lost Wills, Proving In Court

Case law, **2:27**Children’s Lawyer, **6:13 to 6:16**Costs, **19:6**Nature of challenge, **2:1 to 2:6**due execution, **2:2**knowledge and approval, **2:4**onus of proof, **2:6**testamentary capacity, **2:3**undue influence, **2:5**Precedents, see Wills, Challenging Validi-  
ty—PrecedentsProcedure under revised Estate Rules  
administrator pendente elite (formerly),  
**2:12**appeal, **2:16**citation order to accept or refuse  
probate or administration  
(formerly), **2:14**estate trustee during litigation, **2:12**  
general, **2:7****WILLS, CHALLENGING VALIDITY****—Cont’d**

Procedure under revised Estate Rules

**—Cont’d**motion for directions, **2:11**notice of objection, **2:8**notice to objector, **2:10**order for return of certificate of  
appointment, **2:9**order to accept or refuse appointment  
as estate trustee, **2:14**order to revoke certificate of appoint-  
ment of estate trustee, **2:15**submitting rights to court, **2:13**Public Guardian and Trustee, **7:7**Spurious will challenges, **2:22 to 2:26**costs award, threat of, **2:22**minimal evidentiary threshold, **2:23**offers to settle, **2:26**summary judgment, **2:24, 2:25**case law, **2:25**Rule 20, **2:24**Suspicious circumstances (knowledge and  
approval), **2:17 to 2:21**case law after Vout v. Hay, **2:19**conclusion, **2:21**onus of proof, **2:20**Vout v. Hay, **2:18****WILLS, CHALLENGING****VALIDITY—PRECEDENTS**Affidavit in support of application for  
order revoking certificate of appoint-  
ment, **APP 2A § 2A:1, APP 2A  
§ 2A:16**Affidavit in support of application for  
return of certificate of appointment,  
**APP 2A § 2A:1, APP 2A § 2A:16**Affidavit in support of motion for direc-  
tions, **APP 2A § 2A:1, APP 2A  
§ 2A:16**Judgment, **APP 2A § 2A:3, APP 2A  
§ 2A:16**Notice of appearance, **APP 2A § 2A:7**Notice of motion for directions, **APP 2A  
§ 2A:8, APP 2A § 2A:16**Notice of objection, **APP 2A § 2A:4**Notice of settlement, **APP 2A § 2A:5,  
APP 2A § 2A:13 notice that objec-  
tion has been filed**Notice to objector, **APP 2A § 2A:6**

**WILLS, CHALLENGING**

**VALIDITY—PRECEDENTS**

**—Cont'd**

- Order for return of certificate of appointment, **APP 2A § 2A:2, APP 2A § 2A:16**
- Order giving directions where pleadings directed, **APP 2A § 2A:10**
- Order giving directions where trial of issues directed, **APP 2A § 2A:11**
- Order revoking certificate of appointment, **APP 2A § 2A:2, APP 2A § 2A:16**
- Rejection of settlement, **APP 2A § 2A:14**
- Spurious will challenges, **2:22 to 2:26**
  - general, **2:22 to 2:26**

**WILLS, CHALLENGING**

**VALIDITY—PRECEDENTS**

**—Cont'd**

- Spurious will challenges, **2:22 to 2:26**
  - Cont'd
    - settle, offer to, **2:26**
- Statement of claim pursuant to order giving directions, **APP 2A § 2A:9, APP 2A § 2A:16**
- Statement of submissions of rights to court, **APP 2A § 2A:12**
- Summary judgment, **2:24, 2:25**
  - basis, Rule 20, **2:24**
  - case law, **2:25**