FINAL VERSION SUBMITTED FOR APPROVAL

JANUARY 25, 2009

PRACTICE DIRECTION CONCERNING THE ESTATES LIST OF THE SUPERIOR COURT OF JUSTICE IN TORONTO

The Estates List has been established for the hearing of certain proceedings in the Toronto Region involving issues of estate, trust and capacity law.

This Practice Direction replaces the Notice to Profession dated February 11, 1999 concerning Estates Matters and the Administrative Notice dated April 2, 2007 and is to govern the conduct of matters on the Estates List after April 1, 2009, subject to further amendments as required.

Osgoode Hall
[date]
[CJ SCJ]

I: The Estates Office

[1] The Toronto Region Estates List is administered through the Estates Office, 7th floor, 330 University Avenue, Toronto, telephone number 416.326.2940 and fax number 416.326.2939. All filings relating to Estates List matters are done through the Estates Office.

II. Principles guiding the Estates List

[2] The following principles shall guide all proceedings conducted on the Estates List:

- The time and expense devoted to a proceeding should be proportionate to what is at stake in the proceeding; and,

- Co-operation, communication, civility and common sense should prevail amongst all parties and counsel.

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III: Matters heard on the Estates List

[3] The Estates List hears the following matters:

(a) All matters arising under Rules 74 and 75 of the *Rules of Civil Procedure;*

(b) Applications under Rule 14.05 regarding estates, wills and trusts, including applications for advice under section 60 of the *Trustee Act*;

(c) Applications relating to *inter vivos* trusts, whether under Rule 14.05, the *Variation of Trusts Act*, or otherwise;

(d) Proceedings involving the proof or validity of wills, including lost wills;

(e) Proceedings concerning the administration of estates;

(f) Summary procedures for claims against estates pursuant to the *Estates Act*, ss. 44 and 45;

(g) Passing of accounts of estate trustees or any other person acting in a fiduciary capacity, including guardianships and those acting under powers of attorney;

(h) Applications under the *Succession Law Reform Act;*

(i) Proceedings under the *Substitute Decisions Act, 1992*, including proceedings under that Act involving powers of attorney;

(j) Applications for the appointment of a guardian of property of a child under s. 47 of the *Children's Law Reform Act*, if brought in the Superior Court of Justice;

(k) appeals from the Consent Capacity Board under the *Health Care Consent Act* or the *Mental Health Act;*

(l) proceedings under the *Declarations of Death Act* or *Absentees Act*;

(m) proceedings under the *Charities Accounting Act*, *Charitable Gifts Act* or *Religious Organizations' Lands Act*;

(n) Applications for the extension of time to make an election under s. 6(1) of the *Family Law Act* regarding the interest of a spouse under section 5(2) of that Act; and,

(o) such other matters concerning estate, trust or capacity law as a judge may direct be heard on the Estates List. In considering whether to make such a direction, the judge may take into account the current and expected case load of matters on the Estates List.

[4] Where an estate trustee(s) is either plaintiff or defendant in a civil action which does not specifically concern estate or trust law, or where an estate trustee becomes a party in such an action by virtue only of an order to continue under Rule 11.02, the action shall proceed as any other action and shall not be placed on the Estates List unless the court orders otherwise.

Transfers of matters to the Estates List

[5] A matter that should have been commenced on the Estates List may be transferred to it by a judge who is hearing the matter, but who is not sitting on the Estates List.

[6] Matters may be transferred to the Estates List on consent, provided the matters fall within the categories of sub-paragraphs 3(a) – (o), or on a motion to a judge sitting to hear matters on the Estates List.

[7] The place of commencement of a proceeding is governed by Rule 13.1.01. Requests to transfer matters commenced outside the Toronto Region to the Estates List are governed by Rule 13.1.02.

IV. Administrative Matters

Courtrooms and Gowning

[8] Matters listed on the Estates List usually are heard at 330 University Avenue, Toronto, unless notice to the contrary is given.

[9] Counsel shall gown for all hearings or attendances, except pre-trial conferences.

Estates List Documents and Forms

[10] Copies of forms specified by the Rules of Civil Procedure can be found on the Court Services Division Forms website, www.ontariocourtforms.ca. Confirmation and other administrative forms used by the Estates List may be obtained from the Estates List Office or can be found on the Estates List webpage on the Superior Court of Justice website, www.ontariocourts.on.ca/scj. Parties and counsel using documents obtained

from a website must remember that the Rules of Civil Procedure require that all documents filed in a proceeding must use characters of at least 12 point, or 10 pitch, size; as a result, some conversion of the font size of web-sourced documents may be required.

V: Scheduling matters on the Estates List

A. The Daily List – Scheduling Appointments and the Hearing List

[11] The daily list of matters heard by a judge sitting on the Estates List consists of two parts: (i) the hearing of Scheduling Appointments of 10-minutes each, immediately followed by (ii) the hearing of contested matters or unopposed matters that require some time for a judge to review ("Hearing Matters").

[12] Booking dates for a Scheduling Appointment or a Hearing Matter can be done either through the Estates List electronic on-line booking system, the Online System for Court Attendance Reservations (OSCAR) at www.courtcanada.com, or the Estates Office.

[13] Scheduling Appointments will be for no more than 10 minutes for each matter booked and must be booked at least 2 days in advance. Any materials required for a Scheduling Appointment should be filed no later than 12 noon the day before the appointment.

[14] If a party fails to appear at a Scheduling Appointment, the Court may set a timetable and hearing date for the matter in the party's absence.

[15] In order to ensure the most efficient use of court time and to enable contested matters to be heard at the earliest reasonable date, procedures for booking time on the Estates List for the hearing of a proceeding vary according to the type and length of proceeding as described below.

B. Passing of Accounts applications

[16] When initiating an application for the passing of accounts in all circumstances – whether the passing of accounts of estate trustees or of any other person acting in a fiduciary capacity, including guardianships and those acting under powers of attorney – the applicant should book only 10 minutes on the list for Hearing Matters for the initial return date of application.

[17] If no notices of objection are received or if notices of objection are received but are withdrawn within the prescribed time in respect of the application to pass accounts, and no request for increased costs has been filed and served, the applicant may request, upon filing the material required by subrule 74.18(9), that the application proceed as an unopposed matter to be dealt with by a judge in chambers without the need for the parties to attend.

[18] If no notices of objection are received or if notices of objection are received but are withdrawn within the prescribed time in respect of the application to pass accounts, and a request for increased costs has been filed and served, the judge hearing the matter on the initial return date may determine the amount of the costs at that time or, if the judge is of the view that there is not sufficient time on the initial return date to hear the matter on the initial return date, the judge can schedule a date for a further hearing on the costs issue.

[19] If notices of objection are received and not withdrawn in response to the application to pass accounts, and if the parties can agree in advance of the initial return date on the terms of an order giving directions (including a timetable for each pre-hearing step and, where practicable, the hearing date), then parties can obtain a consent order giving directions on the scheduled initial 10 minute return date for the application.

[20] If notices of objection are received and not withdrawn and if the parties cannot agree on an order for directions prior to the initial return date, the parties should file, at least two days in advance of the initial return date, copies of their respective draft orders giving directions, including timetables for each pre-hearing step and proposed hearing dates. If the dispute about directions can be resolved during the 10 minute appointment on the initial return date, the judge can issue an order giving directions, including a timetable for pre-hearing steps and a hearing date. If the argument about the terms of an order giving directions will require longer than the 10 minute appointment on the initial return date, the judge can schedule a date for the hearing of a contested motion for directions.

[21] Draft orders giving directions should address the items described in paragraph 46 below.

C. Applications involving Wills where an order giving directions is required

[22] Where a notice of objection has been filed to the issuance of a certificate of appointment of estate trustee and an application for directions is required, the applicant, or other person applying for directions, should book an initial 10-minute Scheduling Appointment for the initial return date of the application for directions.

[23] If prior to their attendance at the Scheduling Appointment the parties can agree on the terms of a consent order giving directions, including a timetable for each pre-hearing step agreed upon, the judge at the Scheduling Appointment may issue a consent order giving directions.

[24] If the parties cannot agree on an order giving directions prior to the Scheduling Appointment, the parties should file, at least two days in advance of the Scheduling Appointment, copies of their respective draft orders giving directions, including timetables for each pre-hearing step. If the dispute about directions can be resolved during the 10 minute Scheduling Appointment, the judge may issue the order giving directions, including a timetable for pre-hearing steps. If the argument about the terms of an order giving directions will require longer than the 10 minute Scheduling Appointment, the judge can schedule a date for the hearing of a contested application for directions.

D. Guardianship applications

[25] Applications for the appointment of a guardian under the *Substitute Decisions Act* or *Children's Law Reform Act* should be commenced by booking a 10-minute Scheduling Appointment as the initial return date for the application.

[26] If the application will be opposed and prior to their attendance at the Scheduling Appointment the parties can agree on the terms of a consent order giving directions, including a timetable for each step agreed upon and the hearing date, the judge at the Scheduling Appointment may issue a consent order giving directions.

[27] If the application will be opposed and the parties cannot agree on an order giving directions prior to the Scheduling Appointment, the parties should file, at least two days in advance of the Scheduling Appointment, copies of their respective draft orders giving directions, including timetables for each pre-hearing step and the proposed hearing date. If the dispute about directions can be resolved during the 10 minute Scheduling Appointment, the judge may issue an order giving directions, including a timetable for pre-hearing steps and the hearing date. If the argument about the terms of an order giving directions will require longer than the 10 minute Scheduling Appointment, the judge can schedule a date for the hearing of a contested motion for directions.

[28] If the application will not be opposed, at the Scheduling Appointment the Court will set the date and length of time for hearing the unopposed application, unless the Court is able to hear the matter as part of that day's Hearing Matters.

E. Any other type of application or motion brought on the Estates List

Matters that will require less than one hour to argue on the merits

[29] For other matters heard on the Estates List where the applicant or moving party realistically estimates that the argument of the matter by all parties involved will take less than one hour, an appointment may be booked on the list for Hearing Matters, through the Estates Office or OSCAR, for a hearing of up to one hour.

Matters that will require more than one hour to argue on the merits

[30] Where an application or a motion will require more than one hour to argue on the merits and all parties to the application or motion can agree on a timetable for all pre-hearing steps and on the hearing date for argument, the applicant or moving party may obtain from the Estates Office a consent hearing date upon filing a Hearing Date Request Form that:

(i) confirms that the parties have agreed on a timetable for all pre-hearing steps;

(ii) sets out the agreed upon timetable; and

(iii) sets out the agreed hearing date.

The hearing date for such a motion may be reserved by using the OSCAR system, but confirmation of the hearing date will require the applicant or moving party to file a completed Hearing Date Request Form with the Estates Office.

[31] If the parties to an application or motion that will require more than one hour to argue on the merits cannot agree on a timetable for all pre-hearing steps or on a hearing date, the applicant or moving party, on notice to all other parties, shall book a Scheduling Appointment for the Court to set a timetable for pre-hearing steps and a hearing date for the application or motion to be argued on the merits. The parties should file, at least two days in advance of the Scheduling Appointment, copies of their proposed pre-hearing timetables and their proposed hearing dates.

F. Other matters that can be dealt with at a Scheduling Appointment

[32] Apart from the circumstances described above, there may be other occasions during a proceeding when the parties may wish to book a Scheduling Appointment to obtain the assistance of the court in setting timetables for further steps in the proceeding, including steps required to ready the matter for trial, or to obtain consent orders. On notice to other interested parties, such Scheduling Appointments may be booked on two days' notice.

G. Adjournments

General Principles

[33] Parties are expected to be ready to proceed with matters for which hearing dates have been agreed to or set by the court; adjournments of previously scheduled matters shall be granted only in special circumstances and for a material reason. Parties are expected conscientiously to have sought to resolve most adjournments and waiting periods among themselves before a hearing in a way which minimizes inconvenience and difficulty for the parties.

[34] Parties are expected to retain counsel promptly. A request for an adjournment because counsel has not been retained promptly or because new counsel has been retained just prior to the hearing shall be dealt with accordingly.

Where the hearing date was set at a Scheduling Appointment

[35] Requests for adjournments of hearing dates which were set as a result of attendances at a Scheduling Appointment should occur infrequently since the reasonableness of the hearing date would have been canvassed at that appointment. Any such request for an adjournment, even on consent, should be made through a further Scheduling Appointment so that the Court can be satisfied that the matter has reached a stage of readiness which justifies assigning a new hearing date. If the matter is not ready for hearing, it may be removed from the hearing list, leaving it to the parties to re-apply subsequently through a Scheduling Appointment for a new hearing date once the matter is ready to be heard.

Where the hearing date was not set at a Scheduling Appointment

[36] Where the hearing date for a matter was not set through a Scheduling Appointment attendance, a first consent adjournment of the hearing of the matter may be arranged through the Estates Office.

[37] If the parties wish to seek a second consent adjournment of the matter, they should adjourn the matter, in advance of the scheduled hearing date, to a Scheduling Appointment. If the request for a second adjournment is not made until the appearance before the judge scheduled to hear the matter, that judge may direct the matter to be adjourned to a Scheduling Appointment before it proceeds further. On the return of the matter at a Scheduling Appointment the Court can determine whether the matter is ready for hearing, or whether it would be more appropriate to remove the matter from the hearing list, leaving it to the parties to reapply subsequently through a Scheduling Appointment for a new hearing date once the matter is ready to be heard.

VI: Contested Matters: General

Confirmation of Applications and Motions

[38] Parties must confirm the hearing of an application or motion at least two days in advance of the hearing date using the Confirmation Form available from the Estates Office.

Urgent applications or motions

[39] A party who considers a matter to be urgent may complete and submit to the Estates Office an Urgent Hearing Request form describing the nature of the matter, the reason for the urgency, the time required for the matter, and any scheduling discussions the party has been able to engage in with the other party or parties in the circumstances, as well as attaching a copy of the proposed Notice of Application or Notice of Motion.

[40] Requests for the hearing of urgent applications or motions will be heard ^ on an "as required" basis, by the supervising judge or designate. The Estates Office will notify the parties of the time and location for the hearing of the urgent request.

Pre-Trial Conference and Trial Dates

[41] Pre-trial conferences must be held in all matters proceeding to trial. Dates for pre-trial conferences and trials should be obtained from the Estates Office at the time the proceeding is set down for trial.

[42] Two hours normally will be assigned for a pre-trial conference. If the parties think that a longer pre-trial conference would be appropriate in the circumstances of their case, they may book a Scheduling Appointment to secure a date for a longer pre-trial conference. If the parties are unable to agree upon a pre-trial conference date, trial date, the length of time for the trial, or any other matter concerning the conduct of the trial, a party may book a Scheduling Appointment to determine such matters.

[43] At least 5 days prior to the date of a pre-trial conference each party must serve and file with the Estates Office an Estates List Pre-Trial Conference Form.

VII. Contested Matters: Estates

Orders giving Directions: General

[44] Orders giving directions in contested matters are designed to provide the parties with a procedural framework in which to prepare the proceeding for final adjudication. Rule 75.06 provides the court with considerable discretion and flexibility to put in place a process that will ensure the just, expeditious and least expensive determination of a proceeding on its merits. Parties are expected to take time and care in preparing proposed orders giving directions for consideration by the court.

[45] If the parties cannot agree upon an order giving directions before or at a Scheduling Appointment and a contested motion for directions is required, each party must file with its motion materials a copy of the draft order giving directions it is seeking.

[46] Draft orders giving directions should address, where applicable, the following matters:

- The issues to be decided;
- Who are the parties - who is propounding the will(s) and who is challenging the will(s), and who is submitting rights to the court;

- Whether there is any party under disability who requires representation and, if so, whether notice to the Public Guardian and Trustee or the Office of the Children's Lawyer should be directed;

- Whether an estate trustee should be appointed during litigation and the amount of security, if any, such an estate trustee should file;

- Who shall be served with the order for directions, and the method of and times for service;

- Whether the parties should exchange pleadings or put before the court their respective positions and the material facts upon which they rely by some other means;

- Procedures for bringing the matter before the court in a summary way;

- The timing of a mediation session under Rule 75.1 and its conduct, including (i) whether the parties wish the mediator to provide any report to the court on procedural issues, (ii) the desirability of multiple mediation sessions, and (iii) when a pre-trial conference should be held in the event the mediation does not result in a settlement of the proceeding;

- Any other pre-hearing steps to be undertaken, including documentary disclosure, obtaining medical, accounting or legal records, examinations for discovery, and the availability of a motion for summary judgment;

- The timing for the delivery of any expert report and the utility of a pre-hearing meeting between experts to narrow the issues in dispute;

- The timing of a pre-trial conference, including how long after an unsuccessful mediation session the pre-trial conference should be held; and,

- Any matter relating to the conduct of the trial or hearing, including whether affidavits be used as witnesses' evidence-in-chief.

Orders giving Directions: Contested Passing of Accounts

[47] Where a hearing will be held on a passing of accounts, orders giving directions proposed by the parties should address the following issues, where applicable:

- The timing and conduct of a mediation;
- The issues to be tried and each party's position on each issue;
- The timing and scope of relevant disclosure;
- The witnesses each party intends to call, the issues each witness intends to address, and the anticipated length of each witness' testimony (examination-in-chief and cross-examination); and,
- The procedure to be followed at the hearing, including the method of adducing evidence-in-chief.

VIII. Mandatory Mediation: Rule 75.1

[48] Rule 75.1.02(1) stipulates that mandatory mediation applies to the following proceedings:

- Contested applications to pass accounts;
- Formal proof of testamentary instruments;
- Objections to issuing a certificate of appointment;
- Return of a certificate of appointment;
- Claims against an estate;
- Proceedings under Part V of the *Succession Law Reform Act;*
- Proceedings under the *Substitute Decisions Act, 1992;*
- Proceedings under the *Absentees Act*, the *Charities Accounting Act*, the *Estates Act*, the *Trustee Act* or the *Variation of Trusts Act;*

- Applications under Rule 14.05(3) whether the matters at issue relate to an estate or trust; and,

- Proceedings under s. 5(2) of the *Family Law Act.*

[49] On contested passing of accounts applications parties should be prepared to deal with the issue of directions for mandatory mediation on the initial return date specified in the notice of application.

[50] In all other matters, motions for directions for the conduct of a mandatory mediation normally should form part of, or be combined with, a motion for directions under Rule 75.06. Consent mediation orders can be obtained through a Scheduling Appointment.

[51] In addition to addressing the matters set out in Rule 75.1.05(4), an order giving directions for mediation should, where appropriate, deal with any further information the parties require in advance of the mediation in order to ensure a productive mediation session.

IX. Materials for use of the court

General requirements

[52] Parties are strongly encouraged to file any materials for use of the court earlier than the dates specified in the Rules, especially for more complex hearings. All materials must be filed by 2:00 p.m. two days before the hearing.

[53] Application/Motion Confirmation Forms must clearly specify the materials that each party wishes the court to read for use on the application/motion.

Multiple-appearance proceedings: Records for use at the hearing

[54] Many proceedings on the Estates List involve multiple attendances before the Court. Over time materials can become voluminous. Parties are reminded that the Rules require that the application and motion records used at a hearing must contain *all* materials that the parties intend to use on that particular hearing.

[55] The Estates List strongly discourages the practice of relying at a hearing on materials used at previously disposed of hearings in a proceeding. If a party intends to do so, the party must ensure that a representative attends at the Estates Office sufficiently in advance of the hearing to ensure that the correct materials are available for the judge. It is the responsibility of the parties, not the Estates Office or the judge, to ensure that materials from previously disposed of hearings are available for a current hearing.

[56] In complex cases where a large volume of materials will be placed before the hearing judge, it is of great assistance to the Court for the parties to co-ordinate on a common numbering scheme for the records, transcripts, factums, authorities and other materials intended for use by the Court and to ensure that the materials are properly organized for use on the hearing.

Multiple-appearance proceedings: On-going Endorsements/Orders Record

[57] Where a proceeding likely will involve multiple attendances before the court, it is of assistance to judges hearing matters in the proceeding to be able to review previous orders, endorsements and reasons for judgment. In such cases the person starting a case is responsible for preparing and filing with the Estates Office a red three-ring binder, bearing the proceeding's style of cause, entitled "Endorsements/Orders Record", and containing numbered tabs.

[58] The person who started the case shall keep the Endorsements/Orders Record up-to-date, under the supervision of the Estates Office personnel, by using the following procedure. Within 5 days of the date of the issuance of a new endorsement or reasons for judgment, or the entry of a new order in the proceeding, the person who started the case shall provide the Estates Office with (i) a copy of the new endorsement, order or reasons for judgment, (ii) a consecutively numbered tab for the new document, and (iii) an updated table of contents for filing in the *Endorsements/Orders Record* so that a continuous record of all judicial decisions in the proceeding can be kept in an ordered fashion in the court file. Where an endorsement is hand-written, the applicant should assist the Court by preparing a typed draft, in consultation with other parties, for inclusion in the *Endorsements/Order Record*.

[59] An order giving directions in a proceeding may include a provision requiring the applicant to prepare and maintain such an *Endorsements/Orders Record*.

Compendium of Documents

[60] In appropriate cases, to supplement any required formal record, parties are requested to consider preparing a Compendium of the key materials to be referred to during oral argument (fair extracts of documents, transcripts, previous orders, authorities,

etc.) to assist in focusing the case for the Court. Relevant portions of the Compendium should be highlighted or marked. Parties are encouraged to consult among themselves to prepare a joint Compendium, if possible.

[61] The Court encourages the use of diagrams, family trees, lists of persons involved, corporate organization charts, point-form chronologies, and other synopses of complex or technical evidence.

[62] The prior preparation of draft orders for consideration by the Court at the end of a hearing will greatly expedite the issuance of orders.

Factums and short statements of issues

[63] The Rules require that on applications each party must file a factum for use at the hearing.

[64] Although under the Rules factums are not mandatory on the hearing of a motion, parties are reminded that factums are of great assistance to the Court where the motion will be contested or where an understanding of a large amount of materials will be required in order for a court to deal with an unopposed matter. In appropriate cases filing a short, point-form or simple statement of issues, fact and/or law may provide an alternative way by which parties can assist the Court in understanding the issues on the motion.

Evidence at trial

[65] The court encourages the use, in appropriate circumstances, of sworn witness statements at trial in substitution for the examination-in-chief of witnesses, in whole or in part. Where sworn witness statements will be used, they must be exchanged with all other parties and counsel well in advance of the hearing and, unless a prior order is made, the witnesses should be available for cross-examination at the trial.

X: Matters without a hearing

[66] Judges on the Estates List deal with a variety of applications without a hearing. The most common applications involve requests to dispense with administration bonds and uncontested passing of accounts. It is important that parties filing applications without a hearing ensure that their materials contain all the information and evidence required by statute, the Rules or any published filing endorsements emanating from the

Estates List, and also provide clear, detailed explanations of the reasons for the relief they are requesting.

[67] Filing requirements for requests to dispense with administration bonds are set out in *Re Henderson Estate*, 2008 CanLII 69136 (ON S.C.).

[68] Two copies of the draft order sought must be filed with the application materials.

XI: Costs

[69] Parties are reminded that the traditional practice of awarding costs in estate litigation to all parties out of the estate has been tempered by recent jurisprudence relating to the conduct of parties and their relative success in the litigation. Parties are expected to be aware of this jurisprudence and to be prepared to make submissions with respect to its application in particular cases.

XII: Applications for the appointment of guardians under the *Substitute Decisions Act* or *Children's Law Reform Act*

[70] Part III of the *Substitute Decisions Act, 1992* specifies the procedure and filing requirements for applications to appoint guardians of adults. Part III of the *Children's Law Reform Act* sets out the procedure and filing requirements for applications to appoint guardians of minors. In addition, the general requirements of Rule 38 governing applications apply to applications to appoint guardians.

[71] Parties should refer to paragraphs 25 to 28 above regarding the requirements for scheduling applications for the appointments of guardians.

XIII: Settlements affecting parties under a disability

[72] The partial or full settlement of a claim made by or against a person under disability requires the approval of a judge under Rule 7.08. Often the implementation of such a settlement will require the appointment of a guardian of property under Parts I and III of the *Substitute Decisions Act* or section 47 of the *Children's Law Reform Act.*

Settlements of Estates List proceedings

[73] Where the settlement of a proceeding on the Estates List requires court approval , the motion for approval of the settlement and the application for the appointment of a guardian of property should be brought before a judge on the Estates List.

Settlements of other Civil proceedings

[74] Where the settlement of any other civil proceeding will require the appointment of a guardian of property for a person under disability, the application for the appointment of a guardian should be brought on the Estates List. However, where the settlement occurs during the trial or pre-trial conference of a civil matter, the trial or pre-trial judge may deal with the application to appoint a guardian of property where the circumstances make it more practical to do so.

[75] Where the settlement involves an adult under disability, in most circumstances the application to appoint a guardian of property should be brought on the Estates List prior to the filing of a motion for approval of the settlement so that an authorized person exists to receive any settlement funds on behalf of the party under disability prior to the approval of the settlement.

[76] Since the *Children's Law Reform Act* does not authorize an amendment to a management plan for a guardian of property of a minor except by court order, where the settlement involves a minor under disability the application to appoint a guardian of property initially should be made returnable at a Scheduling Appointment on the Estates List so that the Court can co-ordinate the hearing of the application to appoint a guardian with the motion to approve the settlement.

XIV: Applications under Part V of the *Succession Law Reform Act*

[77] In considering an application for dependant's support under Part V of the *Succession Law Reform Act*, a court must consider numerous circumstances, including the dependant's current assets and means, the assets and means that the dependant is likely to have in the future, and the dependant's needs in light of the dependant's accustomed standard of living. Although the Rules of Civil Procedure do not prescribe the manner by which an applicant should place before the court evidence about these matters, applicants are encouraged to include in their application materials

comprehensive lists of the dependant's assets and liabilities, as well as information about the dependant's income and expenses.

XV: *Family Law Act* Elections

[78] An application for the extension of time to make an election under s. 6(1) of the *Family Law Act* regarding the interest of a spouse under section 5(2) of that Act should be brought on the Estates List.

XVI: Effective Date

[79] This Practice Direction comes into effect April 1, 2009. It will be reviewed and updated upon the coming into force of amendments to the Rules of Civil Procedure on January 1, 2010, and thereafter as required.