

Order for Directions – Sample Terms/Will Challenge

AFFIDAVIT OF DOCUMENTS

THIS COURT ORDERS that the applicant and the respondent shall serve and file affidavit of documents and attend and submit to examinations for discovery in accordance with the *Rules of Civil Procedure*.

or

THIS COURT ORDERS that the applicant and the respondent shall serve and file affidavit of documents within 30 days of the date of this order and attend and submit to examinations for discovery in accordance with the *Rules of Civil Procedure* within 90 days of the date of this order.

CERTIFICATE OF PENDING LITIGATION

THIS COURT ORDERS that the Local Registrar for the County of Simcoe in the Province of Ontario to issue a Certificate of Pending Litigation against the real property municipally known as <> and having a legal description <> registered in the name of <>.

DE BENE ESSE EXAMINATION

THIS COURT ORDERS that a *de bene esse* examination of <> be conducted and video-taped for use at the trial of this proceeding in accordance with the *Rules of Civil Procedure*. The examination is to take place within 30 days of the date of this Order.

DEEMED UNDERTAKINGS

THIS COURT ORDERS that Rule 30.1.01(3) of the *Rules of Civil Procedure* shall not apply to the use of evidence or information obtained by the parties in the within proceeding subject to further court order.

ESTATE TRUSTEE DURING LITIGATION

THIS COURT ORDERS that <> is appointed estate trustee during litigation, without security, over all of the property of the Estate of <> wherever situated, pending the final resolution or settlement of the litigation. A certificate of appointment of estate trustee during litigation will be issued forthwith to <>, subject only to the filing of the necessary supporting application, which application is to be expedited by the estates court office.

ESTATE TRUSTEE DURING LITIGATION FEE AGREEMENT

THIS COURT ORDERS that subject to further review by the court, if necessary, the estate trustee during litigation, shall receive out of the assets of the Estate of <>, reasonable remuneration which shall be calculated on the basis of the Schedule "A" attached hereto.

ESTATE TRUSTEE DURING LITIGATION POWERS

THIS COURT ORDERS that the estate trustee during litigation is authorized to execute those powers given by law to an estate trustee during litigation, including such powers under Section 28 of the *Estates Act*, and is hereby authorized to specifically do the following: [tailor list of specific tasks to estate, including sale of real property, preparing and filing tax returns, etc.]

or

THIS COURT ORDERS that the estate trustee during litigation:

- (a) Shall not sell any of the real property owned by the deceased or that are now assets of the estate without leave of the court;

- (b) make no further distributions of the residue of the estate or any specific bequest without further court order.

APPOINTING AGENTS

THIS COURT ORDERS that the estate trustee during litigation shall be at liberty to appoint an agent or agents and seek such assistance from time to time as they may consider necessary for the purpose of performing their duties hereunder.

EXAMINATION OF NON-PARTY

THIS COURT ORDERS that the parties are hereby granted leave pursuant to Rule 31.10 to examine for discovery the solicitor who prepared the Will of <> in accordance with the *Rules of Civil Procedure*. The costs of the examination are reserved to the trial judge.

HEARING OR TRIAL

THIS COURT ORDERS that the issues to be tried without a jury at <> on a date to be fixed by the Registrar. The record shall consist of this Order for Directions and any other Order for Directions made by this court. The listing for trial shall be governed by Rule 48 of the *Rules of Civil Procedure*.

MEDIATION

THIS COURT ORDERS that the parties attend for mediation pursuant to Rule 75.1 of the *Rules of Civil Procedure* and makes the following directions:

- (a) The issues to be mediated are those set out in the Order for Directions and any other

issues the parties agree should be raised at the mediation;

- (b) The mediator's fees shall be paid out of the Estate or as the parties otherwise agree;
- (c) The parties will consult and agree to the mediator, failing which the court will appoint a mediator;
- (d) The mediation shall take place within 90 days of the date of this Order;
- (e) The parties will exchange affidavit of documents in accordance with the *Rules of Civil Procedure* within 30 days before the date of the mediation. [document production can be tailored to proceeding]

PRODUCTION OF MEDICAL RECORDS

THIS COURT ORDERS that the [applicant(s, or respondent(s), or estate trustee during litigation] is entitled to compel production of all medical records and files relating to the deceased [or insert name] from any person or institution in possession of such medical records, in the same manner and to the same extent as if the deceased would have been able if he [she] were alive and that all production received be produced to the other parties on request.

CHARGES RE PRODUCTION OF MEDICAL RECORDS/SOLICITOR RECORDS/NON-PARTIES FILES

THIS COURT ORDERS that the charges for the production of the <> records and files shall be paid from the estate [or by the estate trustee during litigation] but that the final determination as to payment of such costs and expenses shall be reserved to the trial judge.

PRODUCTION OF ORIGINAL WILL

THIS COURT ORDERS that the respondent produce and bring before the Registrar, or otherwise as the court may direct, any paper or writing being or purporting to be a testamentary document that is in her possession or control in respect of <>.

PRODUCTION OF SOLICITOR RECORDS

THIS COURT ORDERS that the [applicant(s), or respondent(s), or the estate trustee during litigation] is entitled to compel production of all solicitor records, notes and files relating to the deceased from any solicitor or law firm in possession of such relevant legal records in the same manner and to the same extent as the deceased would have been able, if he [she] was alive, and that all productions received be produced to the other parties on request.

PRODUCTION OF FINANCIAL PERIODS

THIS COURT ORDERS that the [applicant(s), or respondent(s), or the estate trustee during litigation] is entitled to compel production of all financial records and files relating to the assets held either solely or jointly by the deceased from any financial or banking institution or agency, whether in Canada, the United States of America, or elsewhere, in the same manner and to the same extent as the deceased would have been able if he [she] was alive and that all productions received be produced to the other parties on request.

SOLICITOR/CLIENT PRIVILEGE ISSUES

THIS COURT ORDERS that any claim of privilege reposing the estate of <>, together with any duty of confidentiality, in respect of the issues raised in this proceeding is hereby waived.

STAY OF DISTRIBUTION

THIS COURT ORDERS that the distribution of the assets of the estate of <> be stayed until further court order or as the parties may otherwise agree.

ISSUES TO BE TRIED

THIS COURT ORDERS that the following issues be tried:

The [applicant(s) or propounder of the Will] affirms, and the [respondent(s) or challenger of Will] denies, that the deceased had testamentary capacity on the date of execution of the Will.

The [applicant(s) or propounder of the Will] affirms, and the [respondent(s) or challenger of Will] denies, that the deceased had knowledge of and approved the contents of the Will.

The [applicant(s) or propounder of the Will] affirms, and the [respondent(s) or challenger of Will] denies, that the Will was procured by undue influence.

The [applicant(s) or propounder of the Will] affirms, and the [respondent(s) or challenger of Will] denies, that the Will was duly executed by the deceased.

FURTHER ISSUES TO BE TRIED

THIS COURT ORDERS that the parties may agree on further issues to be tried or as the court may direct.

FURTHER DIRECTIONS

THIS COURT ORDERS that the parties are at liberty to move for further direction as may appear advisable or they deem necessary.

COSTS

THIS COURT ORDERS that the costs of this motion for directions are reserved to the trial judge.