



The Law Society of
Upper Canada | Barreau
du Haut-Canada



Practice Gems: Probate Essentials 2010

Chair: **Suzana Popovic-Montag, TEP**
Hull & Hull LLP

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Donald Lamont Learning Centre
The Law Society of Upper Canada
Toronto, ON

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TAB 2

Unusual Grants of Probate

Craig Ross
Pallett Valo LLP

Practice Gems: Probate Essentials 2010
September 16, 2010



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Continuing Legal Education

UNUSUAL GRANTS OF PROBATE

I. Limited to Assets Referred to in the Will

Rules of Civil Procedure:

- Materials required for applications for a certificate limited to the assets referred to in the Will are set out in Rule 74.04(1) which covers all applications for Certificates of Appointment of Estate Trustee with a Will, whether or not the applicant is named as Estate Trustee in the Will. (Appendix "A")

Estates Procedures Manual

- The Estates Procedures Manual, section 3.3, introduces the section on applications for certificates limited to assets referred to in the will as follows:

“A testator may execute two or more wills simultaneously, commonly called primary and secondary wills. One will deals with assets for which a certificate of appointment of estate trustee with a will limited to assets referred to in the will is required, the other will(s) deal with assets which may be administered without a certificate of appointment of estate trustee”.
- The Estates Procedures Manual requires a draft order with a backsheet, which is not required explicitly by Rule 74.04(1) but presumably falls under Rule 74.04(1)(l) requiring such additional or other material as the court directs. See the precedent draft order attached as Appendix "B".
- The Estates Procedures Manual also instructs court staff that the file must be forwarded to a judge who must sign an order allowing the certificate of appointment to be issued, and that if the application is not complete or contains information about which the registrar has a doubt, the file is to be sent to a judge for determination. Section 3.3.2.

Directions of the Honourable Mr. Justice Brown

- In *Re Goushleff Estate* (2008 CarswellOnt 6102, OSCJ), the deceased made a General Will and a Real Properties Will. A certificate of

appointment limited to the assets in the Real Properties Will was granted before the application for a certificate for the General Will was considered by the Registrar. The Registrar asked if two certificates could issue, one for each of the Wills. In deciding they could, Mr. Justice Brown gave the following directions:

- i) if the application for a certificate involves a... situation where probate is sought only for one of the wills, it is important that the application materials contain a brief affidavit attesting that the non-probated will does not contain any provision revoking the will for which probate is sought. Such evidence will permit the Estates Office to be satisfied that the will for which probate is sought remains in force and governs the disposition of the assets enumerated in it. See Appendix "C".
- if multiple wills exist and the executors plan to obtain probate for each, in addition to including an affidavit attesting to non-revocation..., the applicants should ensure that the draft limited assets certificates of appointment which they submit each clearly identify the will for which probate is sought — e.g. the General Will dated X, or the Secondary Will dated Y, or the "will dated Z styled as the Limited Assets Will". With each will clearly identified on the face of each certificate, the risk of any confusion arising from the issuance of separate certificates for each will should be kept to a minimum. See Appendix "D".

II. Certificates with a Will where Applicant not Named

Rules of Civil Procedure

- Formerly known as "letters of administration with the Will annexed". Rule 74.01 defines "certificate of appointment of estate trustee" to include letters of administration with the will annexed and "estate trustee with a Will" to include an administrator with the will annexed.
- Rule 74.04(1) requires the following materials which will always apply to these applications:
 - 74.04(1)(g) – If the applicant is not named as an estate trustee in the will or codicil, a consent to the applicant's appointment (Form

74.12) by persons who are entitled to share in the distribution of the estate and who together have a majority interest in the value of the assets of the estate at the date of death.

- 74.04(1)(h) – Security required by the *Estates Act*.
- I will deal with the issue of bonds in more detail below and focus here on the nature of the consents required. I note here that if you are going to seek consents, also seek the specific consent to dispensing with the need for a bond. See Appendix “E”.
- The applicant must have the consents of beneficiaries who together represent a minimum of 50% of the value of the estate plus \$1.00.
- But, what if there is a life interest in the residue followed by contingent gifts of the remainder? This is surely common to many of us who prepare wills that include spousal trusts followed by a gift of the remainder to adult children, dependent on the adult children surviving the spouse.
- How is the life interest to be valued? Does it make a difference whether there is discretionary access to capital? Does it make a difference if the duty to remaindermen is explicitly dispensed with?
- How does the conditional gift-over to children affect the calculation of the value of their interests?
- I propose that all of the above questions are relevant and have an effect on the value of the interests involved. Whose consent is required is therefore a factual analysis that must be considered on a case-by-case basis.
- We recently dealt with a case where all the executors had renounced and a professional trustee was being appointed. The Will contained a spousal trust which was fully discretionary and removed the duty to remaindermen. On the death of the spouse, the remainder was divided among the three adult children who survived both spouses, with a further gift-over to issue. In our supporting affidavit, which included a request to dispense with the need for a bond, we took the position that the consents of the surviving spouse and all of the three adult children

were the consents of the beneficiaries having an interest in a majority of value of the assets of the estate. The Certificate was issued.

Estates Procedures Manual, Residency of Applicant and *Re Armstrong Estate*

- Section 3.2.1 of the estates manual states that an applicant who is not named in the will must have the required consents, file the necessary bond or have it dispensed with by a judge, and must be a resident of Ontario. The manual then refers to section 5 of the *Estates Act*, which states that “letters of administration shall not be granted to a person not residing in Ontario”.
- The requirement that the applicant be an Ontario resident was considered by Mr. Justice Brown in *Re Armstrong Estate* (2010 CarswellOnt 2319). In this case, the first executor appointed by the Will had died, and the second had renounced. The residual beneficiaries were the deceased’s seven children who all nominated the applicant, one of the children and a resident of New Brunswick.
- In granting the application, Mr. Justice Brown found that section 29 of the *Estates Act* authorizes the court to “put to one side” the proscription in section 5 regarding Ontario residency. Section 29 states that where a deceased dies intestate or with a Will but does not name an executor or none of the named executors are willing or able to act: (1) administration can be granted, in the court’s discretion, to a surviving spouse or next of kin without any limitation as to residency; (2) administration can be granted to a nominee of the persons otherwise entitled to a grant of administration; and (3) the court has a residual authority to appoint any other person it sees fit on appropriate terms.
- Watch for local court offices refusing the beneficiaries nominee who lives outside of Ontario, and if you have the consent of all beneficiaries, refer the registrar to *Re Armstrong* and ask for a judge’s determination.

III. Certificates of Succeeding Estate Trustee With a Will

Rules of Civil Procedure:

- The materials required for Applications for Certificates of Succeeding Estate Trustee with a Will are set out in Rule 74.06(1) of the *Rules of Civil Procedure*. The provisions of this rule generally reflect the materials required for a Certificate of Appointment of Estate Trustee with a Will with the following additional requirements:
 - The Application (Form 74.21) asks for the particulars of the original Certificate and an explanation of why the Applicant is entitled to apply;
 - The return of the original Certificate of Appointment or a court certified copy of the original Certificate; and
 - Court fees (\$75.00).
- In my experience, the court will not ask the applicant to explain why the original Certificate is not returned if a court certified copy is included with the Application.

Estates Procedures Manual

- At section 5.1, the Estate Procedures Manual introduces the topic by explaining that a Certificate of Succeeding Estate Trustee with a Will will be required in the following circumstances:
 - The original estate trustee named in the Certificate of Appointment has died; or
 - An order is made revoking the appointment of the original estate trustee and replacing the estate trustee with the alternate named in the Will.
- Another circumstance that comes to mind is the removal of one of multiple Estate Trustees by court order.
- In our experience, the explanation section of the Application form should be sufficient to demonstrate why the applicant is entitled to apply, with supporting documents such as death certificates or court orders removing Estate Trustees included with the application.
- If the Application is because of the incapacity of the original Estate Trustee, the applicant should provide evidence of the original Estate

Trustee's incapacity, and include with the Application affidavit with evidence of the original Estate Trustee's incapacity and a draft Order revoking the appointment of the original Estate Trustee and appointing the alternate named in the Will or the Applicant, as the case may be.

Is the Alternate Estate Trustee Named or not Named in the Will?

- Both Rule 74.06(1) and the Estates Procedures Manual notes that if the applicant is not named as an alternate estate trustee in the Will, the consents of the beneficiaries together having a majority interest in the value of the Estate are required.
- Interestingly, the Estates Procedures Manual distinguishes Wills that appoint the alternate Estate Trustee in the event the original Estate Trustee is or becomes unable or unwilling to act, and Wills that include the further language "**or continue to act**", and takes the position that if the Will does not include the language "**or continue to act**", the alternate is not named as Succeeding Estate Trustee and the consents of beneficiaries having a majority interest are required.
- In a recent conversation with one of the local estate court registrars, she confirmed that the distinction regarding the language "**or continue to act**" is something they watch for, but usually they will let the judge determine whether the language of the Will appoints the applicant as Succeeding Estate Trustee or whether consents and/or security should be required.
- If the Applicant is not named in the Will as succeeding Estate Trustee, either at all or because of the wording of the Will, the Applicant must provide a bond in an amount calculated based on the assets remaining in the estate or obtain an Order dispensing with the need for a bond. Remember to seek the beneficiary's consent to dispensing with the need for a bond together with the consent to the Applicant's appointment.

Certificate of Appointment of Succeeding Estate Trustee without a Will

- Generally speaking, the requirements (Rule 74.07) are the same as an Application for a Certificate of Appointment of Succeeding Estate Trustee with a Will where the Applicant is not named in the Will, with the additional requirement that the Applicant must be an Ontario resident.

- I submit that the requirement of Ontario residency in these applications is subject to the same direction of Mr. Justice Brown in *Re Armstrong Estate* with the suggestion that the applicant include an Affidavit in support of his or her application together with the consents and refer to the decision in *Re Armstrong Estate*. Also include a draft Order appointing the applicant as Succeeding Estate Trustee with a Will.

IV. Estate Trustees Appointed Outside Ontario

General

- As a general principle, letters probate and letters of administration issued to Estate Trustees by courts outside Ontario do not give the Estate Trustees authority to deal with assets inside Ontario without either a Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee without a Will, a Confirmation by Resealing, or a Certificate of Ancillary Appointment of Estate Trustee
- The application of this principle will always depend on the third parties the Estate Trustee must deal with to administer assets in Ontario, which may or may not require a further Certificate or Resealing.
- Note that the Provinces and Territories of Canada, and the countries that are members of the Commonwealth, are not considered "foreign jurisdictions", which may or may not matter depending on whether the original appointment is with a Will. A list of member countries of the Commonwealth is attached as Appendix "F".

A. Applications for Certificates of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee Without a Will

When Used

- This form of appointment need only be used when the original Estate Trustee is appointed by a foreign jurisdiction and the original appointment is without a Will.

Rules of Civil Procedure and Forms

- The Rule setting out the materials required is 74.05.1. Items of note include:
 - 74.05.1(1)(a) - The Nomination form (Form 74.20.2) together with the Application form (Form 74.20.1). The Application form asks for deceased's place of domicile and the court issuing the original certificate together with the total value of the Estate and the value of assets inside Ontario;
 - 74.05.1(1)(b) – A court-certified copy of the original foreign grant;
 - 74.05.1(1)(c) – A certificate of the foreign court, issued within a reasonable time of the application, that the original foreign grant is still in force. This rule is asking for an exemplification certificate. See Appendix “G”.
 - 74.05.1(1)(d) – The security required by the *Estates Act*

Estates Procedures Manual

- The Estates Procedures Manual adds the following instructions at section 6.2.1:
 - The court-certified copy of the original grant must be marked as an exhibit to the application contained in the Application Form 74.20.1.
 - A “reasonable time” for date of issue of the certificate required under Rule 75.05.1(1)(c) is within 6 months of the Ontario application.
 - If the certificate required under Rule 75.05.1(1)(c) cannot be obtained: the Applicant must explain why by way of Affidavit; the court-certified copy of the foreign grant must be dated within 6 months of the Ontario application; and the file must be referred to a judge for determination.
 - The amount of the security required by the *Estates Act* need only be the value of the Ontario assets. (See also Rule 74.11 - Bonds)

- The probate fees are to be calculated only on the value of the Ontario assets. This is pursuant to Rule 74.13(1) and s. 3 of the *Estates Administration Act* which directs us to s. 32 of the *Estates Act*, and specifically s. 32(3) which clarifies that for limited grants, the statement of value need only be with respect to the assets intended to be affected by the grant.

B. Applications for Confirmation by Resealing of Appointment of Estate Trustee and Certificates of Ancillary Appointments of Estate Trustee with a Will

When Used

- The Confirmation by Resealing is used for both grants with and without a Will where the original grant was made in a Province or Territory of Canada or a country that is a member of the Commonwealth. Also note:
 - The applicant does not have to be an Ontario resident, whether or not there is a Will;
 - No consents are required from the beneficiaries even if there is no Will; and
 - Letters of Verification (Quebec) qualify as a grant for Confirmation by Resealing.
- A Certificate of Ancillary Appointment is sought when the original grant was made by a foreign jurisdiction and is “with a Will”. The applicant does not have to be an Ontario resident and no consents are required from beneficiaries.
- The same application form (Form 74.27) is used for Confirmation by Resealing and a Certificate of Ancillary Appointment.

Rules, Legislation and Directions Applicable to Confirmation by Resealing

- The purpose, use and requirements for a Confirmation by Resealing are set out in s. 52 of the *Estates Act* (see Appendix “H” attached), which includes the following:

- The amount required by the *Estates Administration Tax Act*, i.e. the probate fees payable based on the value of the Ontario assets, must be deposited;
 - Once the seal of a judge of the Superior Court of Justice is applied, the original grant is of the same force and effect as if it had been originally granted by such court; and
 - If there is no Will, a certificate of the registrar of the Court of the original grant must be filed confirming security covering the value of the entire estate is on deposit with that court, failing which the applicant must file security covering the value of the Ontario assets.
- Rule 74.08(1) sets out the materials that must accompany the application. Note two court-certified copies of the original grant, or the original grant and one court-certified copy, must be filed with the application.
 - The Estates Procedures Manual adds that a court-certified copy must be marked as an exhibit to the affidavit in the application form and must be dated within 6 months of the application for resealing.

Rules, Legislation and Directions for Applications for Certificates of Ancillary Appointment

- Two court certified copies of the original grant must be filed (Rule 74.09(1)(a)) which must be dated within 6 months of the application for the Certificate of Ancillary Appointment (Estates Procedures Manual, section 6.4.1).
- A bond in the amount of the assets in Ontario must be filed (Rule 74.09(1)(b) and 74.11(1)(f)).
- The probate fees payable based on the value of the Ontario assets (Rule 74.13(1), s.3 of the *Estates Administration Act* and s.32(3) of the *Estates Act*).

V. Certificates of Estate Trustee During Litigation

- The jurisdiction of the court to appoint an administrator of an estate where there is a challenge to the validity of the Will or revoking a Certificate of Appointment is set out in s.28 of the *Estates Act*. The authority and role of an Estate Trustee During Litigation is described in that section as follows:
 - An Estate Trustee During Litigation “has all the rights and powers of a general administrator, other than the right of distributing the residue of the property, and every such administrator is subject to the immediate control and direction of the court, and the court may direct that such administrator shall receive out of the property of the deceased such reasonable remuneration as the court considers proper.”
- Thus, the Estate Trustee During Litigation has the authority to call in and convert assets by sale or otherwise and pay proper estate expenses, but may not make distributions to beneficiaries.
- An Application for a Certificate of Appointment of Estate Trustee During Litigation (Form 74.30, Rule 74.10) must be accompanied by:
 - A copy of the Order Giving Directions appointing the applicant as estate trustee during litigation; and
 - The bond required by the *Estates Act*.
- Note that it is common for lawyers seeking directions with respect to estate disputes to forget to have the need for a bond dispensed with in the Order Giving Directions appointing an Estate Trustee During Litigation. If you are an estate solicitor supporting a litigator on an estate dispute, please remind them to deal with the bond in the Order Giving Directions.
- Also note that if the need for a Bond is not dispensed with in the Order Giving Directions, it is still open to the interested parties to consent to an order waiving the need for a Bond, and the consents can be attached as exhibits to an Affidavit in support of dispensing with the need for a bond and submitted with the application.

VI. Obtaining and Dispensing with Bonds in Applications for Uncommon Grants

When Required and Amount

- Security must be posted in the following circumstances:
 - Any applications that are “without a Will” irrespective of where the applicant resides (s. 35 of the *Estates Act*). This inherently includes Estate Trustees During Litigation;
 - Any applications that are “with a Will” but the applicant is not named as Estate Trustee (s. 35 of the *Estates Act*); and
 - Any applications made by applicants who do not reside in Canada or a country that is a member of the Commonwealth (s. 6 of the *Estates Act*).
- In all of the above cases, the amount of security is set by s. 37(1) of the *Estates Act* as a bond “in a penalty of double the amount under which the property of the deceased has been sworn”.
- Where a bond is otherwise required, the requirement and the amount of the bond is subject to the following exceptions:
 - Government agencies acting as administrators need not post security (*Estates Act* s.36(1)).
 - No security is required for letters of administration granted to surviving spouses when the value of the estate is less than the preferential share and evidence of the debts of the estate are provided (*Estates Act* s.36(2)). An Affidavit in the form attached as Appendix “I” should be included with the Application.
 - For applications for Certificates of Appointment of Succeeding Estate Trustee where security is otherwise required, the amount of security is equal to the undistributed portion of the Estate (Rule 74.11(1)(e)).
 - For applications for Resealing or Ancillary Grants, the amount of security is the value of the assets in Ontario (Rule 74.11(1)(f)).

- For applications for Certificates of Appointment of a Foreign Estate Trustee's Nominee, the amount of security is also the value of the assets in Ontario. This is not found in Rule 74.11 but is set out in the Estate Procedures Manual and is consistent with the underlying policy.
- Where the applicant is a trust company authorized to do business in Ontario (s.175(4) *Loan and Trust Corporations Act*)

Altering the Amount of Security or Dispensing with the Bond

- In all cases where a bond is required, the court has the jurisdiction to alter the amount of security required or dispense with the need for a bond. See sections 6 and 37(2) of the *Estates Act*.
- Any application that includes a request to dispense with or vary the amount of the bond must be accompanied by a supporting affidavit and a draft Order.
- Mr. Justice Brown has given the following directions with respect to the contents of affidavits in support of an order waiving the need for a bond:
 - (i) The identity of all beneficiaries of the estate;
 - (ii) The identity of any beneficiary of the estate who is a minor or incapable person;
 - (iii) The value of the interest of any minor or incapable beneficiary in the estate;
 - (iv) Executed consents from all beneficiaries who are sui juris to the appointment of the applicant as estate trustee and to an order dispensing with an administration bond should be attached as exhibits to the affidavit. If consents cannot be obtained from all the beneficiaries, the applicant must explain how he or she intends to protect the interests of those beneficiaries by way of posting security or otherwise;
 - (v) The last occupation of the deceased;
 - (vi) Evidence as to whether all the debts of the deceased have been paid, including any obligations under support agreements or orders;

(vii) Evidence as to whether the deceased operated a business at the time of death and, if the deceased did, whether any debts of that business have been or may be claimed against the estate, and a description of each debt and its amount;

(viii) If all the debts of the estate have not been paid, evidence of the value of the assets of the estate, the particulars of each debt – amount and name of creditor – and an explanation of what arrangements have been made with those creditors to pay their debts and what security the applicant proposes to put in place in order to protect those creditors. (*Re Henderson Estate*, 2008 CanLII 69136 (ON S.C.)) See Appendix “J”.

Furnishing Security

- Rule 74.11(1) describes how security is to be given as follows:
 - (a) the bond required by section 35 of the Estates Act shall be the bond of an insurer licensed under the Insurance Act to write surety and fidelity insurance in Ontario (Form 74.32, Appendix “K”) or of one or more personal sureties (Form 74.33, Appendix “L”);
 - (b) a registrar of the court or a lawyer shall not be a personal surety;
 - (c) a personal surety must be a resident of Ontario who is not a minor;
 - (d) one personal surety is sufficient where the value of the assets of the estate does not exceed \$100,000;
 - (e) the security required for a succeeding estate trustee shall be based on the value of the assets of the estate remaining to be administered at the time the application for a certificate of appointment as succeeding estate trustee is made; and
 - (f) the security required for confirmation by resealing of the appointment of an estate trustee, or for an ancillary appointment of an estate trustee, shall be based on the value of the assets of the estate over which the estate trustee seeks jurisdiction in Ontario.

- Bonds are usually obtained through brokers who collect the relevant information and shop the application to “insurers licensed under the Insurance Act to write surety and fidelity insurance in Ontario”. Premiums will be calculated as a sliding scale based on the percentage of the value of the bond, with an average cost of .2%.
- Because the premium is based on the value of the bond, it is in our clients’ best interests to ask for an order limiting the bond to the value of the estate. In our experience many judges are willing to accept this as sufficient security. A request for security in the amount of the value of the estate should be supported by an affidavit in the form referred to above and a draft order setting out the amount of the bond.
- Bonding companies are generally unwilling to provide long-term security, and will usually only provide bonds for 3 year periods renewable at the option of the bonding company (Appendix “M”). In order to submit an application with a 3-year bond as security, your application materials must include an affidavit in the form recommended by Mr. Justice Brown amended as necessary to explaining why you are providing a time-limited bond, and a draft order authorizing the bond you are seeking as sufficient security.
- Bonding companies are also generally reluctant or unwilling to provide security for foreign applicants that are not residents of developed western countries.
- The applicant estate trustee(s) must complete an application form setting out the reason the bond is required, the assets of the estate, and their personal assets. See Appendix “N” attached.
- It is common for the insurer to ask for the spouse of the applicant to also sign the application form and thereby personally indemnifying the insurer together with the applicant.

VI. Answering Correction Notices

- Section 3.8 of the Estate Procedures manual instructs court staff that they have no authority to issue a certificate where the application and accompanying materials are incomplete, or contain information about which the registrar has a doubt. Only a judge can make a determination in such matters, and an endorsement on the back of the application is the manner in which a judge can give directions.
- The practice in Toronto is to issue a correction notice where the application is incomplete. The practice in jurisdictions outside Toronto varies. Some deliver correction notices where others will call the applicant's lawyer to advise of incomplete materials.
- Where the registrar is advising of a perceived deficiency that is an issue of interpretation, our practice is to write a letter to the registrar explaining why we think our interpretation is correct, and that if the registrar is still in doubt, asking her to forward the file, together with the explanatory letter, to a judge for determination.

APPENDIX "A"

CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITH A WILL

Material to Accompany Application

74.04 (1) An application for a certificate of appointment of estate trustee with a will (Form 74.4 or 74.5 or, if the application is for a certificate limited to assets referred to in the will, Form 74.4.1 or 74.5.1) shall be accompanied by,

- (a) the original of the will and of every codicil;
- (b) an affidavit (Form 74.6) attesting that notice of the application (Form 74.7) has been served in accordance with subrules (2) to (7);
- (c) an affidavit of execution (Form 74.8) of the will and of every codicil, or if neither of the witnesses to the will or the codicil can be found, or both have died, such other evidence of due execution as the court may require;
- (d) if the will or a codicil is in holograph form, an affidavit (Form 74.9) attesting that the handwriting and signature in the will or codicil are those of the deceased;
- (e) if the will or a codicil is not in holograph form but contains an alteration, erasure, obliteration or interlineation that has not been attested, an affidavit as to the condition of the will or codicil at the time of execution (Form 74.10);
- (f) a renunciation (Form 74.11) from every living person who is named in the will or codicil as estate trustee who has not joined in the application and is entitled to do so;
- (g) if the applicant is not named as an estate trustee in the will or codicil, a consent to the applicant's appointment (Form 74.12) by persons who are entitled to share in the distribution of the estate and who together have a majority interest in the value of the assets of the estate at the date of death;
- (h) the security required by the *Estates Act*; and
- (i) such additional or other material as the court directs.

APPENDIX "B"

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

, 2010

) day of

JUSTICE

IN THE ESTATE OF (*name of deceased*)

ORDER

UPON THE APPLICATION of the Applicant for a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Primary Will for the Estate of the above-named deceased, and upon reading the affidavit of the Applicant,

THIS COURT ORDERS that a Certificate of Appointment of Estate Trustee with a Will Limited to the Assets Referred to in the Will shall be granted to the Applicant, (*name of Applicant*).

THIS COURT ORDERS that this grant of a Certificate of Appointment of Estate Trustee with a Will is limited to the assets referred to in the Primary Will dated (*Date of Primary Will*). This is the last will of the deceased dealing with these assets.

THIS COURT ORDERS that the administration bond, to be filed by the Applicant herein, be dispensed with.

DATED:

Superior Court of Justice
491 Steeles Avenue East
Milton, Ontario L9T 1Y7

APPENDIX "C"

Court File No.

SUPERIOR COURT OF JUSTICE

**IN THE MATTER OF THE SECONDARY ESTATE OF DAVID PAUL WAGNER (the
"Deceased")**

AFFIDAVIT

I, ●, of the Town of Oakville, in the Regional Municipality of Halton, make oath and say that:

1. I am the applicant for a Certificate of Appointment of Estate Trustee Limited to the Assets referred to in the Will in the Secondary Estate of the late ● (the "Secondary Estate"), and as such have knowledge of the matters herinafter deposed to.
2. The Deceased died on ● (*date of death*).
3. The Deceased had a Primary Will and a Secondary Will dated ●. The Secondary Will is in force and has not been revoked by the Primary Will.
4. *Include statements and materials in support of other relief required (waiving bond, etc.).*

SWORN before me at the)
 Town of Oakville, in the)
 Regional Municipality of Halton)
 this day of , 2010.) ●

 a Commissioner, etc.

IN THE MATTER OF THE ESTATE OF

AFFIDAVIT

We, (*estate trustees*), both of the City of Mississauga in the Regional Municipality of Peel, make oath and say that:

- 5. We are the Estate Trustees named in the Wills of the late (*deceased*) titled the "General Will" and the "Limited Will", both of which are dated April 26, 2006. We are applying for Certificate of Appointment of Estate Trustees with a Will Limited to the Assets Referred to in the General Will, which forms part of our application and as such have knowledge of the matters hereinafter deposited to.
- 6. (*Name of Deceased*) died on ●, 2010.
- 7. We affirm that the deceased's Limited Will does not contain any provision revoking the General Will and the General Will remains in full force and governs the disposition of the assets enumerated in it.
- 8. This Affidavit is made for the purpose of applying for a Certificate of Appointment of Estate Trustee with a Will (Individual Applicant) Limited to Assets referred to in the Will which forms part of our application and for no other improper purpose.

SEVERALLY SWORN before me at)
 the City of Mississauga in the Regional)
 Municipality of Peel, this ●)
 day of ●, 2010.)
)
)
)

A Commissioner of Oaths etc.

APPENDIX "E"

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE ESTATE OF _____, deceased.

**CONSENT TO APPLICANT'S APPOINTMENT
AS ESTATE TRUSTEE WITH A WILL**

The deceased died on _____, 20__.

No estate trustee named in a testamentary document of that person is applying for a certificate of appointment of estate trustee with a will.

I, _____, am entitled to share in the distribution of the estate.

I consent to the application by The Canada Trust Company for a certificate of appointment of estate trustee with a will.

I consent to an order dispensing with the filing of a bond by the applicant.





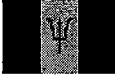
















































DATE: _____, 2010.

Signature of Witness

Name:

APPENDIX "F"

Member Countries of the Commonwealth

 <u>Antigua and Barbuda</u>	 <u>Australia</u>	 <u>Bahamas</u>	 <u>Bangladesh</u>	 <u>Barbados</u>	 <u>Belize</u>
 <u>Botswana</u>	 <u>Brunei Darussalam</u>	 <u>Cameroon +</u>	 <u>Canada +</u>	 <u>Cyprus</u>	 <u>Dominica +</u>
 <u>Fiji Islands</u>	 <u>Gambia</u>	 <u>Ghana</u>	 <u>Grenada</u>	 <u>Guyana</u>	 <u>India</u>
 <u>Jamaica</u>	 <u>Kenya</u>	 <u>Kiribati</u>	 <u>Lesotho</u>	 <u>Malawi</u>	 <u>Malaysia</u>
 <u>Maldives</u>	 <u>Malta</u>	 <u>Mauritius +</u>	 <u>Mozambique</u>	 <u>Namibia</u>	 <u>Nauru</u>
 <u>New Zealand</u>	 <u>Nigeria</u>	 <u>Pakistan</u>	 <u>Papua New Guinea</u>	 <u>St. Kitts and Nevis</u>	 <u>St. Lucia +</u>
 <u>St. Vincent and the Grenadines</u>	 <u>Seychelles +</u>	 <u>Sierra Leone</u>	 <u>Singapore</u>	 <u>Solomon Islands</u>	 <u>South Africa</u>
 <u>Sri Lanka</u>	 <u>Swaziland</u>	 <u>Tanzania</u>	 <u>Tonga</u>	 <u>Trinidad and Tobago</u>	 <u>Tuvalu</u>
 <u>Uganda</u>	 <u>United Kingdom</u>	 <u>Vanuatu +</u>	 <u>Western Samoa</u>	 <u>Zambia</u>	

(NAME OF COURT AND JURISDICTION)

IN THE ESTATE OF (*deceased's name*), deceased,

EXEMPLIFICATION OF (NAME OF CERTIFICATE OR OTHER DOCUMENT ISSUED BY FOREIGN JURISDICTION)

I, (*name of registrar of the foreign court*), Registrar of the (*Foreign Court*) certify that attached is a copy of the (*name of certificate or other document*) of the deceased which is issued on (*date*).

The said (*certificate or other document*) remains on the records of the court and is in effect at the date of this Exemplification.

DATE:

Registrar
Address of court office:

I, (*name of judge*), Judge of the (*name and jurisdiction of issuing court*) certify:

1. The signature of the registrar which appears above is the signature of the registrar of this court who has custody of the Seal of the Court and of its records regarding estate matters.
2. The certificate of the registrar is in the form required by the laws of the (*local jurisdiction and court*) to make it admissible in evidence in the courts of (*local jurisdiction*).
3. The attached copy of the (*name of foreign certificate*) in the estate of the deceased is in the form required by the laws and rules applicable to such matters before (*foreign court*).
4. The (*name of foreign court*) is authorized by the laws of the (*local jurisdiction*) to admit wills to probate, to grant administration of estates and to issue (*names of relevant certificates or other documents*) for those purposes.

Judge

APPENDIX "H"

Estates Act R.S.O. 1990, CHAPTER E.21

Manner of giving effect to grants of probate of Commonwealth and Canadian courts, etc.

52. (1) Where probate or letters of administration or other legal document purporting to be of the same nature granted by a court of competent jurisdiction in the United Kingdom or in a province or territory of Canada or in any British possession is produced to and a copy thereof deposited with a registrar of the Superior Court of Justice and the amount required by the *Estate Administration Tax Act, 1998* is deposited with an officer of the court as on a grant of probate or administration, the probate or letters of administration or other document shall, under the direction of the judge, be sealed with the seal of the Superior Court of Justice, and thereupon is of the like force and effect in Ontario as if the same had been originally granted by the Superior Court of Justice, and is, so far as regards Ontario, subject to any order made by such court, or on appeal therefrom, as if the probate or letters of administration had been granted thereby. R.S.O. 1990, c. E.21, s. 52 (1); 1998, c. 34, s. 63 (3); 2006, c. 19, Sched. C, s. 1 (1).

Letters of verification in Quebec

(2) Letters of verification issued in the Province of Quebec shall be deemed to be a probate within the meaning of this section. R.S.O. 1990, c. E.21, s. 52 (2).

Security required

(3) The letters of administration shall not be sealed with the seal of the Superior Court of Justice until a certificate has been filed under the hand of the registrar of the court that issued the letters that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Ontario, or in the absence of such certificate, until like security is given to the judge of the Superior Court of Justice covering the assets in Ontario as in the case of granting original letters of administration. R.S.O. 1990, c. E.21, s. 52 (3); 2006, c. 19, Sched. C, s. 1 (1).

APPENDIX "I"

Court File No.

AFFIDAVIT

IN THE ESTATE OF ●, DECEASED

I, ●, of the Town of Wasaga Beach, in the Province of Ontario, make oath and say that:

- 9. I am the surviving married spouse of the late ● and as such have knowledge of the matters herein deposed.
- 10. The deceased died on the 10th day of September, 2005. Attached as Exhibit "A" to this my affidavit is a copy of the Funeral Director's Proof of Death Certificate.
- 11. There are ● children of our marriage, none of which are minors.
- 12. The deceased died without a Will. The assets forming part of the deceased's estate are ● with a value of ●. As such, the net value of the estate as computed for the purposes of section 45 of the Succession Law Reform Act does not exceed the preferential share prescribed under subsection 45 (6) of that Act.
- 13. *Describe nature and value of debts. Must be less than assets.*
- 14. This Affidavit is made for the purpose of applying for a Certificate of Appointment of Estate Trustee without a Will (Individual Applicant) without the need for a bond and for no other improper purpose.

SWORN before me at the City of)
 Mississauga, in the)
 Province of Ontario)
 this ● day of ●, 2010.)
)
)

 Name: ●

A Commissioner etc.

APPENDIX "J"

Court File No.

SUPERIOR COURT OF JUSTICE

AFFIDAVIT IN SUPPORT OF ORDER DISPENSING WITH BOND

IN THE ESTATE OF ●, DECEASED

We, ● and ●, both of the City of Mississauga, in the Regional of Municipality of Peel, make oath and say that:

- 15. I, ●, am the mother of ●. I, ●, am a close friend of ●. As such, we have knowledge of the matters herein deposed.
- 16. The late ● died on the ●th day of ●, 200●, intestate.
- 17. ● and ● were married to each other at the time of his death. ● did not have any issue.
- 18. ● has renounced her right to be appointed as Estate Trustee without a Will in priority to us, ● and ●. She has consented to our appointment as Estate Trustees without a Will and also consented to an Order dispensing with the filing of a bond;
- 19. The debts of ● currently outstanding are a mortgage secured by his condominium of approximately ●, a line of credit of approximately ● and credit card debt of approximately ●. The funeral has been paid in full.
- 20. The primary assets of the estate are ●, ● and ● with an approximate value of \$●. The mortgage and line of credit will be satisfied on the sale of the condominium and there are sufficient funds to satisfy the credit card balance once the Certificate of Appointment is issued.
- 21. Our solicitor, ●, has advised us that in accordance with Section 44 of the *Succession Law Reform Act*, ● is the sole beneficiary of her late husband's estate.
- 22. ● was a (*occupation*). ● did not own or operate his own business at the time of his death.
- 23. We make this affidavit in support of our Application for Certificate of Appointment of Estate Trustee Without a Will in the estate of ● and for an Order dispensing with the filing of a security bond and for no other improper purpose.

SWORN before me at the City)
of Mississauga, in the Regional)
Municipality of Peel)
this day of November, 2006.)
) _____
) _____

APPENDIX "K"

FORM 74.32

Courts of Justice Act

BOND — INSURANCE OR GUARANTEE COMPANY

ONTARIO

SUPERIOR COURT OF JUSTICE

BOND NO.

AMOUNT: \$

IN THE ESTATE OF (insert name), deceased.

The principal in this bond is (insert name)

The surety in this bond is (insert name), an insurer licensed under the Insurance Act to write surety and fidelity insurance in Ontario.

The obligee in this bond is the Accountant of the Superior Court of Justice acting for the benefit of creditors and persons entitled to share in the estate of the deceased.

The principal and the surety bind themselves, their heirs, executors, successors and assigns jointly and severally to the Accountant of the Superior Court of Justice in the amount of Dollars (\$.....).

The principal as an estate trustee is required to prepare a complete and true inventory of all the property of the deceased, collect the assets of the estate, pay the debts of the estate, distribute the property of the deceased according to law, and render a complete and true accounting of these activities when lawfully required.

The primary obligation under this bond belongs to the principal. The principal is liable under this bond for any amount found by the court to be owing to any creditors of the estate and persons entitled to share in the estate to whom proper payment has not been made.

The surety, provided it has been given reasonable notice of any proceeding in which judgment may be given against the principal for failure to perform the obligations of this bond shall, on order of the court, and on default of the principal to pay any final judgment made against the principal in the proceeding, pay to the obligee the amount of any deficiency in the payment by the principal, but the surety shall not be liable to pay more than the amount of the bond.

The amount of this bond shall be reduced by and to the extent of any payment made under the bond pursuant to an order of the court.

The surety is entitled to an assignment of the rights of any person who receives payment or benefit from the proceeds of this bond, to the extent of such payment or benefit received.

DATE

SIGNED, SEALED AND DELIVERED

in the presence of:

.....
Principal

.....
Surety

RCP-E 74.32 (November 1, 2005)

APPENDIX "L"
FORM 74.33
Courts of Justice Act
BOND — PERSONAL SURETIES
ONTARIO
SUPERIOR COURT OF JUSTICE

BOND NO.

AMOUNT: \$

IN THE ESTATE OF *(insert name)*, deceased.

The principal in this bond is *(insert name)*

The sureties in this bond are *(insert names)*

The obligee in this bond is the Accountant of the Superior Court of Justice acting for the benefit of creditors and persons entitled to share in the estate of the deceased.

The principal and the sureties bind themselves, their heirs, executors, successors and assigns jointly and severally to the Accountant of the Superior Court of Justice in the amount of Dollars (\$.....).

The principal as an estate trustee is required to prepare a complete and true inventory of all the property of the deceased, collect the assets of the estate, pay the debts of the estate, distribute the property of the deceased according to law, and render a complete and true accounting of these activities when lawfully required.

The primary obligation under this bond belongs to the principal. The principal is liable under this bond for any amount found by the court to be owing to any creditors of the estate and persons entitled to share in the estate to whom proper payment has not been made.

The sureties, provided they have been given reasonable notice of any proceeding in which judgment may be given against the principal for failure to perform the obligations of this bond shall, on order of the court, and on default of the principal to pay any final judgment made against the principal in the proceeding, pay to the obligee the amount of any deficiency in the payment by the principal, but the sureties shall not be liable to pay more than the amount of the bond.

The amount of this bond shall be reduced by and to the extent of any payment made under the bond pursuant to an order of the court.

The sureties are entitled to an assignment of the rights of any person who receives payment or benefit from the proceeds of this bond, to the extent of such payment or benefit received.

DATE

SIGNED, SEALED AND DELIVERED
in the presence of:

.....
Principal
.....
Surety
.....
Surety

AFFIDAVIT OF SURETY

I, (insert name), of (insert city or town and county or district, metropolitan or regional municipality of residence), make oath and say/affirm:

I am a proposed surety on behalf of the intended estate trustees of the property of (insert name), deceased, named in the attached bond.

I am eighteen years of age or over and own property worth \$ over and above all encumbrances, and over and above what will pay my just debts and every sum for which I am now bail or for which I am liable as surety or endorser or otherwise.

SWORN/AFFIRMED BEFORE)
me at the of)
in the of)
this day of , 20 .)

)
)
)
)

.....
A Commissioner for Taking Affidavits (or as may be)

AFFIDAVIT OF SURETY

I, (insert name), of (insert city or town and county or district, metropolitan or regional municipality of residence), make oath and say/affirm:

I am a proposed surety on behalf of the intended estate trustees of the property of (insert name), deceased, named in the attached bond.

I am eighteen years of age or over and own property worth \$ over and above all encumbrances, and over and above what will pay my just debts and every sum for which I am now bail or for which I am liable as surety or endorser or otherwise.

SWORN/AFFIRMED BEFORE)
the at the of)
in the of)
this day of , 20 .)

)
)
)
)

.....
A Commissioner for Taking Affidavits (or as may be)