**Order Giving Directions – Estates List Proceedings – Power of Attorney/Guardianship Matters (Sample Terms)**

| **Issue** | **Sample Clause** | **Annotation/Comments** |
| --- | --- | --- |
| ***Description of Parties, Issues*** | | |
| Description of Issues to be Tried | THIS COURT ORDERS that the parties to the proceedings and the issues to be tried are as follows:  a) issues relating to the alleged misappropriation of assets belonging to (incapable person) in or about (year), and amounting to (amount) by ⚫;  b) issues relating to the alleged breach of fiduciary duty by ⚫, including damages for breach of fiduciary duty and negligence for:  (i) failure to maintain a proper standard of care and skill;  (ii) failure to disclose breaches of trust and fiduciary duty;  (iii) failure to maintain and keep accounts in accordance with the *Substitute Decisions Act, 1992* (the “SDA”), and in particular as set out in the regulations to the SDA 1992, Section 2 Ontario Regulation 100/96;  (iv) failure to maintain and keep accurate accounts in accordance with the SDA and in particular as set out in the regulations to the Ontario Regulation 100/96, sections 5 and 6;  (v) failure to disgorge any benefit obtained by his/her breach of fiduciary duty and breach of duty of loyalty;  (vi) failure to act in accordance with the SDA;  (vii) falsification of accounts;  (viii) incorrect recording of accounting entries;  (ix) breach of section 32 (1) of the SDA and in particular failure to exercise powers granted to an Attorney, diligently, honestly, with integrity and in good faith and on behalf of (incapable person) benefit; and  (x) breach of section 66 (4.1) of the SDA;  (d) issues relating to the alleged mismanagement of (incapable person) assets by ⚫;  (e) issues relating to rescission and restoring (incapable person) to his/her original financial position as at (date), including issues of damages for loss suffered in accordance with, but not limited to s.104 of the Ontario *Courts of Justice Act;*  (f) issues relating to the alleged misconduct of the fiduciary ⚫;  (g) issues relating to damages suffered by (incapable person) as a result of breach of fiduciary duty by and negligence of ⚫ including loss of capital from investment income, interest, including interest calculated in accordance with the *Courts of Justice Act*, ss. 127, 128, 129 and 131;  (h) issues relating to the repayment of all monies allegedly misappropriated by ⚫ together with calculations thereon for interest, costs, expenses, loss of investment and income opportunity;  (i) issues relating to the alleged misappropriation of assets belonging to (incapable person) by (respondent ⚫ attorney) which must be repaid as a debt owed and which are impressed with a trust in favour of (incapable person);  (j) issues relating to declaratory relief, including whether declarations sought by ⚫ ought to be granted regarding the capacity or incapacity of ⚫ , the date of any such incapacity and the nature of any such incapacity; and  (k) issues relating to the validity of gifts purportedly made by (incapable person) to (respondent ⚫ attorney). | NOTE: If the proceeding has not been previously converted to an action, then use of application material and application-versus-action procedural steps should be addressed and considered in drafting the terms of this Order Giving Directions. |
| ***Procedural*** | | |
| Consolidation of Proceedings | THIS COURT ORDERS that the application brought by ⚫, bearing Court File No. ⚫ in the Ontario Superior Court of Justice, is hereby consolidated and joined with the within proceedings and that the hearings of said applications shall take place at the same time or one after the other. | Rule 6.01 of the *Rules of Civil Procedure* encompasses consolidation. See *Couls v Pinto*, 2007 CarswellOnt 7050 (SCJ) concerning the Court's discretion in deciding whether to consolidate proceedings.  NOTE: Attention should be given to which party or entity shall be responsible for transferring the court file(s) if files from different courts are consolidated and transfer from one courthouse to another is necessary. |
| Leave Under the *Substitute Decisions Act* | THIS COURT ORDERS that leave of this Honourable Court, be and is hereby granted to the (applicants) to bring this application pursuant to Section 42(1) of the *Substitute Decisions Act*, S.O. 1992, c 30 as amended. | Sections 42(3)-(4) of the *Substitute Decisions Act, 1992*, list the individuals who may apply to the Court to compel a passing of accounts. Any person may do so with leave of the Court. |
| ***Substantive Relief*** | | |
| Removal of Attorney | THIS COURT ORDERS that ⚫ shall be and is hereby removed as attorney for property/personal care and that ⚫ (co-attorney or alternate attorney) shall be authorized to act as sole attorney for property/personal care for ⚫. |  |
| Accounting | THIS COURT ORDERS that ⚫ in his/her capacity as attorney/guardian of property shall pass accounts in accordance with Sections 42 of the *Substitute Decisions Act*, 1992 S.O. 1992, c 30 as amended (“SDA”) and Rules 74.16, 74.17, and 74.18 of the *Rules of Civil Procedure* for the period commencing ⚫ and concluding ⚫ within sixty (60) days of the date of this Order. | Any person with leave of the Court may apply to compel a guardian or attorney of property to pass accounts; see section 42 of the *Substitute Decisions Act, 1992*. |
| Damages | THIS COURT ORDERS that the Respondent ⚫ is liable to the [incapable person] for damages resulting from any breach of fiduciary duty in respect of his/her activities as attorney for property during the period commencing ⚫ and concluding ⚫ pursuant to s. 33 of the *Substitute Decisions Act*, 1992.  THIS COURT ORDERS that the Respondent is liable to the Estate of the Deceased for damages resulting from any breach of fiduciary duty in respect of his/her activities as estate trustee during the period commencing ⚫ and concluding ⚫. |  |
| Tracing Order | THIS COURT ORDERS that a tracing Order shall be and hereby is granted in accordance with the provisions of the *Rules of Civil Procedure*, Rules 44 and 45, and Section 104 of the *Courts of Justice Act*, R.S.O 1990, c C. 43 as deemed necessary and appropriate by the (applicants/ respondents) to ascertain assets for recovery in respect of (person ⚫ attorney for property ⚫ Estate Trustee). |  |
| Capacity Assessment | THIS COURT ORDERS that the Respondent, ⚫, submit for a capacity assessment, in order to assess ⚫’s capacity to ⚫, if necessary, with the related costs to be paid out of his/her own assets. | If a person's capacity is in issue in a proceeding under the *Substitute Decisions Act, 1992*, and the Court is "satisfied that there are reasonable grounds to believe that the person is incapable", the Court may order that the person be assessed by a capacity assessor for the purpose of providing an opinion as to the party's capacity (s. 79).  Consider whether it is appropriate for a lawyer to be appointed for the incapable or allegedly incapable person, including potentially section 3 counsel |
| Declaration of Incapacity | THIS COURT DECLARES that ⚫ is incapable of managing his/her property and that, as a result, it is necessary for decisions to be made on his/her behalf by a person or persons who are authorized to do so.  THIS COURT DECLARES that ⚫ is incapable of managing his/her personal care concerning any or all of his/her own: (i) health care; (ii) nutrition; (iii) shelter; (iv) clothing; (v) hygiene; and (vi) safety, and, as a result, it is necessary for decisions to be made on behalf of ⚫ by a person or persons who are authorized to do so. | The *Substitute Decisions Act, 1992*, sets out the legal definitions of capacity to manage property and make personal care decisions (at sections 6 and 45, respectively). The onus of establishing that a party is not capacity rests on the person making that allegation; see *Sosnowski v Johnson*, [2006] OJ No 3731 (CA).  NOTE: ensure the form and scope of order sought is limited to only those domains in respect of which the person is or has been found incapable. |
| Appointment of Guardians | THIS COURT ORDERS that ⚫ shall be and is hereby appointed as the guardian of ⚫'s person/property.  THIS COURT ORDERS that the requirement for the posting of a security bond by ⚫ as guardian of ⚫'s property shall be and is hereby dispensed with. | SDA s. 22(3) states that the court shall not appoint a guardian of property if it is satisfied that the need for decisions to be made will be met by an alternative course of action that, (a) does not require the court to find the person to be incapable of managing property; and (b) is less restrictive of the person’s decision-making rights than the appointment of a guardian.  SDA 24(3) A person who does not reside in Ontario shall not be appointed as a guardian of property unless the person provides security, in a manner approved by the court, for the value of the property  SDA 24(4) The court may order that the requirement for security under subsection (3) does not apply to a person or that the amount required be reduced, and may make its order subject to conditions. |
| Authority of Personal Care Guardians | THIS COURT ORDERS that ⚫ may make decisions about any or all of ⚫'s: (i) health care; (ii) nutrition; (iii) shelter; (iv) clothing; (v) hygiene; and (vi) safety.  THIS COURT ORDERS that ⚫ may make decisions about any or all of ⚫'s: (i) employment; (ii) education; (iii) training; (iv) recreation; and (v) any social services provided to ⚫.  THIS COURT ORDERS that ⚫ may exercise custodial power over ⚫, determine his/her living arrangements, and provide for his/her shelter and safety.  THIS COURT ORDERS that ⚫ shall have access to personal information, including health information and records to which ⚫ would have access if capable, and may consent to the release of that information to another person, except for the purpose of litigation as it relates to the personal care guardian or any of his/her status or power as guardian of ⚫'s person.  THIS COURT ORDERS that ⚫ may make any decisions on ⚫'s behalf to which the *Health Care Consent Act, 1996*, applies.  THIS COURT ORDERS that ⚫ is hereby authorized to apprehend ⚫ in accordance with s. 59(3) of the *Substitute Decisions Act, 1992*. | SDA s. 55(2) states that the court shall not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that, (a) does not require the court to find the person to be incapable of personal care; and (b) is less restrictive of the person’s decision-making rights than the appointment of a guardian.  Under section 60 of the *Substitute Decisions Act, 1992*, the Court may make an order for partial guardianship of the person if it considers the person to be incapable in respect of some but not all functions listed in section 45.  NOTE: ensure that the form and the scope of order is limited to only those domains in respect of which person is or has been found incapable. The Court will only make an order authorizing the guardian to apprehend the incapable if it is satisfied that such apprehension may be necessary (SDA, s. 59(3)) |
| Management, Guardianship Plans | THIS COURT ORDERS that the Management Plan, attached hereto as Schedule "A", be and is hereby approved, and the guardian of property shall act in accordance with the Management Plan and, generally, in accordance with the *Substitute Decisions Act, 1992*, with such amendments to the Management Plan from time to time that the Public Guardian and Trustee approves or the Court allows.  THIS COURT ORDERS that the Guardianship Plan, attached hereto as Schedule "A", be and is hereby approved, and the guardian of ⚫'s person shall act in accordance with the Guardianship Plan and, generally, in accordance with the *Substitute Decisions Act, 1992*, with such amendments to the Guardianship Plan from time to time that the Public Guardian and Trustee approves or the Court allows.  THIS COURT ORDERS that ⚫ be appointed as guardian of property/personal care, subject to the filing of a Management/Guardianship Plan within thirty (30) days. |  |
| ***Preservation of Assets*** | | |
| Accounting by Newly-Appointed Guardian of Property | THIS COURT ORDERS that ⚫ shall commence an application to pass his/her accounts as the guardian of property of ⚫ for the period from today's date to the three-year anniversary date of this Order, within six months of the three-year anniversary date of this Order, and, thereafter, pursuant to further Court Order. |  |
| Certificate of Pending Litigation | THIS COURT ORDERS the local registrar for the County of ⚫ in the Province of Ontario to issue a Certificate of Pending Litigation against the real property known municipally as ⚫ and having a legal description of ⚫ registered in the name of ⚫.  THIS COURT ORDERS that a Certificate of Pending Litigation be and is hereby granted, subject only to the filing of the required documentation giving effect to the registration of the same, and such Certificate of Pending Litigation shall be registered against title to the property municipally known as ⚫ , legally described as ⚫ and defined herein as (identify property) and the costs of effecting the same shall be borne by ⚫ person ⚫ estate ⚫ attorney. | See section 103 of the *Courts of Justice Act*, Rule 42.01 of the *Rules of Civil Procedure* and the decision of Master Glustein (as he then was) in  *Perruzza v Spatone*, 2010 ONSC 841 at para. 20 for the principles surrounding the jurisdiction and discretion of granting leave for a CPL.  A beneficial interest in a trust or an estate that holds land is not a specific interest in the land for a beneficiary; See *Spencer v Reisberry*, 2012 ONCA 418. |
| ***Productions*** | | |
|  |  | NOTE: the production orders set out in this section, in the normal course, should only be obtained after independently confirming the position of the incapable or allegedly incapable person regarding such productions. Consider the position of the incapable or allegedly incapable person in relation to such production orders, and whether independent legal advice is appropriate in the circumstances. |
| Powers of Attorney | THIS COURT ORDERS that the Respondent shall produce to the Applicants a copy of the Power of Attorney for Property appointing the Respondent as attorney for property for the Deceased, purportedly dated ⚫, within thirty (30) days of this Order. |  |
| Testamentary Documents | THIS COURT ORDERS that a copy of any Last Will and Testament or other testamentary document of the Deceased, including, without limitation, any beneficiary designation or joint account agreement, be delivered to the lawyer for the Applicant forthwith. | Under Section 9 of the *Estates Act*, the Court has the jurisdiction to order the production of any testamentary documents of the deceased. |
| Production of Financial Records | THIS COURT ORDERS that the ⚫ be and is hereby entitled to compel production of all financial records, banking records, tax records, and any and all records regarding the assets, liabilities, income and expenses relating to ⚫ prior to death or while under attorneyship, either solely or jointly by ⚫ with another, for the period commencing ⚫ and concluding ⚫, from any financial advisor, corporation, bank, trust company, insurance company, accountant, or other authority in possession, power, or control of such records, and any predecessors or successors in interest, whether in Canada, or the United States, or elsewhere, in the same manner and to the same extent as ⚫ would have been able, if he/she were alive, including but not limited to records to which ⚫ was entitled to inspect as a shareholder pursuant to sections 140, 140.1, and 145 of the *Business Corporations Act*, R.S.O. 1990, c B. 18. The ⚫ will, upon receipt of any such documents, produce copies to the lawyer(s) for the parties, with the cost incurred in relation to the production and copying of said documents to be paid from the assets of the estate by ⚫ and with the final determination as to payment of such costs and expenses to be reserved to the Trial Judge, unless otherwise agreed upon by the parties. | Production orders should be limited in scope. Consider the "3/2 period", which commences three years prior to the date of execution of the will/transaction being challenged and concludes the earlier of (i) two years later or (ii) the date of death.  Section 32(6) of the *Substitute Decisions Act, 1992*, creates a fiduciary obligation on an attorney or guardian of an incapable person to keep accounts of all transactions. In addition, the addition of an adult child to an elderly parent’s account is sufficient to create a fiduciary duty in relation to the parent’s account. See *Borges v Borges*, 2018 ONSC 3451 at para. 27. |
| Production of Medical Records | THIS COURT ORDERS that the ⚫ be and is hereby entitled to compel production of all medical records and files relating to ⚫, for the period commencing ⚫ and concluding ⚫, from any person or institution in possession of such medical records, in the same manner and to the same extent as ⚫ would have been able, if he/she were alive, and that all productions received be produced to the other parties on request. The charges for the production of the records and files shall be paid from the Estate by ⚫, and the final determination as to payment of such costs and expenses shall be reserved to the Trial Judge. | There is case law in the context of the *Substitute Decisions Act, 1992*, that the Court may not have the jurisdiction, contrary to the patient’s wishes, to order the production of medical records. See Justice Penny’s decision in *Beretta v Beretta*, 2014 ONSC 7178, at para. 73. However, in *Borges v Borges*, 2018 ONSC 3451, at para. 25 the Court ordered the production of the medical records where the capacity of the alleged incapable person is in issue in an SDA proceeding.  Capacity Assessors assessing capacity under the SDA can be granted access to personal health information pursuant to 43(1)(a) of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A |
| Production of Lawyer’s Records | THIS COURT ORDERS that the ⚫ be and is hereby entitled to compel production of all lawyer records, notes and files relating to ⚫, for the period commencing ⚫ and concluding ⚫, from any lawyer or law firm in possession of such relevant legal records in the same manner and to the same extent as ⚫ would have been able, if he/she was alive, and that all productions received be produced to the other parties on request. The charges for the production of the records and files shall be paid from the Estate by ⚫, and the final determination as to payment of such cost and expenses shall be reserved to the Trial Judge. | See *Ballard Estate*, [1994] CarswellOnt 579 (ON SC), as to the joint interest principle in privilege as between beneficiaries and trustees concerning the legal opinions given about the administration of the trust to a trustee.  NOTE: ensure that the production order for lawyer’s records is limited in scope only to those lawyer files which are or may be necessary for adjudication of the proceedings. |
| Production of Lawyer's Real Estate File | THIS COURT ORDERS that the lawyers involved in the transfer of (property) on or about (date), forthwith provide all files, documentation, and information to the lawyers for the applicants/respondents, respecting matters relating to the deceased during the period commencing ⚫ and concluding ⚫. |  |
| Privilege | THIS COURT ORDERS that any claim in respect of the deceased, of lawyer/client privilege, financial advisor/client privilege, or any other professional privilege, including medical privilege, or the duty of confidentiality relating to the instructions for, making of, or execution of, any of the deceased’s testamentary or personal documentation, financial documentation, or documentation relating to property, real estate, or a corporation of the deceased, inclusive of any privacy regulations and legislation which may prohibit the obtaining of such information, including personal; health information in respect of the deceased, documentation in respect of the deceased governed by the *Personal Information Protection and Electronic Documents Act* (the “PIPEDA”), and the *Personal Health Information Protection Act* (the “PHIPA”), shall be and hereby is waived by the Order Giving Directions herein. | The general policy that supports the exception of the privilege that normally attaches where there is a will challenge is that the interests of the deceased client are furthered in the sense that the purpose of allowing evidence of the drafting lawyer’s notes and testimony about the execution of the will allows the Court to ascertain what the deceased’s true intentions are. See *Goodman Estate v Geffen*, [1991] 2 SCR 353 and *Hope v Martin,* 2011 ONSC 5447 at paras 19-20 for a review of the wills exception to privilege. |
| ***(Scheduling of) Next Steps in Litigation*** | | |
| Scheduling | THIS COURT ORDERS that the parties hereto shall adhere to the following schedule:  (a) responding affidavits to be served by (date);  (b) defence where statement of claim is to be served by (date);  (c) return of motion date is to be (date);  (d) affidavit of documents to be exchanged on/by (date);  (e) mediation to be conducted on/by (date);  (f) examinations for discovery to be conducted of ⚫ (persons) on/by (date);  (g) examinations of non-party witnesses to be conducted of ⚫ on/by (date);  (h) the *de bene esse* examination of ⚫ to be conducted on/by (date);  (i) the pre-trial of this matter to be conducted on/by (date);  (j) the issues to be mediated are those set out in the within Order Giving Directions. |  |
| Mediation | THIS COURT ORDERS that the parties attend for a Mediation before a Mediator 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 Giving Directions herein;  (b) the Moving Parties and the Respondent are designated parties with the Moving Parties having carriage of the Mediation and the Respondent responding to it;  (c) the Notice of Mediator giving the date, place, and time of the Mediation shall be served on the designated parties by an alternative to personal service pursuant to Rule 16.03 of the *Rules of Civil Procedure*;  (d) the fees of the Mediator shall be paid by ⚫; and  (e) any matters arising out of the mediation requiring further direction of the Court shall be referred to me or such other Judge who is available.  THIS COURT ORDERS that the parties referred to herein, within ⚫ days of the date of the Order herein, or in the alternative, within ⚫ days of the parties obtaining copies of all medical, financial, lawyer’s records and report, shall attend for mediation before ⚫, pursuant to Rule 75.1 of the *Rules of Civil Procedure* and the following directions apply to such Order [insert judicial direction sought regarding mediation]:  or in the alternative, within 60 days of the parties obtaining copies of all medical, financial, lawyer’s records and reports, shall be required to attend a mediation, prior to Examinations for Discovery, and in accordance with Rules 75.1 of the *Rules of Civil Procedure* and the following directions apply to such Order [insert direction sought regarding mediation]: |  |
| Examinations for Discovery | THIS COURT ORDERS that the Moving Parties and the Respondent shall serve and file Affidavits of Documents and attend and submit to Examinations for Discovery in accordance with the *Rules of Civil Procedure*. |  |
| Deemed Undertaking | 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 Application.  THIS COURT DECLARES that Rule 30.1.01(3) of the *Rules of Civil Procedure* does not apply to the evidence obtained pursuant to this Order Giving Directions herein. | *Juman v Doucette*, [2008] 1 SCR 157, sets out the rationale for the implied and deemed undertaking rule.  While the public interest in getting at the truth in a civil action outweighs the examinee’s privacy interest, the privacy interest is nevertheless entitled to a measure of protection.  In para. 26, the Supreme Court says that litigants who get this protection that certain documents and answers will not be used for collateral purposes or ulterior purposes, will be “encouraged to provide a more complete and candid discovery.” |
| Examination of Non-parties | THIS COURT ORDERS that the parties are hereby granted leave pursuant to Rule 31.10 to examine for discovery the lawyer who prepared the Will of ⚫, the costs of the examination to be reserved to the Trial Judge.  THIS COURT ORDERS that the parties are hereby granted leave pursuant to Rule 31.10 of the *Rules of Civil Procedure* to examine for discovery the lawyer who prepared the Will of ⚫, and that ⚫ shall be entitled to payment for his/her attendance at his/her regular hourly rate, at first instance out of the assets of the Estate, with the final determination as to the payment of such costs and expenses reserved to the trial Judge or as this Court may further order.  THIS COURT ORDERS that the parties are hereby granted leave to apply to the Court on proper notice pursuant to Rule 31.10 to examine for discovery the lawyer or such other individual, who prepared the Will of ⚫ whose identity is unknown as of the date of this Order, and the costs of the examinations shall be reserved to the Trial Judge. | See *Magna Hotels (Toronto) Inc. v GE Canada Equipment Financing G.P.* , 2014 ONSC 2699 at para 2 (Brown J as he then was): The test under Rule 31.10 of the *Rules of Civil Procedure* contains two basic components. First, a finding under Rule 31.10(1) that there is reason to believe that a person has information relevant to a material issue in the action.  Second, the conjunctive factors enumerated in Rule 31.10(2) must be met. |
| Hearing/Trial | THIS COURT ORDERS that the issues be tried without a Jury in Toronto, Ontario at a date to be fixed by the Registrar, and the Trial Record shall consist of this Order Giving Directions and any other Order Giving Directions made by this Court. Following the mediation in this proceeding, any party shall be at liberty to set this proceeding down for trial without the consent of the other party. | Under Section 108(2) of the *Courts of Justice Act*, the issues of fact and the assessment of damages in an action shall be tried without a jury in respect of a claim for, *inter alia*, declaratory relief and the execution of a trust. |
| Further Directions | THIS COURT ORDERS that the parties are hereby granted leave to move for further directions as may appear advisable or necessary. |  |
| ***Ancillary Orders*** | | |
| Service by Email | THIS COURT ORDERS that service of all documents in this proceeding on a lawyer of record, other than documents that must be served by personal or alternative to personal service, may be served in accordance with Rule 16.05(1)(f) of the *Rules of Civil Procedure*. |  |
| Service within Ontario | THIS COURT ORDERS that service of this Order shall be effected upon all Parties with a known or discovered financial interest in the Estate, other than the Respondents, by personal service or by an alternative to personal service.  THIS COURT ORDERS that this Order Giving Directions shall be served by regular mail on the following persons: [name individuals]. |  |
| Validation of Service | THIS COURT ORDERS that service upon ⚫ of the application record, motion record returnable ⚫ is hereby validated pursuant to Rule 16.08 of the *Rules of Civil Procedure*, because copies of these documents were left with ⚫ (person) at ⚫ (address) on ⚫ (date). |  |
| Third Party Rights | THIS COURT ORDERS that any person affected by this Order, if they object, can make submissions to the Court. | Particularly where an order that is made may affect the rights of third parties, such as drafting lawyers, through production orders or other relief, it is essential that those third parties are able to move to vary or set aside orders that are not made on notice to them. |
| ***Costs*** | | |
| Costs | THIS COURT ORDERS that the costs of and incidental to the (applicants) in the bringing of this application, shall be paid on a full indemnity, substantial indemnity or partial indemnity basis by (person ⚫estate of the deceased ⚫ Estate Trustee ⚫ Attorney ).  THIS COURT ORDERS that costs of this attendance are reserved to the Judge hearing the final adjudication of this matter, or as the Court may further Order. | Where public policy considerations are at play in estates litigation, including (1) where the difficulties or ambiguities that gave rise to the litigation are caused, in whole or in part, by the testator, and (2) the need to ensure that estates are properly administered, the Court can order blended costs awards in which a portion of the costs is payable by the losing party and the balance is payable out of the estate where one or more of the relevant public policy factors are engaged; see *Neuberger v York*, 2016 ONCA 303 at para. 24-25.  Otherwise, in circumstances where public policy considerations are not involved, the "loser pays" principle is likely to apply (as it does in other civil litigation proceedings); see *McDougald Estate v Gooderham*, 2005 CanLII 21091 (ONCA). |

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