



## **Trusts, Equity and Probate List Guidelines for Standard Orders**

Practitioners and litigants should note the following guidelines when preparing proposed orders for proceedings in the List:

- Proceedings concerning the testamentary capacity and knowledge and approval of the testator, or allegations of undue influence, will not ordinarily be appropriate for evidence to be given by affidavit. Instead, parties will be ordered to prepare position statements to assist with the mediation of proceedings prior to trial, and *viva voce* evidence will be given at trial.
- Where a grant of representation is sought by consent following the settlement of proceedings, the standard order by the Court will be for the proceeding to be referred to the Registrar for a grant subject to the requirements of the Registrar. The Judge in Charge will not ordinarily make a grant of representation without referring the proceeding to the Registrar.
- Applications for the revocation of a grant of representation should be brought by summons in the proceeding in which the grant was made. The applicant should then seek orders to be added as a defendant to these proceedings.
- Practitioners should note that where contested caveat proceedings are settled, and the parties intend for there to be a grant of representation to the plaintiff, the proceeding should not be dismissed but should instead be referred to the Registrar. Where a grant of representation is intended to be sought by a person other than the plaintiff, the contested caveat proceeding should be dismissed and a new application made.

- Where a withdrawal of a renunciation of probate is sought, and the renunciation was advised by the practitioner, the Court will not ordinarily make the order without an undertaking that the practitioner will bear the costs of seeking the withdrawal of the renunciation.
- Where a will is sought to be rectified in an uncontested proceeding, and the rectification was the fault of the practitioner responsible for drafting the will, the Court will not ordinarily make the order without an undertaking that the practitioner will bear the costs of seeking that the will be rectified.
- In draft documents submitted to the Court, a caveator or applicant for revocation of a grant of representation should not be included in the title to the proceeding until orders are made adding them as a defendant to the proceeding