



NOTICE TO PRACTITIONERS

SIMULTANEOUS DEATHS

In some instances two or more persons die in circumstances rendering the order of death uncertain. The estates may comprise jointly owned assets and assets solely owned. The individuals may have died testate or intestate.

In proceedings for Probate or Administration some applicants seek to rely on the statutory presumption relating to the order of death contained in section 184 of the **Property Law Act** 1958. In my view the presumption only applies where the Supreme Court by Order determines the preliminary question as to whether or not the order of death is uncertain. Any such Order of the Court should be filed with an application for Probate or Administration. See, **Re Comfort** (1947) VR 237, **Re Brush** (1962) VR596 and **Re Zappullo** (1966) VR 390.

Owing to the obvious difficulties and expense of obtaining an Order of the Court, it is my practice to apply the presumption of death in order of seniority where there is no Order of the Court produced provided any persons who could be adversely affected by the application of the presumption being sui juris, have consented to the application. This procedure is only adopted where evidence can be produced to establish that there is in fact uncertainty as to the order of death.

Accordingly, in proceedings for Probate or Administration a police report, coroner's report and any other available evidence upon which an applicant relies should be filed. The applicant should also state on oath firstly, that all possible enquiries as to survivorship have been made, but it appears that Party **A** and Party **B** died in circumstances rendering it uncertain which of them survived the other and secondly

that Party **A** being the younger is, by virtue of Section 184 Property Law Act 1958 deemed to have survived Party **B**.

MICHAEL J. HALPIN
Registrar of Probates
19 March 2003