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MOTIONS AND ORDERS FOR DIRECTIONS IN PASSING OF ACCOUNTS APPLICATIONS: THE WHY, WHAT & HOW

The Why: Benefits of Orders Giving Directions

The *Rules of Civil Procedure* offer limited guidance on the specific process and procedure for bringing an application to pass accounts to its judicial conclusion. Rule 38 of the *Rules of Civil Procedure* governs the procedure to be followed on applications in general, but much of this rule does not apply to applications to pass accounts.¹

Rules 74.16 to 74.18 of the *Rules of Civil Procedure* set out the procedure for starting an application to pass accounts, particularly following the 2015 amendments², but the *Rules of Civil Procedure* still provide no comprehensive roadmap for managing a contested passing of accounts through to final adjudication.

While the Rule 74.18(11.5) of the *Rules of Civil Procedure* require the applicant, where objections remain outstanding, to serve a consolidated notice of objection and a reply, and Rule 74.18(11.7) requires the applicant to file a defined passing-of-accounts record prior to the hearing, these provisions do not resolve the practical uncertainties that arise once objections are filed. The *Rules of Civil Procedure* do not prescribe timelines for the iterative exchanges that typically occur between fiduciaries and objectors, nor do they provide a comprehensive framework governing cross-examination, disclosure, expert evidence, procedural motions, or disputes concerning the scope of the issues. The amendments provide more structure than existed previously, but they stop well short of a complete procedural code for contested passings.

The procedure for conducting the hearing itself is another open question: an application to pass accounts is essentially a court-supervised financial audit, which does not fit neatly

¹ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Rule 38.09 does not apply. That rule provides for such matters as entering affidavits and transcripts for examination into evidence and the delivery of factums. Rule 38.10(2) and (3) do not apply. Those rules provide for the application to be treated as an action in respect of any issues that are directed to be tried.

² *Rules of Civil Procedure*, Rule 74.18, as amended by O. Reg. 193/15, s. 12(15).

into our adversarial system of application or trial adjudication without forethought and focused modification.

The solution to these problems is most often the Order Giving Directions. An Order Giving Directions is, “designed to provide the parties with a procedural framework in which to prepare the proceeding for final adjudication.”³ It compels the parties to give the necessary forethought to implement a process and the procedure that is most likely to lead to a just, expeditious and cost-effective determination.

The benefits of an Order Giving Directions are their flexibility and consensual nature.

Flexibility: Every application to pass accounts is unique. Some objections may be about the fiduciary’s failure to keep accurate records; some may be about the propriety of claimed or stated expenses; some may be about the quantification of compensation; some may be concerns over poor investment decisions; and others may be about misappropriation/misallocation of assets; just to name some of the more common objections. Some applications will involve the disclosure and organization of large volumes of documentation, while others may involve little documentation but require the evidence of witnesses whether professional, such as experts or otherwise. Some applications might be most appropriately heard according to the ordinary procedure for applications under Rule 38, while others are more appropriately heard as trials with *viva voce* evidence.

Consent: By negotiating the disclosure, process and procedure to disposition, the parties are active participants in the construction of the procedure that they have agreed to follow from the beginning and that they are invested in it. A well-negotiated and well-crafted Order Giving Directions is less likely than the “default” procedure (i.e. no fixed procedure) to result in wasteful interlocutory motions.

As the Toronto Estates List Practice direction states: “*Rule 75.06 provides the court with considerable discretion and flexibility to put in place a process that will ensure the just, expeditious and least expensive determination of a proceeding on its merits. Parties are expected to take time and care in preparing proposed orders giving directions for consideration by the court.*”⁴

The How: Jurisdiction and Procedure

³ Practice Direction Concerning the Estates List of the Superior Court of Justice in Toronto, October 14, 2025 [“Practice Direction”] at para. 45.

⁴ *Ibid.*

The court's jurisdiction and its source of guidance in making orders for directions come from three distinct sources:

- 1) Firstly, the jurisdiction of the Court as it extends to the specific powers of enquiry on an application to pass accounts, arise from the *Estates Act*, Section 49 (1) through 49(10). Specifically, section 49(4) of the *Estates Act* provides that a judge may order the trial of an issue of any complaint or claim by a person interested in the passing of accounts and shall make all necessary directions as to pleadings, production of documents, discovery and otherwise in connection with the issue;⁵
- 2) Secondly, rule 75.06, provides that any person who appears to have a financial interest in an estate may apply for directions, or move for directions in another proceeding under this rule, as to the procedure for bringing any matter before the court.⁶ The jurisdiction and procedure for the passing of accounts by an estate trustee, attorney, and guardians for property are set out under Rules 74.15 – 74.18 of the *Rules of Civil Procedure*, and the corresponding forms 74.44-74.51; and
- 3) A third notable source of the court's jurisdiction to order directions, but only applicable on the Toronto Estates list, is the Toronto Estates List practice direction, which provides specific guidance to parties in applications to pass accounts.⁷ The first hearing on the application is to be requested by the Applicant, and typically, scheduled for only 10 minutes.⁸ If a notice of objection is filed and not withdrawn, then the parties can either obtain an Order Giving Directions at the first hearing on consent, or if they cannot agree, then, at least two days before the hearing, the parties should file copies of their respective draft Orders Giving Directions.⁹ At the hearing, the Court may issue an Order if the parties can agree on the terms. Otherwise, the Court may schedule a longer appearance to hear a contested motion for directions.¹⁰ The practice direction also provides guidance for the content of the order, which will be discussed in more detail below. The practice direction in part provides guidance and direction but is no substitute for Rules of the Court.

Rules 74.15 to 74.18 of the *Rules of Civil Procedure* now make express reference to draft orders for directions. Rule 74.18(11.7) (i) requires that, where a contested passing

⁵ *Estates Act*, R.S.O. 1990, c. E.21, s. 49(4).

⁶ *Rules of Civil Procedure*, Rule 74.06(1).

⁷ It may be more accurate to define the practice direction as a source of principles to apply when the court exercises its discretion rather than a source of "jurisdiction". See *Tibbits v. York Central Hospital*, 2005 CanLII 2928 (ON SC) at paras. 11 and 12, but contrast, e.g., *Waxman v. Waxman*, 2011 ONSC 1129 (Commercial List) as paras. 12 to 15.

⁸ Practice Direction at para. 16.

⁹ *Ibid.* at paras. 21 and 22.

¹⁰ *Ibid.* at para. 22.

proceeds to a hearing, the applicant shall file a record that includes a draft order for directions or of the judgment sought.

Rule 74.18(13.1) contemplates the kinds of directions the court may give at that stage. However, the rules still provide only limited procedural guidance, and the Estates List Practice Direction continues to offer the more fulsome and practical framework for crafting and obtaining Orders Giving Directions.

If parties cannot agree on the terms of an Order Giving Directions, any party can bring a motion for directions.¹¹ The jurisdiction to bring a motion in an application to pass accounts is the same as in any other proceeding and is governed by Rule 37 of the *Rules of Civil Procedure*.

The Consequences of No Order Giving Directions

The consequences of not seeking a timely motion for directions can be potentially serious. In *Steven Thompson Family Trust v. Thompson et. al.*, the applicants brought an application to pass their accounts.¹² The respondent beneficiaries filed Notices of Objection. All of the parties filed written submissions or responding materials and subsequently attended the hearing of the application on the scheduled date. The respondents, in their submissions, raised allegations of the applicant's gross negligence, bad faith, and willful misconduct. The applicants argued at the hearing that these claims would require findings of fact that could not be made on the record before the court. The respondents argued that, since they were not seeking any remedy other than the disallowance of trustee expenses and compensation, that there was no need for any additional record. The court agreed with the respondents and proceeded with the hearing that day, disallowing various trustee expenses and reducing compensation.¹³ It is important to note that the applicant, who was resisting judgment being made that day, never brought a motion for directions. The Court again has broad discretion and inherent jurisdiction to dispose of the application, or order directions on any matter touching the accounts as it alone deems appropriate.

If there is a possibility that the parties to an application to pass accounts will not consent to an Order Giving Directions before the first appearance, the party/parties should arguably bring a motion for directions. The party/parties should not merely turn up in court with draft Orders in hand as this may be risky given the powers afforded to the court.

The What: The Content of an Order Giving Directions

¹¹ *Rules of Civil Procedure*, Rule 74.18(11.9)(b).

¹² *Steven Thompson Family Trust v. Thompson et. al.*, 2012 ONSC 7138.

¹³ *Ibid.* at para. 27.

The Toronto Estates List practice direction gives some notion about the content of an Order Giving Direction. The Order should address, where applicable:¹⁴

- The issues to be decided;
- Who are the parties, including who is submitting rights to the court;
- Whether there is any party under disability who requires representation and, if so, whether notice to the Public Guardian and Trustee or the Office of the Children's Lawyer should be directed;
- Whether an estate trustee during litigation should be appointed, and the amount of security, if any, such an estate trustee should post
- Who shall be served with the order for directions, and the method of and times for service;
- Whether the parties should exchange pleadings or put before the court their respective positions and the material facts upon which they rely by some other means;
- Procedures for bringing the matter before the court in a summary manner;
- The timing of a mediation session under Rule 75.1 and its conduct, including (i) whether the parties wish the mediator to provide any report to the court on procedural issues, (ii) the desirability of multiple mediation sessions, and (iii) when a pre-trial conference should be held in the event the mediation does not result in a settlement of the proceeding;
- Any other pre-hearing steps to be undertaken, including documentary disclosure, obtaining medical, accounting or legal records, examinations for discovery, and the availability of a motion for summary judgment;
- The timing for the delivery of any expert report and the utility of a pre-hearing meeting between experts to narrow the issues in dispute;
- The timing of a pre-trial conference, including how long after an unsuccessful mediation session the pre-trial conference should be held; and,
- The procedure to be followed at the hearing, including the method of adducing evidence-in-chief.

¹⁴ Practice Direction, *supra* note 4 at para. 47 (inapplicable paragraphs omitted).

Specifically, with respect to contested applications to pass accounts, the Toronto Estates List Practice Directions and the *Rules of Civil Procedure* direct that the Order Giving Directions should address the following, as applicable:¹⁵

- The timing and conduct of a mediation, if in a mandatory jurisdiction;
- The issues to be tried and each party's position on each issue;
- The timing and scope of relevant disclosure;
- The witnesses each party intends to call, the issues each witness intends to address, and the anticipated length of each witness' testimony (examination-in-chief and cross-examination); and
- The procedure to be followed at the hearing, including the method of adducing evidence-in-chief.

The Ontario Superior Court of Justice now provides a standardized model Order Giving Directions for use in applications to pass accounts. This model order is available through the Toronto Estates List practice direction¹⁶, and reflects the procedural expectations of the Estates List and across Ontario. For ease of reference, we link directly to that model order below and recommend that practitioners rely on it when preparing draft orders under Rules 74.15–74.18:

Orders Giving Directions – Passing of Accounts

The Court has broad discretion to give directions under Rule 75.06. Not only the *Rules of Civil Procedure*, but also creative thinking can give rise to useful procedures that might be appropriate to be employed in any given case. The Honourable Justice David Brown once gave the following guidance to counsel, who are contemplating the mode of trial or summary judgment motion, and these reasons are worthy of consideration in the context of passing of accounts applications:

The 2010 amendments to the Rules of Civil Procedure made available to judges and counsel alike a big box of LEGO-like building blocks with which they can construct a wide variety of modes of trial: witnesses testifying by viva voce evidence; witnesses testifying, in whole or in part, by affidavit; using pre-hearing affidavits and cross-examinations as examinations for discovery; using pre-hearing affidavits as part of the trial evidence-in-chief of a witness and pre-hearing transcripts as part of the trial cross-examination of a witness; placing time limits on examinations at trial; using written opening statements; pre-trial hot-

¹⁵ *Ibid.* at para. 48; *Rules of Civil Procedure*, Rule 74.18(13.1).

¹⁶ Practice Direction, *supra* note 4 at para. 49.

tubbing by experts; and, filing an agreed statement of facts. The range of alternatives is not limited by the specific examples identified in the Rules because a judge “may give such directions or impose such terms as are just” in respect of the trial and make such order as the judge “considers necessary or advisable with respect to the conduct of the proceeding”.

Under our Rules the “conventional trial” no longer exists as a norm; the Rules have made the civil trial modular in nature, with counsel and the judge able to fashion trials tailor-made to the circumstances of each a particular case. Our Court must use these trial building blocks to offer litigants creative, cost-attractive trial options if we stand any hope of limiting complex summary judgment motions to the role defined for them by the Court of Appeal in the Combined Air decision and preserving the role of the public courts as the primary adjudicators of civil cases.¹⁷

The parties must, of course, remember that although the court’s discretion is wide, it will be exercised in a principled way. In *Newell v. Newell*, an objector obtained an Order Giving Directions to cross-examine the applicant on his affidavit verifying accounts.¹⁸ The applicant sought and was granted leave to appeal this Order. The Divisional Court found that the right to cross-examine at large on an affidavit verifying accounts was too broad.¹⁹ Instead, the right to cross-examination should be confined to the cross-examination of those issues directed to be tried. The court said that the procedure on an application to pass accounts should be “informal and summary in nature” until after a judge decides that there are issues requiring a trial. A pre-hearing cross-examination should arguably not be construed as standard practice.

In crafting an Order Giving Directions, it may therefore be worth considering and adhering to the principles enunciated in the case of *George Weston Limited* where it was opined that creative, flexible solutions are welcome. Moreover, the principle in *Newell* that the proposed Order Giving Directions satisfy other important values, such as procedural fairness and proportionality, especially where the motion for directions will be contested is of precedential value.

Example: Zucker Estate²⁰

In *Zucker Estate*, the estate had a significant value, approximately \$43 million. Two of the residual beneficiaries made an application for the accounts of the estate to be passed,

¹⁷ *George Weston Limited v. Domtar Inc.*, 2012 ONSC 5001 at paras. 36 and 37.

¹⁸ *Newell v. Newell*, 2010 ONSC 5010 (Div. Ct.) at para. 29.

¹⁹ *Ibid.*

²⁰ *Zucker Estate*, 2012 ONSC 2262.

alleging that excessive executor's compensation was pre-taken and should be repaid to the estate.

There were two executors, one of whom was a partner in an accounting firm. Pursuant to an agreement between the partner and the accounting firm, the firm received one-half of the executors' compensation that was paid to the partner personally.

The Court had previously made an Order Giving Directions that required the beneficiaries to serve Notices of Objection and for the co-executors to provide responses. The beneficiaries had complied with the Order, but the co-executors had not responded by the deadline.

The other co-executor (that is, the non-partner) sought to add the accounting firm partnership as a party to the proceeding since it might be liable to repay any excessive compensation pursuant to the *Partnership Act*.

The parties agreed that further directions were required, but they could not agree on the terms of an Order. This motion proceeded as a contested motion for directions. Two main issues were contested: the appropriate issues for trial and the schedule for the steps leading to trial. The parties made submissions on these issues, and the Court considered them in written reasons.

The Court made the following Order:

1. That the issues to be tried shall be defined as follows:
 - a. Is the compensation received by the respondents in the accounts before the court reviewable by the court in the passing of accounts or does any approval or consent by the beneficiaries to such compensation, s. 4 of the Limitations Act or the legal doctrines of acquiescence or laches preclude such review?
 - b. If any such compensation is reviewable by the court, for what period is such compensation reviewable and what amount of such compensation is reviewable?
 - c. If any such compensation is reviewable by the court, is such compensation fair and reasonable, and accordingly not subject to adjustment?
 - d. If any such compensation is not fair and reasonable, what amount of compensation is fair and reasonable?

- e. Are the respondents liable for repayment of any of the compensation received, and if so, what amount is each of the respondents liable to repay;
 - f. Regarding the compensation received, if any, which is not reasonable was the pre-taking of same reasonable?
 - g. Are Kevey Leibow's outstanding unpaid legal costs incurred in respect of the estate including, without limitation, costs relating to general estate administration matters and costs arising out of the proceedings in Toronto court file 01-2521/04, Hamilton court file 11-29036 and Hamilton court file 11-27391 which are not subject to being fixed in accordance with a prior court order relating to a prior motion or by the court on the passing of account to be paid from the Estate, subject to assessment?
 - h. Are Michael Moore's outstanding unpaid legal costs incurred relating to the estate which are not subject to being fixed in accordance with a prior court order relating to a prior motion or by the court on passing of accounts including, without limitation, costs relating to general estate administration matters, to be paid from the estate subject to assessment?;
 - i. Any other issues arising out of the notice of objection to the accounts which the respondents David Zucker and Suzy Zucker intend to pursue;
 - j. Any outstanding matters arising from the order of Greer J. dated December 2, 2012;
 - k. Costs on the passing of accounts.
2. As to the timetable for the scheduling of these proceedings, I order that the matter proceed as follows:
- a. Beneficiaries to serve notice of objections to the supplemental accounts by April 16th, 2012;
 - b. Any claims to be made against Taylor Leibow LLP to be filed by April 30th, 2012;
 - c. Estate trustees to file responses to the notice of objection to the original accounts and the notice of objection to the supplemental account by May 30th, 2012;
 - d. Any response by Taylor Leibow LLP to the claims made against it to be delivered by May 30th, 2012;

- e. Settling of the order of Justice Greer by May 15th, 2012;
 - f. Examinations of the parties to be completed by July 15th, 2012;
 - g. Any motions for undertakings or refusals to be scheduled by August 15th, 2012;
 - h. Pretrial conference to be held by September 1, 2012;
 - i. Trial to be heard in September 2012.
3. That the applicants shall be David Zucker and Suzy Zucker and the respondents shall be M. Kevey Leibow, Michael Alexander Moore and Taylor Leibow LLP.

The Court reserved costs of the motion to the trial judge.

This case is an example of how a contested motion for directions may proceed if the parties to an application to pass accounts cannot otherwise agree.

Example: *Horbaczyk v. Horbaczyk*²¹

In *Horbaczyk v. Horbaczyk*, three brothers became embroiled in a prolonged estate dispute following the death of their father. Two of the sons were named as Estate Trustees in a 2012 Codicil, but no Certificate of Appointment was ever issued. Nevertheless, they assumed the role of Estate Trustees from their father's date of death in 2015. Their brother challenged both the validity of the Codicil and numerous aspects of the estate administration, including the handling of personal property, the sale of the family home, and the management of estate funds.

Multiple interim orders had already been made directing the sale of the deceased's residence, permitting valuations, and requiring supervised access to real property of the estate. Proceeds were distributed in stages, with significant holdbacks imposed due to allegations made by the Estate Trustees' brother. Matters escalated when he filed a Notice of Objection to the Estate Trustees' Application for a Certificate of Appointment of Estate Trustee with a Will, and also objected to the estate accounts when they commenced an application to pass them.

Two motions for directions – one by the objecting brother, and one by the Estate Trustees – were heard together. A key procedural issue was whether the passing of accounts

²¹ *Horbaczyk v. Horbaczyk*, 2017 ONSC 6666.

should proceed immediately or await the determination of foundational disputes about the Codicil, estate property, and administration.

Justice Emery held that the issues raised on the motions for directions would inevitably inform and narrow the accounting issues, and therefore adjourned the passing of accounts until after adjudication of the contested matters.

The Court made the following Order Giving Directions:

1. Issues for Adjudication:

- a) the validity of the 2012 Codicil and whether it was procured by undue influence;
- b) an accounting of all personal property of the deceased, including household contents;
- c) distribution of the remaining sale proceeds of the estate's real property;
- d) any breach of fiduciary duty by the Estate Trustees in their management of estate funds; and
- e) whether the Estate Trustees may pass accounts despite having acted without a Certificate of Appointment.

2. Form of Proceeding: The issues shall be litigated as an action.

3. Parties: The objecting brother shall be the plaintiff; the Estate Trustees shall be the defendants.

4. Pleadings:

- a) Statement of Claim to be served by December 15, 2017;
- b) Statement of Defence and any Counterclaim by January 30, 2018;
- c) Reply/Defence to Counterclaim by February 15, 2018.

5. Estate Trustee During Litigation: Only one of the Estate Trustees is appointed ETDL, without security.

6. Documentary Disclosure: All parties to serve sworn Affidavits of Documents within 20 days after the last defence is served. The Estate Trustees may rely on the accounts filed in the passing application, which will form part of the trial record.

7. Evidence at Trial: Evidence-in-chief to be provided by affidavit, with cross-examination at trial.

8. **Expert Evidence:** Expert reports (with qualifications and Acknowledgement of Expert) to be delivered at least 60 days before trial.
9. **Mediation:** Pursuant to Rules 75.06(3.1) and 75.2, mediation is ordered, with directions that:
 - a) the mediator be a lawyer or retired judge knowledgeable in estates;
 - b) the mediation address the issues identified for trial;
 - c) mediation occur by April 30, 2018, after completion of pleadings and disclosure;
 - d) the objecting brother must retain counsel to prepare for and attend mediation;
 - e) mediator's fees are to be paid from the Estate, up to \$5,000.
10. **Passing of Accounts:** The Application to Pass Accounts is adjourned sine die, returnable on 14 days' notice.
11. **Costs:** Costs of both motions for directions are reserved to the trial judge.
12. **Seizure:** The motions judge is not seized of further proceedings.

This case illustrates how, in a contentious estate dispute involving both procedural irregularities (estate trustees acting without a certificate) and foundational challenges (validity of testamentary documents), a motion for directions can serve to convert a passing of accounts into a fully-pleaded action, impose structure, and require mediation – all before the accounting proceeds.

Example: *Re: The Estate of Andrew Hargrave Stuart*²²

The passing of accounts in *Re: The Estate of Andrew Hargrave Stuart* involved a 14-year administration of two estates. First, the testator's estate initially administered by his surviving spouse, and second, the spouse's own estate, administered after her death by her daughter, the Applicant.

Following the Applicant's filing of the accounts for the 14-year period, the three residual beneficiaries (the testator's sons from his first marriage) served extensive Notices of Objection and declined to withdraw any objections.

The Applicant filed a draft Order Giving Directions under r. 74.18(11.7)(i), while the beneficiaries filed their own alternative draft under r. 74.18(11.9)(b). The parties agreed that the matter must proceed to trial, but disagreed on almost every procedural

²² *Re: The Estate of Andrew Hargrave Stuart*, 2018 ONSC 6333.

component: the parties, the issues, the scope and method of disclosure, whether mediation should occur before or after a separate will-interpretation proceeding, whether the interpretation should be brought by application or motion, who should pay mediation fees, whether examinations for discovery were appropriate, how evidence should be led at trial, whether the spouse's personal income tax returns should be produced, and the amount of funds to be held in reserve pending final determination.

The parties attended before the Court for a contested motion for directions, and Justice Broad addressed each disputed item. In doing so, the Court preferred the Applicant's formulation of issues.

The Court made the following Order:

1. **Parties:** The parties are the Applicant, in her capacity as Estate Trustee of the spouse's estate, and the three respondent-beneficiaries.
2. **Issues for Trial:** Eleven categories of issues were identified, including allegations that:
 - a) the Applicant's claim for compensation was excessive;
 - b) professional fees paid from the Estate were excessive or improperly allocated;
 - c) the testator's spouse failed to comply with the Will or properly invest the estate;
 - d) the testator's spouse acted in conflict and treated beneficiaries unevenly;
 - e) income and capital encroachments taken by the testator's spouse were excessive;
 - f) the nature of the testator's spouse's life interest in the residence required determination;
 - g) accounting preparation costs were excessive;
 - h) assets of the deceased were omitted;
 - i) all assets were properly disclosed and administered (as asserted by the Applicant); and
 - j) the testator's spouse bore personal liability for certain tax consequences.
3. **Documentary Disclosure:** Respondents to serve Affidavits of Documents, and the Applicant to produce all vouchers and estate tax materials relied on in responding to the objections. Respondents to produce requested documents in return.
4. **Additional Production:** The Applicant to serve a supplemental Document Brief.

5. **Interpretation Application:** The succeeding Estate Trustee must commence an Application under Rule 14.05(3)(d) to interpret paragraphs of the testator's Will, following documentary disclosure but before mediation.
6. **Mediation:** Mandatory mediation within 45 days following the determination of the interpretation application, with mediator fees shared equally between the estates.
7. **Examinations for Discovery:** All parties to attend examinations for discovery within 60 days after mediation.
8. **Undertakings/Refusals Motions:** To be brought within 60 days after discoveries.
9. **Pre-Trial and Trial Scheduling:** Timelines set for setting the matter down, selecting a pre-trial date, and preparing for trial.
10. **Trial Format:** Evidence-in-chief to be by affidavit and limited transcript excerpts, with viva voce cross-examination on affidavits; notice required if cross-examination is sought.
11. **Trial Materials:** Applicant to file a full Trial Record at least 10 days before trial; both sides to serve Compendia and Memoranda of Law.
12. **Reserves:** Each estate must retain \$200,000 pending the final determination of the proceeding.
13. **Costs:** All costs reserved to the trial judge.
14. **Further Directions:** Either party may seek further directions as required.

This case illustrates how a highly detailed, Court-imposed Order Giving Directions can structure a contentious, multi-issue passing of accounts when the parties cannot agree on any part of the procedure.

Concluding Comments

Finally, given there is no uniformity within the jurisdiction of Ontario in discharging a fiduciary's choice of implementation of procedure on a contested passing of accounts, adopting a 'best practices' approach as suggested in the within materials, may be helpful to clients, counsel, and the judiciary alike. All entities bear the same confusion, risk and uncertainty where there are no clear and definitive rules defining the process and procedure. In the current regime, perhaps some modicum of flexibility is afforded, or maintained, however, on the flip side, the downside as evidenced, includes uncertainty; misused or misguided strategy employed for litigation advantage; a misunderstanding of

process prejudicial to party participants; unnecessary costs associated with interlocutory and appeal proceedings; and thereto prolonged applications fraught with unnecessary delay, resources and judicial time.

Passing of Accounts applications can be complex and adjudication of same can be complicated. Absent a specialized panel of expertise hearing such applications, clear rules and procedure will be of assistance to the court. Similarly, given the importance placed on accountability by fiduciaries, simplifying the rules, and clarifying the expectations will make for a better understood, fairer process.

Displacing the uncertainty attached to each Counsel's interpretation of their own 'best practices' will level the playing field for litigants and narrow the scope for interpretive design.

For additional information regarding fiduciary accounting, including Orders Giving Directions, please refer to WEL Partners' publication on Fiduciary Accounting at the link below. The resource is available online, in both eBook and PDF formats, at no cost:

[WEL Partners on Fiduciary Accounting](#)

This Paper are intended for the purposes of providing information and guidance only. The materials are not intended to be relied upon as the giving of legal advice and do not purport to be exhaustive.

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