



## Will & Estate Disputes Legal Update

October 2020

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### High Court grants Trustees additional general powers for the first time.

In a recent landmark ruling of the High Court in the case of *Cotterell v Allendale*, the High Court granted the trustees of the Allendale 1949 Settlement, extra powers in the interests of general expediency, under the provisions of Section 57 of the Trustee Act 1925.

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### Video witnessing of Wills now legal as a result of the coronavirus pandemic.

Video Witnessing of Wills is now (temporarily) legal as a result of the coronavirus pandemic, courtesy of a new statutory instrument introduced in September 2020.

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## Unable to resign – Property and Affairs deputies must have court approval to stop acting.

The Court of Protection was asked to clarify the proper process to be followed in a situation where a Property and Affairs Deputy wishes to cease acting on behalf of a vulnerable individual. The Court held that a deputy cannot simply refuse to act and must obtain the court's prior approval to do so.



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## Creation of a constructive trust without detrimental reliance upheld by High Court.

In the recent case of *Archibald v Alexander*, John and Brenda Archibald were awarded a share of the beneficial ownership of a house bought in the joint names of their late mother and their sister, Patsy Alexander, in 1997.



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## High Court orders non-party respondent to disclose correspondence with beneficiary to a disputed Will.

In the recent case of *Gardiner v Tabet*, the High Court made a rare decision to order a lay draftsman and the witnesses to a Will to give full disclosure of their communications with the testator and the main beneficiary of the Will.



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## Examining the life of the deceased helped the Court interpret an ambiguous Will.

Peter Wales had no children so left almost his whole estate to "*such all of my nephew's and niece's children*". The Court concluded that this meant both his relatives by blood and by marriage.



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## Will drafted by main beneficiary upheld...just

In the recent case of *McCarthy v McCarthy*, a will prepared by the beneficiary and signed by the deceased was upheld by the Court, despite some serious reservations.

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