

RULE 10
REPRESENTATION ORDER

**REPRESENTATION OF AN INTERESTED PERSON WHO
CANNOT BE ASCERTAINED**

Proceedings in which Order may be Made

- 10.01** (1) In a proceeding concerning,
- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
 - (b) the determination of a question arising in the administration of an estate or trust;
 - (c) the approval of a sale, purchase, settlement or other transaction;
 - (d) the approval of an arrangement under the *Variation of Trusts Act*;
 - (e) the administration of the estate of a deceased person; or
 - (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

Order Binds Represented Persons

- (2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to Rule 10.03.

Settlement Affecting Persons who are not Parties

R. 10.02

- (3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,
- (a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or
 - (b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,
- the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons.
- (4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to Rule 10.03.

REPRESENTATION OF A DECEASED PERSON

10.02 Where it appears to a judge that the estate of a deceased person has an interest in a matter in question in the proceeding and there is no executor or administrator of the estate, the judge may order that the proceeding continue in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent the estate for the purposes of the proceeding, and an order in the proceeding binds the estate of the deceased person, subject to Rule 10.03, as if the executor or administrator of the estate of that person had been a party to the proceeding.

RELIEF FROM BINDING EFFECT OF ORDER

10.03 Where a person or an estate is bound by reason of a representation order made under subrule 10.01(1) or Rule 10.02, an approval under subrule 10.01(3) or an order that the proceeding continue made under Rule 10.02, a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

- (a) the order or approval was obtained by fraud or non-disclosure of material facts;
- (b) the interests of the person or estate were different from those represented at the hearing; or

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- (c) for some other sufficient reason the order or approval should be set aside.