

Publisher's Note

2018 — Release 5

Previous release was 2018-4

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Widdifield

Executors and Trustees, 6th Edition

This seminal work of Canadian legal literature is reviewed and updated by a team of authors drawn from the front ranks of the profession from across Canada. In keeping with the original, the sixth edition of Widdifield on Executors and Trustees offers a comprehensive exposition of the law relating to the exercise of the duties and prerogatives of executors and trustees in Canadian estates and trusts law.

This release updates commentary in Chapter 1 (Funeral); Chapter 2 (Assets); Chapter 3 (Claims Against the Estate); and Chapter 5 (Benefits and Beneficiaries). Highlights of this release, include:

HIGHLIGHTS

Claims against the estates — Spousal Support: In *Marasse Estate (Re)*, 2017 ABQB 706, 2017 CarswellAlta 2458, [2017] A.W.L.D. 6483, [2017] W.D.F.L. 6020, [2018] 4 W.W.R. 175, 1 R.F.L. (8th) 411, 33 E.T.R. (4th) 52, a separation agreement entered into in 2014 provided, in part, that the husband pay spousal support for 60 months. The support provisions were later incorporated into a divorce judgment. The wife died in 2015. Her personal representative brought an application for the balance of the payments under the agreement. The court ordered the payments to continue stating that there was an important distinction between court order for spousal support and contractual agreement to provide support. It found that the contract could be enforceable after death. There was juristic reason to continue obligation — there was an enurement clause and a non-reviewability clause. The

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agreement was comprehensive, containing detailed provisions relating to distribution of real and personal property, employment pension and CCP credits and defining obligations for debts. Anticipated need may have been factor in determining the amount and duration of payments but actual need was not expressed to be premise or precondition to payment. The preamble indicated that agreement was intended to be a complete, final settlement, and elsewhere in agreement the possibility of death was clearly contemplated.

Claims against the estates — Retroactive Child Support: In *Stalzer v. Stalzer*, 2018 ABQB 191, 2018 CarswellAlta 486, there was no agreement or application for support but voluntary payments were being made at one point in the spouses' separation. Here the court dismissed applications for retroactive child support brought by the mother against the father's estate and by the father's estate against the mother. The court stated that applications for child support were confined to a 'spouse' as defined in s. 2(1) of the *Divorce Act*. After death, neither the body of the father nor the estate of the father was a "spouse" as defined in the Act such that an application for child support could be brought by or made against them.

Control over the remains of the deceased — Parents: Despite there being no evidence of the deceased having chronic traumatic encephalopathy the court supported a mother's application to have her son's brain samples tested for it in the face of his father's objection. The son and their grandson had been found dead "under suspicious circumstances. Under s. 36 of the *General Regulation to Funeral Services Act*, Alta. Reg. 226/1998 the father, being the elder parent, would have been entitled to have control over the disposition of the remains; however, the court stated that s. 36 of the Regulations expressly contemplated that a judge may depart from the priority set out in the section. The court went on to supported the conclusion of the chambers judge that any harm done by testing of the brain specimen was outweighed by irreparable situation of losing all opportunity to conduct further testing for conditions including a pathological or organic neurological disorder: *Campbell v. Campbell*, 2018 ABCA 46, 2018 CarswellAlta 162, [2018] A.W.L.D. 815, 288 A.C.W.S. (3d) 198.

Claims Against the Estate — Limitations Periods: In *Wall Estate*, 2018 ONSC 1735, 2018 CarswellOnt 3974, a beneficiary was not barred by the *Limitations Act, 2002* from filing a notice of objection to accounts. In the view of the court, a notice of objection did not rise to the level of "claim" as contemplated by the Act. The court distinguished *Saraceni v. Saraceni*, 2013 ABCA 354, 2013 CarswellAlta 1993 (Alta. C.A.) and applied *Armitage v. Salvation Army* (2016), 2016 ONCA 971, 2016 CarswellOnt 20023, 23 E.T.R. (4th) 1, Justice Mulligan stating at para. 31: "In my view, if the passing of accounts does not constitute a claim, I am not satisfied that a Notice of Objection is a claim."

Claims against the Estate — Insolvent estates — Priority of claims: In *Evans Estate (Re)*, 2018 NSSC 68, 2018 CarswellNS 208, 289 A.C.W.S. (3d) 732 the court considered the priority of the CRA's claim over the amount owed to a funeral home for the deceased's burial. In this case the Public Trustee was the personal

representative. The estate was insolvent and had assets of \$1,545 and debts including \$8,187 owed to Canada Revenue Agency (CRA) and \$3,952 owed to the funeral home. The Public Trustee obtained clearance certificate from CRA and filed it with the Probate Court. The Registrar paid the balance of the estate to the funeral home in accordance with priorities under s. 83(3) of the *Probate Act*. The Public Trustee appealed the decision of the Registrar on the ground that the CRA claim had priority and the Public Trustee would be personally liable under s. 159 of the *Income Tax Act*. The appeal was allowed. The Crown prerogative meant that the federal Crown was not bound by provincial statute in absence of clear provision to the contrary. Where it was impossible to comply with federal law stipulating order of priority for payment of debts and provincial law stipulating different priority, paramountcy applies and the federal law takes priority.

