

## Publisher's Note

2018 — Release 6

Previous release was 2018-5

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## Estate Litigation

*Estate Litigation, 2<sup>nd</sup> Edition*, is a comprehensive, practical work covering all facets of estate litigation including mental incompetency disputes, challenges to wills, *Family Law Act* claims, passing of executors' accounts, presumption of death and dependant support claims. The publication includes extensive precedents along with relevant statutory material.

### What's New in this Update:

This release features updates to the case law and commentary to Chapter 22 (Limitation Periods in Estate Matters), Chapter 23 (Claims by Common Law Spouses and Same-Sex Partners Against Estates), Chapter 24 (The Estate Trustee During Litigation), and Chapter 25 (Resulting Trust, Unjust Enrichment and related Equitable Rights and Remedies in Estate Litigation).

### Highlights Include:

- **Limitation Periods in Estate Matters — Estates Statutes and the Limitations Act, 2002 — Trustee Act** — The issue of fraudulent concealment was recently considered by the Ontario Court of Appeal in *Roulston v. McKenny*, where the Court held that the doctrine of fraudulent concealment may be applied to toll the limitation period in section 38(3) of the

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*Trustee Act: Roulston v. McKenny*, 2017 ONCA 92017 CarswellOnt 16 (Ont. C.A.).

- **Resulting Trust, Unjust Enrichment and related Equitable Rights and Remedies in Estate Litigation — The Presumption of Advancement and the Presumption of Resulting Trust — The Supreme Court of Canada Decisions in *Pecore v. Pecore* and *Saylor v. Madsen Estate* — Recent Applications of the Presumption of Resulting Trust** — A recent decision from the Ontario Court of Appeal in *Chechui v. Nieman* establishes that the presumption of resulting trust may apply not only to the purchase or transfer of property, but may also apply to a post-purchase payment that reduces liabilities associated with the purchase or transfer of property: *Chechui v. Nieman*, 2017 ONCA 669, 2017 CarswellOnt 13119 (Ont. C.A.).