

## Publisher's Note

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Schnurr

## 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 two new legal memoranda and several updated legal memoranda in the Issues in Focus section. Also included in this release are updates to the Selected Bibliography and the Words and Phrases section.

### Highlights Include:

- **Issues in Focus — What factors should an Estate Trustee take into consideration when dealing with a testator's digital assets?** — From an estate administration perspective, the upsurge in the prevalence of digital assets held by Canadian individuals dictates that Estate Trustees will have to add to their customary duties the obligation to make initial inquiries to determine whether the deceased had digital assets, and then to value and distribute them as part of the deceased's estate. This gives rise to numerous challenges relating to identifying, accessing and putting real-world value on

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digital assets. The challenge can be further compounded by the fact that currently there is little in the way of Canadian estates legislation to guide Estate Trustees with this task.

- **Issues in Focus — Can a resulting trust exist in respect of land under the Torrens system? Or is such inconsistent with the concept of conclusive title?**  
— For estate litigators, knowledge of resulting trusts over land is important. When successfully enforced, such claims can bring valuable land back into a transferor's estate, to be distributed according to their will. For lawyers in Torrens land titles jurisdictions, however, resulting trust claims raise the issue of how such trusts interact with the principle of indefeasible title.
- **Words and Phrases — Ontario — Disclaimer** — Disclaimer often refers to an initial rejection of a gift at the time when it is offered. Renunciation generally refers to the rejection (or disclaimer) of an interest sometime after it has already arisen: *Rubner v. Bistricher* (2018), 2018 CarswellOnt 4501, 2018 ONSC 1934 (Ont. S.C.J.) at para. 128, 129 Myers J.