

Table of Contents

	PAGE
<i>Preface</i>	iii
<i>Table of Cases</i>	xi
Chapter 1 Trust Law	
<i>by Ed Esposto</i>	1
Introduction	1
Trustee Liability	1
<i>Cahill v. Cahill</i>	1
<i>Groome Estate v. Groome</i>	5
The Continuing Evolution of Constructive Trusts in Canada	8
<i>Moore v. Sweet</i>	12
The Continuing Saga of Resulting Trusts in Canada	18
<i>Andrade v. Andrade</i>	20
Chapter 2 Taxation of Trusts and Estates	
<i>by Paul Gibney, Marie-Eve Gosselin and E. Rebecca Potter</i>	25
Introduction	25
Legislative Changes	25
<i>2017 Federal Budget</i>	25
<i>Implementation of the Changes Announced in the 2016 Federal Budget</i>	26
<i>Corporate-Owned Life Insurance Policies</i>	26
<i>Principal Residence Exemption</i>	28
<i>Increase in Personal Tax Rate</i>	31
Administrative Update	31
<i>Graduated Rate Estates</i>	31
<i>Voluntary Disclosures by Estates</i>	32
<i>GAAR and the 21st Anniversary of a Trust</i>	32
<i>GST/HST on Executor Fees of Retired Lawyers</i>	33
Case Law Update	33
<i>Assessing Trusts on a Consolidated Basis: Evoy Estate v. The Queen</i>	33

<i>Trust Residence: Herman Grad 2000 Family Trust v. Ontario (Minister of Revenue)</i>	34
Chapter 3 Unequal Treatment Aboriginal Estate and Inheritance Law Under The Indian Act: The Federal Paternalism Continues <i>by Lionel J. Tupman and Arieh Bloom</i>	37
Introduction.	37
Background	38
The Estates Regime Applicable to First Nations Living on Reserves ..	38
<i>Who Is Subject to the Minister’s Testamentary Jurisdiction?</i>	38
<i>The Minister’s Jurisdiction and Powers</i>	38
<i>Will Validity Under the Act</i>	39
<i>Testamentary Transfers of Possessory Interests in Reserve Lands.</i> ...	41
<i>The Family Homes on Reserves and Matrimonial Interests or Rights Act (the “FHA”)</i>	42
<i>Intestacy Under the Act</i>	43
<i>The Applicability of Provincial Legislation and Common Law to Reserve Estates</i>	45
Challenging the Act’s Estates Provisions As Contrary to Section 15 of the Charter	46
<i>The Legal Framework for a Section 15 Challenge</i>	46
<i>Analyzing a Section 15 Challenge of the Act’s Estate Provisions</i> ...	48
<i>Section 15 Infringement</i>	49
<i>Section 1 Analysis</i>	51
Conclusion.	52
Chapter 4 Testamentary Autonomy and Part V of the Succession Law Reform Act <i>by Jonathan F. Lancaster and Corina S. Weigl</i>	53
Introduction.	53
Dependants’ Relief Legislation.	54
The Meaning of Adequate Provision Under Part V of the SLRA.	54
The Legal and Moral Considerations of Adequate Provision	56
Testamentary Autonomy’s Supporting Factors.	58
Conclusion.	60
Chapter 5 Disclosure In Will Challenges – Who Must Disclose What and When <i>by Ian Hull and Suzana Popovic-Montag</i>	61
Introduction.	61

What May the Drafting Lawyer Disclose	61
The “Wills Exception” – Releasing the Will	62
Who Can Waive Privilege/Confidentiality	64
Beneficiaries’ Request for Information	66
Discretionary Beneficiaries	68
Trustees Obligations to Inform.	69
Disclosure to Third Parties.	70
Conclusion.	71
Appendix	72
Chapter 6 Family Law Issues in Estate Litigation	
<i>by Kelly A. Charlebois and Lisa M. Filgiano.</i>	75
Dependant’s Relief Claims Under the Succession Law Reform Act . . .	75
<i>Background</i>	75
<i>Recent Case Law</i>	76
<i>What Constitutes Dependency?</i>	77
<i>Long-Term Spouses</i>	78
The Disappointed Beneficiary – Moore v. Sweet	79
<i>Constructive Trust</i>	81
<i>Valid Juristic Reason</i>	82
<i>The Two-Step Analysis</i>	83
<i>The Dissent</i>	84
<i>Unjust Enrichment – The Deprivation Element</i>	86
<i>The Juristic Reason Element.</i>	87
The Enactment of the All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016	88
<i>The All Families Are Equal Act</i>	90
<i>Implications in the Estate Context.</i>	91
<i>Support Obligations and Intestacy Rights</i>	91
<i>Estate Planning and Administration</i>	92
Chapter 7 Applications To Pass Accounts	
<i>by Angela Casey and Angelique Moss</i>	95
Introduction.	95
Changes to Rule 74.18 – Applications to Pass Accounts.	95
Procedural Issues	97
<i>In the Estate of Ingrid Loveman – Evidence on a Contested</i>	
<i>Passing</i>	97
<i>Baci v. Tiberi – Where an Application Should Be Converted to an</i>	
<i>Action</i>	98

<i>Armitage v. The Salvation Army – Application of the Limitations Act, 2002</i>	99
<i>McLoughlin v. McLoughlin – Standing to Compel a Passing of Accounts</i>	101
Standard of Care	102
<i>Cahill v. Cahill – Co-Estate Trustee Liability</i>	102
<i>The Estate of Ingrid Loveman – Estate Trustee Must Pay for Mistakes</i>	103
<i>Groome Estate – Damages Against Trustee for Poor Investment Decisions</i>	105
Compensation	107
<i>Foniciello v. Bendall – Fiduciary Compensation</i>	107
<i>In The Matter of the Estate of Pauline Medynski and In The Matter of the Guardianship of Andrew Medynski – A Lesson in Proportionality</i>	107
Costs in Applications to Pass Accounts	109
<i>In The Matter of the Estate of Pauline Medynski and In The Matter of the Guardianship of Andrew Medynski – Full Indemnity Costs Must Be Reasonable</i>	109
<i>Sentineal Estate v. Sentineal – Trustee’s Right to Indemnification for Legal Fees</i>	109
<i>Brown v. Rigsby – When Will a Trustee Lose His Right to Indemnification</i>	110
<i>Greaves v. Nigro – When Will an Objector Be Denied His Costs from the Estate?</i>	111
Conclusion	113
Chapter 8 Powers of Attorney and Substitute Decision Making <i>by M. Jasmine Sweatman</i>	115
Introduction	15
Capacity Assessments: Seeking Advice is Not a Bad Thing	115
Capacity and Involuntary Status Disputes and the Doctrine of Mootness	116
Determining Best Interest When Appointing Substitute Decision-Makers	120
Property Proxy – Attorney or Agent?	122
Conclusion	123
Chapter 9 Solicitor’s Negligence <i>by Archie J. Rabinowitz</i>	125
Introduction	125

TABLE OF CONTENTS

ix

Part I: Testamentary Capacity	125
<i>Tarantino v. Galvano</i>	126
<i>Klaprat v. Chezick</i>	128
<i>Schrof v. Schrof</i>	129
Part II: Standard of Care in Estate Planning	131
<i>Welton Estate v. Haugrud</i>	131
<i>Johnston Estate v. Johnston</i>	132
Part III: Damages for Lost Chance	133
<i>Jarbeau v. McLean</i>	133
Part IV: The Solicitor-Executor Relationship	134
<i>Eve v. Wilhelm Estate (Trustee of)</i>	133
Conclusion	135
<i>Index</i>	137