

Publisher's Note

2019 — Release 3

Previous release was 2019-2

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Schnurr

Estate Litigation

Estate Litigation, 2nd 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 2 (Challenging the Validity of Wills), Chapter 3 (Orders for Assistance (formerly "Citation Orders"), Chapter 4 (Dependant Support Claims) and Chapter 6 (Role of the Children's Lawyer).

Highlights Include:

- **Challenging the Validity of Wills — Nature of the Challenge — Testamentary Capacity** — The Ontario Court of Appeal recently confirmed that in determining whether a testator had capacity to make a will, the law "does not require that a testator have an encyclopedic knowledge of her assets." The court quoted as follows from an earlier Court of Appeal decision written by Justice Laskin: "A competent testator does not have to know the precise makeup of her estate. She only need know in a general way the

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nature and extent of her property.”: *Quaggiotto v. Quaggiotto*, 2019 ONCA 107.

- **Dependant Support Claims — Expanded Definition of “Estate” That Dependant Can Claim Against — Pre-Retirement Death Benefit** — The issue of whether pre-retirement death benefits qualify as s. 72 assets pursuant to the Succession Law Reform Act was recently considered by the Ontario Superior Court. The Court explained that s. 72 provided the Court with discretion and authority to attribute to the estate the capital value of assets designated to beneficiaries under a plan or policy, or that have been otherwise allocated by the terms of a will or other instrument: *Cotnam v. Rousseau* (2018), 33 E.T.R. (4th) 156 (Ont. S.C.J.).
- **Role of the Children’s Lawyer — Solicitor—Client Privilege and Litigation Records at the Office of the Children’s Lawyer** — The Ontario Court of Appeal recently considered whether a child-client’s litigation records at the Office of the Children’s Lawyer are protected by solicitor-client privilege, or whether they may be produced further to a freedom of information request pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31: *Ontario (Children’s Lawyer) v. Ontario (Information and Privacy Commissioner)* (2018), 141 O.R. (3d) 481 (C.A.).