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Kirwin
**Vulnerable Persons:
Protection and Remedies in Canada**

This reference work guides the practitioner through all aspects of law and practice related to vulnerable persons in Canada. This book is the first Canadian legal text on this subject, and is conveniently organized so the user can quickly access the legal remedies available for the protection of persons in vulnerable circumstances in the common law provinces of Canada. The four types of vulnerable persons are discussed in this book and organized by chapter: youths who fall outside the scope of child protection laws and adults who suffered child abuse, spouses, the elderly, and medical patients and persons with disabilities.

What's New in this Release:

This release features updates to the case law and commentary in Chapters 1 (Youth Protection and Childhood Remedies), 2 (Spousal Protection and Remedies), 3 (Protection of the Elderly and Remedies), and 4 (Protection of the Disabled/Patients and Remedies).

Highlights

- **Youth Protection and Childhood Remedies — Class Action proceedings —**
A plaintiff commenced an action as an individual litigant seeking damages on behalf of herself and her child against Her Majesty the Queen for failing to provide a plan of care for the child who was the subject of a

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TGO for two years. The mother became a representative plaintiff in a class action but no longer wished to act in that capacity. A lawyer applied to be appointed as next friend. This first lawyer sought payment, in advance, from the Crown for legal services rendered as the litigation representative. The Court decided that the mother was not entitled to advance costs from the Crown at that stage of the litigation. As well, the Court decided that the mother was not entitled to advance costs from the Public trustee. A conflict of interest arose in respect of the first lawyer representative. A second lawyer representative acting as litigation representative for the child sought approval of a contingency fee agreement as between him and the child which was approved by the Court. As between the lawyer and the class, the Court said the ultimate decision would be left to the trial judge. In the most recent decisions involving this matter, the Court provisionally certified the action as a class proceeding. Her Majesty the Queen appealed the Certification Decision to the Court of Appeal. The Court of Appeal varied the certification order by narrowing the scope of the class proceedings to children and parents or guardians affected by Director of Child Welfare's failure to file care plans for children who were subjects of temporary guardianship orders within time prescribed by Child Welfare Act between 2002 and 2004. Advanced costs in the amount of \$18,000 were granted to the representative plaintiff for the child class to seek leave to appeal the Court of Appeal decision to the Supreme Court of Canada. The Representative plaintiff of the parent/guardian class members was given a modest sum of \$6,000 for purpose of filing the leave application: *C. (L.) v. Alberta*, 2017 CarswellAlta 187 (Q.B.).

- **Protection for the Elderly and Remedies —Marriage and Incapacity** — An elderly woman diagnosed with dementia entered a marriage and executed a new will. Griffin J. (as she then was) surveyed the law surrounding capacity to marry and concluded that it must involve some understanding of whom a person wants to live with and the effect it will have on one's future in so far as it will be an exclusive mutually supportive relationship until death or divorce. With respect to the test of testamentary capacity, Griffith J. cited *Re Schwartz*. To have testamentary capacity, a testator must know the nature and extent of his property, the persons who are the natural objects of his bounty, and the testamentary provisions he is making, and he must be capable of appreciating these factors in relation to each other and forming an ordinary desire as to the disposition of his property. She concluded that the elderly woman was incapable of entering into the marriage or drafting a new will. She was highly vulnerable and was not capable of weighing the implications of marriage, even at the emotional level. At the time of marriage she could not have formed an intention to live her new husband or a lifetime bond with him. She did not understand what it meant to live closely with another person or the concept of a lifetime bond. The marriage was declared void *ab initio*: *Devore-Thompson v. Poulain*, 2017 BCSC 1289, 2017 CarswellBC 2024.