

Table of Contents

	PAGE
<i>Preface</i>	iii
<i>Table of Cases</i>	ix
Chapter 1 Case Comment on Re Milne Estate	
<i>by Ed Esposto</i>	1
Postscript	13
Chapter 2 Taxation of Trusts and Estates	
<i>by Paul Gibney, Marie-Eve Gosselin and</i>	
<i>E. Rebecca Potter</i>	17
Introduction	17
Legislative Changes	17
<i>New Trust Reporting Requirements</i>	18
<i>Trusts Subject to the New Reporting Requirements</i>	19
<i>Information to Be Reported</i>	20
<i>Penalties</i>	20
<i>Cross-Border Surplus Stripping and Trusts</i>	21
<i>Health and Welfare Trusts</i>	22
<i>Changes to Taxation of Private Corporations</i>	23
<i>Restricting the Small Business Limit</i>	23
<i>Refundability of Taxes on Investment Income</i>	23
Administrative Update	24
<i>Graduated Rate Estates</i>	24
<i>Principal Residence Exemption</i>	25
<i>Alter Ego Trusts</i>	26
<i>The Residence of Tax-Free Savings Accounts</i>	26
Case Law Update	27
<i>GAAR on Tax-Free Dividends Paid to a Family Trust: Satoma</i>	
<i>Trust v. The Queen</i>	27
<i>An Heir Can Appeal for an Estate: Estate of Winifred Straessle v.</i>	
<i>The Queen</i>	28

Chapter 3 Powers of Attorney and Substitute Decision Making	
<i>by M. Jasmine Sweatman</i>	31
Introduction.	31
Termination and Revocation of a Substitute Decision Maker.	31
<i>Abel v. Abel</i>	32
<i>J.B. v. de Souza</i>	33
Powers of the Board in Appointing a Representative	35
<i>R.B. (Re)</i>	35
Principles of Substitute Decision Making and End of Life Decisions	36
<i>Medical Practitioners Are to Decide Whether the Criteria in</i>	
<i>Section 242.2 is Met</i>	37
<i>The Meaning of A “Reasonably Foreseeable” Natural Death in</i>	
<i>Section 242.2(2)(d)</i>	39
<i>A “Reasonably Foreseeable” Natural Death Still Required for</i>	
<i>M.A.I.D.</i>	39
<i>Divisional Court Decision Affirms That Physicians Must Make A</i>	
<i>Referral</i>	40
<i>Medical Assistance in Dying and Substitute Decision Making</i>	42
Ferreira v. St. Mary’s General Hospital	45
Conclusion.	47
Chapter 4 Diffusing the Conflict in Contentious Estate and Capacity Matters	
<i>by Resa Eisen and Jane E. Martin</i>	49
Introduction.	49
Elder Rights and Family Dynamics	49
The Legal Landscape	53
How are Elder Law Disputes Often Mediated?.	55
Mediator Neutrality	56
Styles of Mediation	57
Conclusion.	61
Chapter 5 Estate Trustees During Litigation: A Review of Recent Case Law	
<i>by Charles Wagner and Brendan Donovan</i>	63
What We Know Already	64
Mayer v. Rubin	66
Bank of Nova Scotia v. Kuklis	68
Sweetnam v. Williamson Estate	70
Estate of Timothy Bryant v. Bryant	70
2018 and Beyond	73

Chapter 6 Interim Support and Funding Orders: Post-Mortem Claims Made by the “Modern Day” Spouse <i>by Kimberly A. Whaley and Alexander J. Swabuk</i>	75
Introduction.	75
Recourse Available for Surviving Spouses	76
Dependant Support Claims	77
Qualifying as a “Dependant”	78
Deadlines and Extensions.	80
The Test for Interim Relief	82
What Constitutes a “ <i>Prima Facie</i> ” Case?	84
“Adequate” Support?	85
Conclusion.	86
Chapter 7 Unjust Enrichment in Will Challenges <i>by Suzana Popovic-Montag, Charlotte McGee and Ian Hull.</i>	89
Introduction.	89
The Beginnings of Unjust Enrichment in Canada	90
<i>Degelman v. Guaranty Trust Co. of Canada</i>	90
<i>The Trilogy: Murdoch v. Murdoch, Rathwell v. Rathwell and Becker v. Pettkus</i>	91
Unjust Enrichment Since the Trilogy	92
Remedies for Unjust Enrichment	95
Unjust Enrichment and Will Challenges in Canada: Case Law.	95
<i>Belvedere v. Brittain Estate.</i>	96
<i>Wright Estate v. Johnston.</i>	97
<i>McMillan v. Johnson Estate</i>	98
<i>Lata v. Rush</i>	100
<i>Lavoie v. Trudel</i>	101
<i>McDonald v. McDonald Estate.</i>	102
Conclusion.	104
Chapter 8 Oppression Remedy and Family-Held Corporation <i>by Anne E. Posno.</i>	105
The Intersection of Expectations and Corporate Duties	105
Refresher – Oppression Remedy.	106
Estate Freeze: Family-Held Corporation	109
Oppression Cases Involving Family-Held Companies	110
Foundational Cases	110
<i>820099 Ontario Ltd v. Harold E. Ballard Ltd.</i>	110

<i>Nanef v. Con-Crete Holdings</i>	112
Other Significant Oppression Cases Involving Family-Held Corporations	114
<i>Wonsch (Litigation Guardian of) v. Wonsch</i>	114
<i>Cohen v. Jonco</i>	115
<i>Hui v. Hoa</i>	116
<i>Glesby v. Glesby</i>	117
<i>Strauss v. Wright</i>	117
Conclusion	118
Annex	120
<i>Index</i>	127