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ANNOTATED ONTARIO ESTATES STATUTES

Schnurr

Release No. 2, June 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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The *Annotated Ontario Estates Statutes* is a comprehensive reference that brings together, in a single loose-leaf volume, easy access to the legislation and case law critical to the practice of estates law in Ontario. The text includes complete annotations of estates-related legislative provisions, and section-by-section commentary written by a leading practitioner in estates law.

What's New in this Update

In this release, the case law has been updated and legislative updates have been made to Chapter 1: Absentees Act and Chapter 19: Settled Estates Act. Two additional forms under the Children's Law Reform Act have also been added.

Highlights

Substitute Decisions Act 1992 – State Intrusion and Personal Freedoms – In *The Public Guardian and Trustee v. Golyzniak*, 2021 CarswellOnt 9157, 2021 ONSC 4524, the Public Guardian and Trustee (PGT) presented concerns regarding Mr. Golyzniak's safety, wellbeing and living conditions, and his ability to manage his property. The PGT sought an order for their permanent appointment as guardian. This application was granted in part. In relation to Mr. Golyzniak's living conditions, the evidence presented, although not without merit, did not establish incapacity in relation to personal care. The PGT was however appointed as the guardian of Mr. Golyzniak's property. It was found that the former guardian of the property, Mr. Golyzniak's mother, had failed to manage his funds in accordance with approved Management Plans, had failed to pass accounts, and was unwilling or unable to explain what was done with her son's funds. In making this decision, the Ontario Superior Court of Justice considered the *Substitute Decisions Act, 1992*, S.O. 1992, c. 30. This Act seeks to restrict state attempts to impose value judgments and paternalism. Even when a person makes choices that are not in their best interest, without evidence as to incapacity to make personal care decisions, state intrusion into a person's liberty and freedom is not permitted. Proof of incapacity is a high threshold. This is a means of preserving freedom, autonomy, and dignity.

Succession Law Reform Act 1990 – In *Mak (Estate) v. Mak*, 2021 CarswellOnt 8904, 2021 ONSC 4415, it was held that the *Pecore v. Pecore*, 2007 CarswellOnt 2752 presumption of a resulting trust does not apply to a beneficiary designation. Subsection 51(1) of the *Succession Law Reform Act* (SLRA) states that an individual may designate a beneficiary of a "plan". Section 53 of the SLRA provides that an institution administering the "plan" must pay it out in accordance with subsection 51(1) beneficiary designation upon the plan owner's death. The presumption of resulting trust with respect to adult children evolved from the formerly recognized presumption of advancement – when parents sometimes erroneously assume that arranging for joint ownership of an asset with their adult child is merely "advancing" the asset to such adult child as such adult child will eventually be entitled to such asset upon such parent's death. However, the whole point of a beneficiary designation, is to specifically state what is to happen to an asset upon death. Therefore, the presumption of a resulting trust should not apply in the circumstances of a beneficiary

designation.

Appendix 4a: Forms – Children’s Law Reform Act – An additional two forms have been added to this release: Notice of Relocation Form – Person with a Parenting Order and Notice of Change in Place of Residence Form – Person with Contact.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases, Table of Statutes and Index are now in PDF with no searching and linking
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- Images are generally greyscale and size is now adjustable
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