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### **TAX PLANNED WILL PRECEDENTS, 4TH**

**Butler**

**Release No. 11, December 2025**

Written by a tax and estate planning specialist with over 30 years experience practicing law, this fourth edition of Tax Planned Will Precedents is an invaluable handbook for any lawyer engaging in estate planning. It features significant updates to commentary as well as a reorganization of relevant clauses in a more intuitive manner. It also features many useful forms and checklists including: the Estate Planning Information checklist, the Information for Executors form, the Checklist of Information about Testator, Directions to Executors and Trustees, and the Will Checklist.

### **What's New in this Update:**

This release features updates to Appendix B – Federal Legislation and Appendix D – Digests.

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## Highlights

- **§ D:3.—Estates and trusts—Estates—Will challenges—Testamentary capacity—Suspicious circumstances—Miscellaneous—**Deceased was retired academic with history of mental illness and delusions — Deceased executed handwritten codicil in 2019, wherein he left his entire estate to beneficiary — Beneficiary was woman deceased had met online, but not in person — Deceased’s executrix and family members questioned validity of codicil — Codicil was declared invalid for finding of undue influence and lack of capacity — Beneficiary appealed — Appeal dismissed — There were suspicious circumstances surrounding preparation of codicil and beneficiary’s involvement — Beneficiary had shared and reinforced deceased’s delusions about electronic harassment prior to his death — Deceased’s cognitive decline and isolation sufficiently rebutted his presumption of testamentary capacity — Burden was shifted to beneficiary to prove knowledge and capacity of contents of codicil: *Lamont v. Estate of Louis Fournier et al.* (2025), 2025 CarswellNB 340, 2025 CarswellNB 339, 2025 NBCA 79, LaVigne J.A., LeBlanc J.A., Robichaud J.A. (N.B. C.A.); affirming *Estate of Louis Fournier v. Lamont, Fournier Sylvester, Fournier* (2024), 2024 NBBR 162, 2024 CarswellNB 671, 2024 NBKB 162, 2024 CarswellNB 402, Maya Hamo J. (N.B. C.K.B.) [New Brunswick].
- **§ D:8.—Estates and trusts—Estates—Actions involving personal representatives—Practice and procedure—Costs—Personal liability of representative—**Applicant was sole residual beneficiary of estate of deceased — Primary assets of estate included business — Applicant was nearly 17 years old at time of deceased’s death, and his share of estate was to be held in trust until he reached age of 25 — Respondents A and T were appointed as estate trustees — M, who was in romantic relationship with A, offered to buy business — Applicant’s counsel wrote to counsel for estate, raising concerns that A was in apparent conflict of interest due to her romantic relationship with M and requesting that she resign as estate trustee — Estate counsel forwarded M’s “final offer” to purchase business to counsel for applicant, with 10-day deadline for acceptance, and advised that A and T were recommending that offer be accepted — Applicant brought application seeking removal of A and T as estate trustees — Application judge removed A and T as estate trustees, and ordered them to pay applicant’s costs personally on partial indemnity basis in amount of \$56,693.01 — A and T appealed and brought application for leave to appeal costs order — Appeal and application dismissed — Application judge did not err in ordering that A and T pay applicant’s costs personally — Application was made necessary because of A and T’s steadfast denial of any conflict, and their unjustified refusal to resign in face of clear and unequivocal request that they do so: *Muscat v. Muscat Estate* (2025), 2025 CarswellOnt 11391, 2025 ONCA 518, J. Copeland J.A., P.J. Monahan J.A., Thorburn J.A. (Ont. C.A.) [Ontario].