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<p>COMPENSATION & DUTIES OF ESTATE TRUSTEES, GUARDIANS & ATTORNEYS Jennifer J. Jenkins Release No. 3, December 2024</p>
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What’s New in this Update:

This release features updates in Chapters 1, 6, 12, 16, 17, 18, 19, 20, 21, 22, 23, 25.

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Highlights:

- **Chapter 17 Statutory Estate Remedies – Ontario’s *Family Law Act* and *Succession Law Reform Act***

In *Tosine*, Justice M.D. Faieta reviewed tests for conjugal relations to satisfy the definition of *spouse* under Part V of the *Succession Law Reform Act*. Applicant did not provide sufficient evidence to establish cohabitation and entitlement to dependant spousal relief.

In *Bergler*, British Columbia’s Court of Appeal upheld a trial judge’s finding of a secret trust. Reliable hearsay and a common law spouse who failed to object to deathbed terms confirmed the trust. The appeal court agreed that a jointly owned property was severed by the secret trust.

- **Chapter 18 Common Law Equitable Remedies**

In *Schutz Estate*, the court, on a contested passing of accounts, considered financial records prior to deceased’s death. The accounts were adjusted for missing assets with damages paid to the estate. The executor was denied costs for the passing from the estate.

- **Chapter 19 Applications to Court – Protection for Estate Trustees**

In *Gorgi*, Justice A. Sanfilippo rectified a will. The court clarified a biological child and his children were not entitled to share in the deceased’s estate. This view respected the testator’s testamentary freedom and will instructions. The Ontario Court of Appeal upheld the judge’s rectification to limit who shared in the estate.

- **Chapter 21 Evidence, Procedure and Limitation Periods**

In *Wynn*, the court, in a family law case, bifurcated the trial issues into three discrete hearings related to a marriage contract and dependants relief.

In *LaPointe*, the new rule 6.01.01(1) effective July 1, 2024 was interpreted on bifurcation. The court declined to bifurcate liability from damages in this personal injury jury trial.

In *Docherty*, Justice Petersen, treated a motion for relief as a summary judgment motion. Partial summary judgment was granted for child support arrears. Acceptance of an offer to settle constituted a valid separation agreement.