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WIDDIFIELD ON EXECUTORS AND TRUSTEES, 6TH EDITION Carmen S. Thériault, B.A., LL.B. Release No. 1, January 2025

This seminal work of Canadian legal literature is reviewed and updated by a team of authors drawn from the front ranks of the profession from across Canada. In keeping with the original, the sixth edition of Widdifield on Executors and Trustees offers a comprehensive exposition of the law relating to the exercise of the duties and prerogatives of executors and trustees in Canadian estates and trusts law.

What's New in This Update:

This release features an updated Chapter 4 with new case law commentary.

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Highlights of This Release, Include:

§ 4:7 General Rule in Estate Litigation: Costs Follow the Event — In *Joy Estate v. McGrath*, 2022 ONCA 119, 2022 CarswellOnt 1457 (Ont. C.A.), Gillese J.A. commented upon the process to be followed where public policy considerations arise:

The jurisprudence is clear: at first instance, when deciding costs in estate litigation, the court must begin by carefully scrutinizing the litigation to determine whether one or more of the public policy considerations applies. If so, as a general principle, the parties' reasonable costs are to be paid from the testator's estate.

It is worthy of note that this approach is not a balancing of the public policy considerations against the rationale for cost rules that ordinarily apply to civil litigation. Rather, it is a sequential analysis, the first step of which is to determine whether one or more of the public policy considerations apply. If so, generally the parties' reasonable costs should be payable from the estate. A departure from this general principle requires justification on the part of the court.

§ 4:15 Special Costs — The court will order special costs in exceptional circumstances where the conduct is reprehensible, which encompasses scandalous or outrageous conduct (such as conduct tantamount to fraud or an abuse of process), as well as milder forms of misconduct deserving of reproof or rebuke: *Kirouac Estate*, 2024 BCSC 1119, 2024 CarswellBC 1847 (B.C. S.C.).

§ 4:24 Solicitor Appointed as Executor/Trustee — In *Re Parkinson Estate*, 2024 MBCA 52, 2024 CarswellMan 217 (Man. C.A.), the court awarded \$110,139.17 in solicitor and client costs against an executor who was a lawyer. The court was highly critical of the executor's conduct, including a dispute over compensation which the court viewed as being wholly due to the executor seeking an unreasonable level of compensation and then attempting to bolster his position by issuing invoices for unsubstantiated legal services when his executor compensation was questioned.

ProView Developments

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