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WIDDIFIELD ON EXECUTORS AND TRUSTEES, 6TH EDITION

Release No. 7, August 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 contains amendments and updates to the commentary in Chapter 2 (Assets); Chapter 4 (Expenses and Legal Costs); Chapter 5 (Bequests and Beneficiaries); Chapter 13 (Duty to Keep Records); Chapter 14 (Passing Accounts); Chapter 15 (Resignation, Removal and Appointment of Trustees); and Words and Phrases.

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Highlights of This Release, Include:

Mutual Wills — Revocation — By Subsequent Will — Situs — This case concerned the validity of a joint will made by a married couple in Germany and whether it was revoked by a subsequent will made by one of the spouses in British Columbia. In 1995, the testator and his spouse, citizens of Germany with permanent residence in Canada, made a joint will in Germany naming the spouse's parents as "universal heirs of our entire estate". The will was executed by the testator and the spouse but not witnessed. In 2019, the spouse made a will in British Columbia revoking all prior dispositions and naming the testator as her sole heir. The will was executed by the spouse but not witnessed. The spouse passed away soon after. Following the testator's death in 2022, an individual who claimed to have lived with him in a marriage-like relationship in the final years of his life brought an application for a grant of administration without will annexed. The spouse's mother obtained a certificate of inheritance from a German court identifying her as the sole heir of the testator's estate based on the 1995 will. The spouse's mother then instructed a lawyer in B.C. to bring an application for proof in solemn form of the 1995 will. The application was dismissed. Based on an expert opinion, the court found that the 1995 will had been made in accordance with German law, which did not require it to be witnessed, and met the requirements for formal validity. While the 2019 will was also formally valid under German law, B.C. law applied to the issue of revocation. It found that although the 1995 will had not been revoked by the 2019 will according to German law, which required revocation of a joint will to be made by a notarized declaration to the other spouse, it had been revoked by the 2019 will according to B.C. law. The latter was the jurisdiction in which the spouse was then domiciled and the estate's real property was located. The 1995 will was therefore found to be of no force or effect once it had been revoked by the spouse prior to the testator's death. The court, accordingly, found that he had died intestate: *Siebert Estate (Re)*, 2025 BCSC 617, 2025 CarswellBC 1034 (B.C. S.C.).

Estate Trustee Removal — Delay — Whether Delay Prejudiced Estate — On an application brought to seek their removal, *inter alia*, for delay in administering an estate, the estate trustees argued that the applicants had not been prejudiced by the delay. The primary asset of the estate was a piece of real property and the estate trustees submitted that the value of the property increased significantly since the death of the testator and this was a benefit to the beneficiaries. The court found that "this argument [struck] a hollow chord". It noted that one of the beneficiaries had passed before he received his share of the residue and, given his illness, could have used his inheritance to make his final years more comfortable. Second, it observed that "an estate trustee's mandate [had] never been to hold the administration of an estate hostage in the hopes of increasing its value" (para. 31): *O'Neill v. O'Neill*, 2025 ONSC 2892, 2025 CarswellOnt 7488 (Ont. S.C.J.).

Removal of Estate Trustees — Legal Costs of Appeal — Estate Trustees Personally Liable — Appeal Unnecessary and Against Estate's Interests — The appellants were estate trustees under a will. The deceased's son was the only beneficiary of the estate. He sought their removal as estate trustees alleging that they had not informed him that they planned to sell the family cottage, made it difficult for him to retrieve his belongings from the property, transferred the cottage to a third party rather than to him as part of the estate and as a

result triggered a large and unnecessary capital gains tax. The Court of Appeal upheld the motion judge's decision to remove the trustees. It noted her finding that the son was the only beneficiary, that he had lost all trust in the appellants for the reasons raised in his allegations and, as the interests of the beneficiaries must be the primary concern of the court, it was apparent that the appellants should be removed. The Court of Appeal also found that there was ample support for the motion judge's finding that, going forward, the appellants would likely have mishandled the estate. The Court of Appeal then went on to order that the appellants pay $21,000 in costs in their personal capacity upon finding that their appeal was unnecessary and against the estate's interests: *MacBeth Estate v. MacBeth*, 2025 ONCA 360, 2025 CarswellOnt 6999 (Ont. C.A.).

Estate Trustee — Duty to Account — Where Assets Held Jointly with Deceased — An estate trustee gave an accounting but did not disclose any of the joint assets that she held with the deceased other than a GIC for $158,030.19, which she purported to pay out voluntarily as though under the will because her mother had expressed this wish. Her argument was that the joint assets were not estate assets and thus did not need to be disclosed. The court did not accept this argument. It found that, as estate trustee, she had an obligation to disclose all assets the deceased held jointly with others, including herself. It noted that that counsel for the trustee had acknowledged the presumption of a resulting trust in the case of the joint assets but had submitted that, while the presumption can be rebutted, only a court could make that final determination. The court questioned, however, how a determination could be made if interested parties were not even aware of the joint assets. It went on to hold, moreover, that if there is a rebuttable presumption that an asset belonged to the estate, it should be included at least on a tentative basis in the initial accounting and noted that that is now required under recent amendments to the *Surrogate Rules*, Alta. Reg. 130/1995, rule 26(1) and form GA2 (effective January 1, 2024): *Syryda Estate v. Rathwell*, 2025 ABKB 285, 2025 CarswellAlta 1075 (Alta. K.B.).

ProView Developments

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