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### ESTATE ADMINISTRATION

Armstrong

Release No. 3, April 2024

*Estate Administration: A Solicitor's Reference Manual* is a how-to guide dealing with all aspects of estate administration in Ontario. Text is augmented by up-to-date forms, precedents, letters and checklists. Commonly used statutes and regulations are reproduced in full. All aspects of estate administration are examined, including the conveyancing of real property and the income tax implications arising upon death.

### What's New in this Update:

In this release, updates have been made to Chapter 3 (Realization of Assets, Settlement of Liabilities and Distribution of Estate), Appendix C (Authored Special Instructions), Appendix E (Special Instructions Digests), Appendix WP (Words and Phrases).

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## Highlights:

This release contains updates and Authored Special Instructions and their related digest sections. These include:

- § C1:3. Special Instruction 2—Funeral Arrangements
- § C1:16. Special Instruction 11A—Execution: Substantial Compliance with Legislation
- § C1:22. Special Instruction 14—Competency of Executors or Estates Trustees
- § C1:40. Special Instruction 25A—Ademption
- § C1:73. Special Instruction 47B—Joint Ownership—Bank, Investment Accounts, and Real Estate

The caselaw highlights in this release include:

- **Abatement or Ademption - Life Interest in Real Property** — The court had to consider whether the life Interest contained in testator’s Will, allowing the applicant to take up residence in a property owned by the Estate, would adeem or abate if the Estate was de facto insolvent. The court found that it would abate. The proceeds available in the Estate’s bank account appeared insufficient to satisfy the Estate’s liabilities. The Estate’s only substantial asset was the Property. To avoid a sale of the Property in favour of the life interest could render the Estate insolvent and expose the personal representatives to personal liability for the outstanding debt. As the passing of accounts had not yet occurred, it was found to be too early to determine the solvency of the estate. However, the court stated that if, once the accounts are passed, the Property was the only asset, the bequest may be considered abated. The court stated at that a life Interest was no different than any other bequest: *Daye v. Daye Estate*, 2023 NSSC 305, 2023 CarswellNS 782
- **Estates and trusts — Estates — Personal representatives — Competency — Misconduct** — In this case the court found that the removal of the Estate Trustee was necessary for the proper administration of the Deceased’s Estate, and the welfare of the Estate and its beneficiaries. The home she lived in was the principal asset of the Estate and she had not taken sufficient steps to preserve it, further she had breached a court order related to this, and had breached the provision of the will requiring that she maintain and repair the property. The court noted that in *Kasanda v. Sartarelli*, 2023 ONSC 4400, 2023 CarswellOnt 11622, the Court had held that “past misconduct may justify removal if it is likely to continue in the future”, given that the Estate Trustee had had ample time to comply with the court order and rectify the issues, the court found that her removal was warranted: *Vario v. Vario*, 2023 ONSC 5110, 2023 CarswellOnt 14092.
- **Joint Ownership — Evidence- Subsequent to the Transfer — Quality of Relationship** — The deceased was survived by five children from his first marriage and a common law spouse of almost forty

years. At the time of his death the deceased and his spouse jointly held 4 bank accounts. The deceased was the sole contributor to three of the accounts. The trial judge while finding that the presumption of advancement did not apply to gratuitous transfers between common law spouses, found that the common law spouse of the deceased was the surviving owner of the joint accounts. The decision was upheld on appeal. The determination of the beneficial ownership of the jointly held accounts was one of intention. The trial judge had not erred in considering the quality of relationship between deceased and his common law spouse in context of an examination of the *Pecore* factor of “evidence subsequent to the transfer” as corroborative evidence tending towards rebutting presumption of resulting trust [*Pecore v. Pecore* 2007 SCC 17, 2007 CarswellOnt 2752, 2007 CarswellOnt 2753, [2007] 1 S.C.R. 795, [2007] W.D.F.L. 1902, [2007] S.C.J. No. 17, 156 A.C.W.S. (3d) 502, 224 O.A.C. 330, 279 D.L.R. (4th) 513, 32 E.T.R. (3d) 1, 361 N.R. 1, 37 R.F.L. (6th) 237, J.E. 2007-874]. Though Supreme Court of Canada did not explicitly include quality of relationship in its list of factors, there was no reason why courts could not consider evidence regarding the quality of the relationship between the transferor and the transferee in order to determine whether the presumption of resulting trust has been rebutted. The appeal court noted the close relationship of the deceased to his spouse compared to those who were making a claim to the funds, saying at para 35: “37 Certainly, love and affection are not the only motivators for gift-giving. The reasons behind a gift may be myriad and complicated and include feelings of gratitude or guilt or charity or the emotional benefits that come with benevolence. But, it cannot be said that considering the absolute or relative quality of the relationship between the deceased, on one hand, and each of the various claimants, on the other, is an error of law within the *Pecore* framework”: *Edgecombe v. Nicholas* 2023 NLCA 19, 2023 CarswellNfld 162, 483 D.L.R. (4th) 647, 89 R.F.L. (8th) 259.

## 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 and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages