

## Publisher's Note

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<b>ESTATE LITIGATION</b> Brian A. Schnurr Release No. 8, December 2024
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*Estate Litigation, 2<sup>nd</sup> Edition*, is a comprehensive, practical work covering all facets of estate litigation including mental incompetency disputes, challenges to wills, *Family Law Act* claims, passing of executors' accounts, presumption of death and dependant support claims. The publication includes extensive precedents along with relevant statutory material.

### What's New in this Update:

This release features updates to Issues in Focus and the Bibliography.

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## Highlights Include:

**APPENDIX IF. ISSUES IN FOCUS—§ IF:34—Does an estate have to honour a cheque that was given as a gift when there were insufficient funds in the bank account?**—There are three essential elements for an *inter vivos* gift to be valid and enforceable: (i) an intention to donate on the part of the transferor; (ii) an acceptance on the part of the transferee; and (iii) a sufficient act of delivery. Present case law suggests that where a transferor has insufficient funds in his or her bank account to satisfy a cheque ‘gifted’ to a transferee, the third element of a gift—an act of delivery—is not carried out. Consequently, upon the death of the transferor, the estate has no obligation to honour the cheque as no gift was ever actualized. This conclusion, however, depends largely on the circumstances of each case.

**APPENDIX IF. ISSUES IN FOCUS—§ IF:58—What rights do donors have to provide input and control the direction taken by the beneficiary of donated funds where the funds are given for a designated purpose? When will the court order the Public Guardian and Trustee under section 6 of the Charities Accounting Act (Ontario) to investigate a charity?**—Charities and their donors usually share the same goal that donations effectively support the mission of the particular charity. However, tensions can arise. On the one hand, charities will typically want to maximize donations they receive while also maintaining freedom to use those donated funds as they see fit to best realize their charitable aims. On the other hand, donors who donate funds for specific purposes have a legitimate interest to ensure their donated funds are being used as intended. Courts will order the Public Guardian and Trustee (“PGT”) to investigate how donated funds have been dealt with or disposed of only in serious situations where there is evidence that the charity has violated the public interest by using donated funds for improper purposes outside of the charity’s mission. Where donors wish to retain more control over how their designated funds are being used by a charity in situations where an investigation under the *Act* by the PGT is not warranted, they may have other civil remedies. However, donors should also consider the more proactive option of retaining a qualified estate and trusts lawyer before the donation is made to structure the donation as a restricted charitable purpose trust with conditions or restrictions acceptable to both the donor and charity, including enhanced provisions for audits of and financial disclosure by the charity.

## 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