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### ESTATE LITIGATION

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Release No. 1, January 2025

*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 Appendix A—Legislation and Appendix WP—Words and Phrases.

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## Highlights Include:

**APPENDIX WP WORDS AND PHRASES—DISTRIBUTION**—At the hearing of this application, [the respondent] relied on s. 155(2)(c) of the *WESA* [*Wills, Estates and Succession Act*, S.B.C. 2009, c. 13], to support her argument that her claim in this action ought to preclude distributions from either estate... The Applicants ... observe that the word “distribution” may either refer to “the act by which ... assets are given out or delivered” (the “First Meaning”) or to “how the estate is apportioned or divided between the parties” (the “Second Meaning”). They submit that the Second Meaning should be applied in this case, and that [the respondent’s] claims—at least those with which she is proceeding—would not “affect the distribution” of assets under the General Will or the Restricted Will in the sense that the distribution scheme would not be altered. By contrast, [the respondent] submits that the First Meaning is applicable here. I understand her argument to be that s. 155(2)(c) is intended to prohibit any payment out of money from an estate where there are proceedings that may affect the estate’s capacity to pay the liabilities arising from those proceedings... the interpretation advanced by the Applicants ...—the Second Meaning—is the correct one. Read as a whole, s. 155 is intended to forestall the paying out of money from an estate if there is an ongoing dispute about who is entitled to what under the will at issue. (*Holmes v. Holmes* (2024), 2024 CarswellBC 1260, 2024 BCSC 737 (B.C. S.C.) at para. 31, 36, 37, 38, 39, 41 Loo J.).

**APPENDIX WP. WORDS AND PHRASES—INTERLOCUTORY DECISION**—An interlocutory decision is one made during the course of a proceeding that does not decide the central issue in the proceeding or determine the substantive merits of a cause of action or substantive defence... (*Miller v. Miller Estate* (2024), 2024 CarswellSask 296, 2024 SKCA 70 (Sask. C.A.) at para. 13 Kalmakoff J.A.).

**APPENDIX WP. WORDS AND PHRASES—INTER VIVOS GIFT**—An *inter vivos* gift, must be distinguished from a testamentary gift. An *inter vivos* gift, takes effect immediately, whereas a testamentary gift takes effect only upon the death of the testator. (*Wiffin v. Lau* (2024), 2024 CarswellOnt 200, 2024 ONSC 224 (Ont. S.C.J.) at para. 35 Antoniani, J.).

**LEGISLATION**—Legislation in this text has been updated with the latest amendments.

## ProView Developments

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