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COMPENSATION & DUTIES OF ESTATE TRUSTEES, GUARDIANS & ATTORNEYS

Jennifer J. Jenkins
Release No. 1, May 2026

This year's release has been converted into a more user-friendly softbound book. Subscribers will receive a softbound book to replace any relevant revised content within the work. This should greatly improve the reader's experience in terms of filing pages within a limited binder system—allowing the work to easily expand as discussion of the law dictates.

Filing Instructions

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What's New in this Update:

This release features updates in Chapters 9 (Personal Representative Misconduct: Impact on Compensation), 15 (Estate Trustee Duties—Estate Creditors, Administration Taxes, Digital Estates), 17 (Statutory Estate Remedies—Ontario's *Family Law Act* and Succession *Law Reform Act*), 18 (Common Law Equitable Remedies—Resulting and Constructive Trusts, Unjust Enrichment and More), 19 (Applications to Court—Protection for Estate Trustees), 20 (Discharge and Removal of Personal Representative and Estate Trustees), 21 (Evidence, Procedure and Limitation Periods), 22 (Costs in Contentious Estate Litigation), and 25 (Advising Attorneys and Guardians on Duties).

Highlights:

- **Chapter 9 Personal Representative Misconduct: Impact on Compensation**
Gowans Estate A British Columbia decision on a contested passing of accounts reduced executor compensation due to valid objections.
- **Chapter 15 Estate Trustee Duties—Estate Creditors, Administration Taxes, Digital Estates**
Section IX—added section 21.1(1) Court-Ordered Validity of Testamentary Intentions.
In *Madhani*, Justice A.A. Sanfilippo establishes a two-step analysis to validate wills under section 21.1 of the *SLRA*.
In *Dunham*, the court validated a will with two photocopied pages and compared rules for lost wills and for validated wills.
In *Hejno*, Ontario's Court of Appeal dismisses a validation of a draft will and remitted the matter back to the Superior Court to collect evidence.
- **Chapter 18 Common Law Equitable Remedies—Resulting and Constructive Trusts, Unjust Enrichment and More**
In *Simko*, Justice Spencer Nicholson dismissed claims of gratuitous transfers and resulting trust relying on a two-year limitation period.
In *Buffa*, the court found evidence to rebut resulting trust presumptions.
- **Chapter 19 Applications to Court—Protection for Estate Trustees**
New section VI added. Applications for Person Under Disability and *Higgins* case.
- **Chapter 20 Discharge and Removal of Personal Representative and Estate Trustees**
In *MacBeth Estate*, Ontario's Court of Appeal affirmed a motion judge's discretion to remove estate trustees for mismanagement, ordering them to pay appeal costs personally.
- **Chapter 21 Evidence, Procedure and Limitation Peri-**

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In *Macpherson*, the Ontario Court of Appeal dismissed an appeal. Their function was not to provide another hearing. However, a provision on liability was varied.

- **Chapter 20 Discharge and Removal of Personal Representative and Estate Trustees**

In *Tessaro*, Justice Myers dismissed negligence claims against a lawyer commenced beyond the ultimate limitation period of 15 years.

- **Chapter 22 Costs in Contentious Estate Litigation**

In *Bulut*, leave to appeal the arbitrator's decision was denied. Appeal quashed with costs.

- **Chapter 25 Advising Attorneys and Guardians on Duties**

McGrath Respondents not required to pass accounts as they had no trust obligation and did not act as trustees or attorneys *de son tort*.