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WIDDIFIELD ON EXECUTORS AND TRUSTEES, 6TH EDITION

Release No. 2, February 2026

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 15 (Resignation, Removal and Appointment of Trustees); and Words and Phrases.

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Highlights of This Release, Include:

Lapse—Anti-lapse provisions—Contrary intention—The deceased's will provided that her real estate was to be left to her husband and, in an Alternative Transfer of Property clause, if he predeceased her, a property was to be left to her son and another to her daughter. This clause provided that the son was to receive the property left to him "absolutely", as was the daughter. The will also contained the common clause intended to exclude a testamentary gift from, for example, the beneficiary's net family property under s. 4(2) of the *Family Law Act*, R.S.O. 1990, c. F.3. The son predeceased the mother and the daughter argued that the two provisions manifested a contrary intention that would oust the operation of the anti-lapse provision. The court did not agree. It found that the words "for their own use absolutely"—or, as here, the word "absolutely"—were not in themselves sufficient to demonstrate a contrary intention; this depended upon the totality of the will, the language used in the will, and the circumstances surrounding the creation of the will to determine the necessary intention of the testator. It concluded that the deceased's intention in transferring the property to the son "absolutely" had its ordinary meaning, which is a gift of a full estate in fee simple. The word "absolutely" in the will did not express any intention to gift over the daughter should the son predecease the testator. With regard to the clause related to the *Family Law Act*, it found that the clause would only become operative if one of the beneficiaries separated or divorced. It was to protect her son during his lifetime and did not demonstrate an intention to prevent the property from passing to his wife following his death. The daughter also argued that the testator intended to treat her children equally and that the Alternative Transfer of Property clause was best understood as a class or joint gift of all her real property to her children. The court agreed that the testator generally sought to treat her children equally, but this general objective did not manifest an intention that would oust the anti-lapse provision in respect of the property: *Devonport v. Devonport*, 2024 ONSC 6764, 2024 CarswellOnt 19151 (Ont. S.C.J.), affirmed 2025 ONCA 753, 2025 CarswellOnt 18191 (Ont. C.A.).

Rectification of will—Intention of testator—Language of will requiring addition of words—The cousins of the deceased initially applied for a declaration of intestacy, as to the residue of the deceased's estate. The deceased's will did not name a residual beneficiary. The residue made up the entirety of the estate. An application was granted in part, with partial intestacy declared by the application judge. The appellant was named the personal representative in the will but was not given a clear gift. The will stated only that: "[i]n the event that [the appellant] predeceases me then I bequeath my estate to the Dogwood Foundation". The personal representative claimed that it was the deceased's intention for her to be the beneficiary of the estate. The personal representative's appeal from the application judgment was dismissed. The court found that conflicting inferences were present in the will, with extrinsic evidence being insufficient to clarify the testator's intention. The Court of Appeal found that the will clauses were not inconsistent with the appellant's claim but that the will could not be interpreted as naming a residual beneficiary based on its language without adding words, which was not the role of the court. The evidence for rectification was not sufficient:

> 7. That said, the problem created by the will as drafted is that the interpretation advocated for by the appellant is not available without adding a provision that is not there. In other words, even without treating any clause in the will as inconsistent

> with an intention that the appellant receive the residue of the estate, the will, as drafted, cannot be *interpreted* as naming a residual beneficiary. Rather, the appellant needed to make a case for rectification. This requires "clear and convincing evidence . . . that the will does not reflect the testator's intentions because of (a) an accidental slip, omission or misdescription, or (b) a misunderstanding of, or a failure to give effect to, the testator's instructions by a person who prepared the will": *Wills and Succession Act*, SA 2010, c W-12.2, s. 39(1). On this record, with no evidence regarding the testator's instructions, and only the contingency clause and some information about the testator's circumstances and relationships that was of limited probative value, it was open to the chambers judge to determine that the testator's intentions were not sufficiently clear.

Constant Estate (Re), 2025 ABCA 329, 2025 CarswellAlta 2298 (Alta. C.A.).

Legal costs of executor—Executor defending removal application—Impact of testator's responsibility for selection of estate trustee—In a successful application to remove her sister as estate trustee, a beneficiary sought costs from the trustee personally as special costs, and an order that the trustee not be able to recover her own costs from the estate for defending this application. The court stated that there was precedent for denying costs from the estate for an executor who unsuccessfully defends themselves from removal on the basis that they are defending themselves personally in the litigation, not the estate, and it would be unfair to the beneficiaries: *Levi-Bandel v. Talesiesin Estate*, 2011 BCSC 247, 2011 CarswellBC 384 (B.C. S.C. [In Chambers]), paras. 33-36. It also said there was precedent for special costs being awarded against an executor who was removed for showing a troubling disregard for their duties as administrator and who placed their own interests above those of the beneficiaries: *Estate of Forbes McTavish Campbell*, 2015 BCSC 774, (*sub nom.* Campbell v. Campbell) 2015 CarswellBC 1254 (B.C. S.C.). It found, in this case, that the trustee had not been able to distinguish her own interests from those of the estate, and served her own interests by continuing to live in estate property, rent-free, for two and-a-half years despite her sister's repeated demands for the sale and distribution of her inheritance. Also, the court found that the beneficiary had been required to hire legal counsel in this matter and did not have the means to pay for this outside the distribution of her inheritance from the estate. However, it found that part of the responsibility for the situation was rooted in the testator's decision to appoint one of his daughters as executor of his will, knowing of the conflict between them. The court also noted that having the parties provide submissions on special costs would further delay the matter and eat into their resources and the resources of the estate. In its view the cost of further submissions and litigation would be disproportionate to the value of the estate. Given all the circumstances the court found, while acknowledging it was an increasingly rare outcome, that this was a case where the estate should bear the costs of the application: *Koshman Estate (Re)*, 2025 BCSC 2193, 2025 CarswellBC 3332 (B.C. S.C.).

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