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ESTATE ADMINISTRATION

Armstrong

Release No. 6, June 2026

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:

This release features updates to Chapter 1 Administration Prior to Issuance of Certificate of Appointment of Estate Trustee, Chapter 3 Realization of Assets, Settlement of Liabilities and Distribution of Estate, Appendix C Authored Special Instructions, Appendix E Special Instructions Digests and Appendix WP Words and Phrases.

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Highlights

This release contains updates to this work that include the Authored Special Instructions and their related digest sections. These include:

- § 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
- § C1:45. Special Instruction 29A—Rectification of Wills
- § C1:47. Special Instruction 31—Wills Made Outside of Ontario
- § C1:86. Special Instruction 47N—Pets as Assets and Beneficiaries

Among the caselaw highlights in this release, are the following:

- **Draft Will—Validation— Succession Law Reform Act, R.S.O. 1990, c. S.26 (SLRA), s. 21.1(1)—**This dealt with the thorny issue of validating a draft will pursuant to s. 21.1(1) of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (SLRA) This was an application to validate a draft will pursuant to s. 21.1(1) of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (SLRA) .Without an order validating the draft will, the SLRA's provisions on intestacy would govern the distribution of the deceased's estate and his property would pass to his estranged surviving siblings and the children of his predeceased brother. The deceased had died suddenly after meeting with a lawyer who had drafted a will and powers of attorney for him. A letter from the lawyer, which the deceased had picked up, enclosed drafts of the will and power of attorney, confirmed an appointment for October 16, 2024 to sign the documents, and also stated: "Kindly review the draft and advise of any changes or corrections, preferably at least two or three days prior to your appointment. The deceased died before the appointment. The sole issue before the court was whether the draft will set out the deceased's testamentary intentions. In coming to their decision, Muszynski J. noted that in the caselaw dealing with court validated wills, it was evident that a key consideration was whether the deceased has demonstrated "a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death": *Estate of Young*, 2015 BCSC 182, at para. 35; *White v. White*, 2023 ONSC 3740, 89 E.T.R. (4th) 25, at para. 18; *Skopyk Estate*, 2017 BCSC 2335, at para. 21; *Salmon v. Rombough*, 2024 ONSC 1186, at para. 115; *Smith Estate, Re*, 2016 BCSC 350, at para. 19; and *McKinlay v. Currie et al*, 2025 ONSC 3471, at para. 28. Muszynski J noted that the applicant had relied on *Grattan v. Grattan*, February 1, 2023, Court File No. 22-0054 Superior Court of Justice Belleville, to support her position that a draft will can be validated pursuant to s. 21.1 of the SLRA if the court is satisfied it reflects the testamentary intentions of the deceased. Muszynski J. observed that aside from *Grattan*, courts in Ontario have more frequently allowed applications under s. 21.1 of the SLRA to cure technical deficiencies to a signed will. The court noted that in *Hejno v. Hejno*, 2025 ONCA 876 a draft will was validated by the application judge pursuant to s. 21.1 of the SLRA. As it was unopposed, the application judge did not issue reasons for judgment. The Court of Appeal allowed the appeal and noted that without "the benefit of reasons in the court below or full argument

before us, this is not an appropriate case for us to definitively determine the legal test that governs applications under s. 21.1 of the SLRA." Muszynski J. stated that the validation of an improperly executed or otherwise deficient will is a fact specific inquiry that often requires reliance on extrinsic evidence. Muszynski J. noted that the applicant had put forward evidence on instances where the deceased had expressed his intentions with respect to the disposal of his property, however the court cited *Madhani v. Fast*, 2025 ONSC 4100, 2025 CarswellOnt 11207, 2025 A.C.W.S. 3484, 99 E.T.R. (4th) 111, where the court said, "expressions of intentions as to how a testator would like their property to be disposed of after death are not testamentary intentions. Expressions of intentions, alone, are insufficient to ground a valid will." Muszynski J. noted that this distinction between expressions of intentions and testamentary intentions was at the heart of this case and the applicant had not satisfied the court that the draft reflected the deceased's testamentary intentions, meaning his deliberate or fixed and final expression of intention as to the disposal of his property on death for the following reasons: a. While there were some similarities between an undated, handwritten list of intended dispositions found in the deceased's home and the draft will, there were notable discrepancies. b. There was no evidence that the deceased reviewed the draft will. c. The lawyer's letter enclosing the draft will invited the deceased to review draft and to "advise of any changes or corrections" at least two to three days prior to the signing appointment. d. The suggested deadline for the deceased to "advise of any changes or corrections" had not yet expired before he died. e. While the lawyer's evidence was that the deceased was clear in his instructions and had made up his mind as to who he wanted to benefit from his estate, he also acknowledged that he scheduled a follow-up appointment weeks later to allow him an opportunity to review the draft documents and make any requested changes or corrections. Muszynski J. found that the draft will could not be validated by s. 21.1 of the SLRA. This was because " people change their minds" and the deceased appeared to have changed his mind on at least one occasion between the time he had made his handwritten list and the time he met with his lawyer and it was unclear whether he would have requested any further changes or corrections to the will before he returned to sign a final version: *Smith v. Bechtel et al*, 2026 ONSC 975, 2026 CarswellOnt 2113.

- **Domicile—Will Made In Quebec—Codicil Made In Ontario—**The testator died in in Kingston, Ontario. She had executed a will in 1973 in Quebec and had that at the time, resided there. Attached to the original will was a handwritten "amendment" "to reflect the present situation", dated 10 February 1998. The place where the codicil was made was not stated, but the court found that was made in Ontario and that the testator had been domiciled in Ontario for 35 years. The estate consisted entirely of personal property. On an application for a Certificate of Appointment, the court sought to determine whether it had the jurisdiction to consider the amendment of a Quebec will by an Ontario codicil. It found no caselaw on point and considered the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 ("SLRA") which stated: 36 (1) The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated. (2) Subject to other provisions of

this Part, the manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his or her death. 38 A change of domicile of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction. 39 Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables. The court found that the will was valid and that the handwritten codicil, it presumed to have been made in Ontario, and met the requirements of a holograph will under Ontario law. It cited *Grillo Estate v. Grillo* 2015 ONSC 1352, in which the court found that s. 36(2) conferred jurisdiction for the court to deal with the validity of an alleged holograph will of an Ontario domiciled deceased which had been made in Italy. The will made in Italy, purported to supersede an Ontario will which the deceased had made earlier. The court found that it had the jurisdiction to recognise and give effect to the Quebec will of the deceased, as revised by the subsequent Ontario handwritten codicil, in a similar manner to the court in *Grillo Estate*: *Re Pregent Estate*, 2025 ONSC 7208, 2025 CarswellOnt 21662.

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