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### **ESTATE ADMINISTRATION**

**Armstrong**

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*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 amends the commentary in text to reflect new developments in the jurisprudence. In addition to these amendments a new special instruction has been added to reflect *Yurkiw Estate (Re)* 2025 BCSC 1026, 2025 CarswellBC 1644, in which the B.C. Supreme Court clarified what a trust document is and, in the course of its decision, commented on the practices it expected of corporate trustees in honouring their obligation to ensure the integrity of a trust file – see further discussion in Case Law Highlights below.

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### Case Law Highlights

- **Trustees—Production of file—Definition of “Trust Document” and “Entire File”**—This case dealt with an application by a beneficiary asking that the corporate trustee of an estate comply with a previous order of the court by producing copies of its “entire file” to him as it related to the estate. The trustee had clearly failed to provide all relevant documents within the required timeframe. The issue arose as to the scope of the phrase “entire file”. In the course of its decision the court commented on the practices it expected of corporate trustees in honouring their obligation to ensure the integrity of a trust file. The court noted, inter alia, that trustees should have procedures for electronic record retention and an assertion by it that reconstructing the file was expensive or time consuming, indicated that prior planning was not adequate. The court observed that courts will defer to a trustee’s reasonable record management and retention policies, but they are not going to be sympathetic to an institutional trustee coming back and saying it is no longer possible to conceptually determine what the “file” is, especially in the absence of evidence of diligence on the institutional trustee’s part. Nevertheless, the court went on to clarify the conceptual issue of what the “file” was. It stated that, as a starting point, it was the totality of trust documents. To determine what the file was, therefore, it was necessary to ask what makes a record (i.e., a medium encoding information) a “trust document”. Citing *Re Londonderry’s Settlement* [1964] 3 All E.R. 855 stated that a “trust document”, was a document in the possession of the trustee containing information about the trust, not subject to some rule permitting withholding. Applying the principle of technological neutrality, this meant that all physical and electronic records in the possession or control of the trustee that contain information about the trust are trust documents (and therefore in the “file”), unless:
  - a) They are “transitory” records. This would be records of a form that the trustee sets out in advance that it will not retain because the information is either duplicative or unimportant. These transitory records are not part of the “file” if they are, in fact, deleted or made inaccessible. The legitimacy of having rules providing for non-retention of transitory documents arises because this may be in the interests of the beneficiaries, for example, if retention is expensive.
  - b) They are within a category of exception to the principle that beneficiaries are entitled to see trust documents. One such category would be documents subject to solicitor-client privilege where the trustee can maintain a separate interest from the beneficiary in the legal advice. The Court commented that while it would be best practice to identify these categories in advance and to set up information retention systems based on those categories, this was not required.
- The Court stated that unless all the information contained in a record is within one of these exceptions, the record is a “trust document” if it contains information relating to the trust and is in the possession of the trustee. So, the “file” comprises all such records. It noted that the exceptions are set out in the case law. If there were to be any further exceptions, the court held, this must be explained to the beneficiaries at the outset, the exception must be in the interest of the beneficiaries (for example, by reducing expense) and the records must not relate to infor-

mation necessary to accounting for the management of the trust. One of the beneficiaries raised the question of whether there could be protection for privacy of each of the beneficiaries in what is disclosed. She was concerned about the disclosure of things like bank account numbers to a co-beneficiary with whom she had a difficult relationship. The court agreed that this protection could be provided. It stated that the basic principle was that the trust property, including information, must be handled in the interests of the beneficiaries. One of those interests is privacy, and that interest may exist vis-à-vis another beneficiary. So long as the trustee acts in an even-handed way with respect to all beneficiaries in maintaining privacy interests, and so long as the personal or private information is not necessary to evaluate the accounting, then the court had no difficulty with the trustee redacting information that was of a personal or confidential nature. The court opined that this category seemed like one recognized in *Re Londenderry's Settlement*. The court noted that at the outset of the trust, it would be best to for the trustee to indicate the nature of the redactions it would make in future disclosures or, alternatively, to get the agreement of the beneficiaries as to a protocol, but that it was not necessary if the trustee was able to defend the redactions as being even-handed and in the interests of the beneficiaries. The court then went on to order the costs of the application to be borne by the trustee and without indemnity from the trust corpus because this matter “really should not have gotten [that] far”: para.21: *Yurkiw Estate (Re)* 2025 BCSC 1026, 2025 CarswellBC 1644.

## **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