

Publisher's Note

2019 — Release 2

Previous release was 2019-1

From Your Library:

<input type="checkbox"/>	_____

Widdifield

Executors and Trustees, 6th Edition

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 3 (Claims Against the Estate For Debts), Chapter 5 (Bequests and Beneficiaries), Chapter 10 (Breach of Trust and Its Consequences), Chapter 11 (Executor's Compensation); Chapter 14 (Passing Accounts), Chapter 15 (Resignation, Removal and Appointment of Trustees), and Chapter 18 (Words and Phrases). Highlights of this release, include:

Highlights

Unjust Enrichment — Constructive Trust — Irrevocable Beneficiary Designations —

The applicant and the deceased were married for more than 20 years. The applicant was named the beneficiary of the deceased's life insurance policy and from its inception until the breakup of their marriage, the deceased and the applicant paid insurance premiums on policy from their joint account. Pursuant to an oral agreement, the applicant continued to pay the premiums and the policy remained in

THOMSON REUTERS CANADA® Customer Relations

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

Email CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

effect until her husband's death. Following their divorce, the deceased established a relationship with the respondent and contrary to the oral agreement revoked the applicant's designation and designated the respondent as the irrevocable beneficiary. The trial judge found that there was oral agreement between the former spouses, which took form of equitable assignment, and held that the applicant should receive life insurance proceeds. The respondent's appeal was allowed. The Court of Appeal ruled that trial judge erred in relying on doctrine of equitable assignment, which was not pleaded or argued, and that because record was not created on ground of equitable assignment, trial judge's findings with respect to it were unreliable. The applicant's appeal was allowed by a majority of the Supreme Court which held that the respondent had been unjustly enriched and imposed a constructive trust in the appellant's favour. In doing so, it found that the designation of respondent as irrevocable beneficiary under ss. 190(1) and 191(1) of *Insurance Act* did not supersede applicant's contractual interest in receiving proceeds of the policy, Côté J. stating at para. 70: "Nothing in the Insurance Act can be read as ousting the common law or equitable rights that persons other than the designated beneficiary may have in policy proceeds": *Moore v. Sweet*, 2018 SCC 52, 2018 CSC 52, 2018 CarswellOnt 19478, 2018 CarswellOnt 19479, 298 A.C.W.S. (3d) 401, 43 C.C.P.B. (2nd) 161.

Passing of Accounts — When Will Court Refuse to Compel — The court made an order dispensing with final passing of accounts and approving an informal accounting even though there appeared to be significant deficiencies in the accounts. The estate, valued at \$284,750 at the high end, was going to a single beneficiary who was disabled. The court stated that greater good was served by bringing the matter to close rather than pursuing further accounting inquiries as additional legal and accounting costs would have had result of impoverishing estate to the beneficiary's detriment: *Moore Estate (Re)*, 2018 ABQB 614, 2018 CarswellAlta 1784, [2018] A.W.L.D. 3693, [2018] A.W.L.D. 3694, [2018] A.W.L.D. 3695, [2018] A.W.L.D. 3696, [2018] A.W.L.D. 3697, [2018] A.W.L.D. 3706, 296 A.C.W.S. (3d) 353, 41 E.T.R. (4th) 103.

Executor Compensation — Comparison Made to Administrator Appointed Under Administration of Estates Act — Factors Affecting Compensation — There had been significant delay and conflict between the beneficiaries and executors. The executors sought court approval of fees of \$184,519, which was five percent of \$3,690,386 which was the realized value of assets plus income earned by estate during administration. The court approved the fee. It considered legislative direction as to the fees that an official administrator could charge when administering an estate under *Administration of Estates Act*, S.S. 1998, c. A-4.1, and found, on a similar file, that an administrator would have been entitled to charge almost double the amount the executors sought. The court also noted that the duration of administration of estate was significantly extended by opposition and challenges by the beneficiaries to the actions of executors; the executors had not acted in bad faith in administration of estate; the administration of estate was complicated and challenging; time occupied by the executors in performing their

duties was significant; they displayed significant skill and ability and the administration was successful: *Gutiw-Kuzub v. Pobran*, 2018 SKQB 218, 2018 CarswellSask 388, 295 A.C.W.S. (3d) 899.

Estate Assets — Distribution — In Specie — The Supreme Court of Canada found that a beneficiary had not raised a compelling objection to an *in specie* distribution of the property where that objection was grounded in her desire to escape her equitable obligation and to spite her brother: *Cowper-Smith v. Morgan*, 2017 SCC 61, 2017 CSC 61, 2017 CarswellBC 3482, 2017 CarswellBC 3483, [2017] 2 S.C.R. 754, [2018] 1 W.W.R. 209, 285 A.C.W.S. (3d) 776, 32 E.T.R. (4th) 1, 416 D.L.R. (4th) 1, 4 B.C.L.R. (6th) 1.

Resulting Trust — Life Interest — A son transferred his property into the name of his mother. The property was a matrimonial home, and the son's wife was required to consent to transfer. No monetary consideration flowed on the transfer. The mother executed a will containing a provision to transfer the property to the son for his own use absolutely. The provision stated that if something happened to the son, the property should be transferred to his wife, but that his father would be at liberty to occupy house, rent-free. The mother died in 2007 and the son in 2016. On an application to the court, the father accepted that the property was an asset of the son's estate but, in his view, this was pursuant to s. 9(1) of the *Estates Administration Act*, R.S.O. 1990, c. E.22 that vested the property in the son three years after the mother's death. As such, the property was subject to the father's life interest. The court found that on balance of probabilities, the son had conveyed legal and beneficial title to mother subject to resulting trust in his favour. The reason for transfer was to "creditor-proof" property. There was no evidence he intended to convey home to the mother for her absolute and unrestricted ownership. This was his only residence; it was home to him, his wife, and their children. There was no apparent reason why the son would have gifted the property to the mother. Given the determination that the mother held the property subject to a resulting trust in favour of the son during her lifetime, the father's submission could not succeed: *Trezzi v. Trezzi*, 2018 ONSC 4711, 2018 CarswellOnt 14780, 296 A.C.W.S. (3d) 445 (Ont. S.C.J.).

