

The Canadian Abridgment eDigests -- Estates and Trusts

2021-48

November 29, 2021

EST.I.6.b.i.A

Subject Title: Estates and trusts

Classification Number: I.6.b.i.A

Estates -- Legacies and devises -- Nature of estate created -- Life estate -- General principles

Testator died and bequeathed life estate in all land and farm equipment to his brother, with remainder interest to testator's nephews and residual estate to his sisters -- Estate applied for order for distribution and case management judge ordered section of land to be sold and net proceeds partially distributed to sisters -- Brother appealed and nephews cross-appealed -- Appeals dismissed and case returned to case management judge for determination of values and accounting issues prior to final distribution of estate -- Case management judge had jurisdiction to deal with substantive issues and provided nephews with adequate opportunity to be heard -- Dispute between brother and his nephews over whether value of life estate was fixed number or depreciated over time as his life expectancy shortened needed to be resolved -- Value of life estate would affect calculation of amount brother owed to estate and amount estate owed to him -- There were no matters where case management judge was clearly wrong or failed to weigh relevant factors or made errors in principle -- Sale of section of land and distribution to sisters should proceed and accounting and valuation issues should be returned to case management judge.

Kachur Estate v. Kachur (2021), 2021 CarswellAlta 2497, 2021 ABCA 343, Frans Slatter J.A., Frederica Schutz J.A., Kevin Feehan J.A. (Alta. C.A.) [Alberta]

EST.I.8.b.iii

Subject Title: Estates and trusts

Classification Number: I.8.b.iii

Estates -- Dependants' relief legislation -- Factors for consideration -- Moral obligation

Parties were five siblings who worked at parents' grocery store between 1971 and 1981 without pay and who gave parents their pay cheques from other jobs -- Parties received pocket money, vehicles to commute to school and had their living and school expenses paid for by parents -- Family purchased house in 1975 -- Mother's will divided house equally between defendants and gifted residue of estate to defendants and plaintiffs equally -- Mother's handwritten letter explained she wished to leave house to defendants because defendants played greater role in caring for her than plaintiffs -- Of total value of mother's estate, plaintiffs were to receive five percent while defendants were to receive 42 percent -- Plaintiffs brought action for variation of mother's will and unjust enrichment -- Variation allowed; Unjust enrichment dismissed -- Defendants were each awarded specific gifts of \$300,000 and remainder of estate was to be divided equally among five siblings -- Variation achieved appropriate balance between mother's clear intent to recognize defendants' role in her final years while meeting her moral obligations to plaintiffs -- Purchase of house was made when family was joint

economic unit, and contributions of parties to economic life of family was substantial -- Plaintiffs were to be recognized for their significant sacrifices in last three years of mother's life, but distribution of assets in will did not make adequate, just, and equitable provision for plaintiffs -- While it was clear mother sought to favour defendants, it was less apparent how clearly she understood scale of unequal treatment under will.

Tang v. Tom ([2021](#), [2021 BCSC 1399](#), [2021 CarswellBC 2269](#)), Edelmann J. (B.C. S.C.) [British Columbia]

EST.I.13.g

Subject Title: Estates and trusts

Classification Number: I.13.g

Estates -- Passing of accounts -- Miscellaneous

Administration of estate had taken approximately seven years and executor was resident outside of province.

In the Matter of the Estate of Bert Gisborne, Deceased ([2021](#), [2021 BCSC 2113](#), [2021 CarswellBC 3405](#)), Keighley, In Chambers Master (B.C. S.C.) [British Columbia]

EST.I.14.c.v

Subject Title: Estates and trusts

Classification Number: I.14.c.v

Estates -- Remuneration of personal representatives -- Entitlement to compensation -- Miscellaneous

Executor was entitled to executor's fee, both capital fee and property management or maintenance fee.

In the Matter of the Estate of Bert Gisborne, Deceased ([2021](#), [2021 BCSC 2113](#), [2021 CarswellBC 3405](#)), Keighley, In Chambers Master (B.C. S.C.) [British Columbia]

EST.III.1.e.i

Subject Title: Estates and trusts

Classification Number: III.1.e.i

Trustees -- Nature of trustee's office -- Removal of trustee -- Failure to act

Beneficiary's share of deceased's estate was put in trust that directed trustee to pay income and capital of trust as for beneficiary's care, maintenance, education and benefit -- Codicil provided fund was to begin on beneficiary's 60th birthday -- Trustee interpreted trust as permitting use before beneficiary's 60th birthday in cases of need or emergency but trustee advised beneficiary to pursue other solutions before encroaching on capital -- Beneficiary complained trustee failed to adequately report on trust activities, did not provide adequate funds from trust during times of need, and made improper investments -- Beneficiary's evidence confirmed he received emails trustee sent that included annual trust reports, acknowledged receipt of electronic spreadsheets,

and conceded trustee accurately recorded all transactions -- Beneficiary brought application to remove trustee -- Application dismissed -- Beneficiary did not establish trustee was unfit to continue in role as trustee -- Trustee accounted for trust assets and reported regularly to beneficiary -- Trustee's understanding of her obligations under trust was not unreasonable and her advice to pursue other solutions before encroaching on trust's capital was reasonable -- Trustee never refused to respond to beneficiary's requests for assistance and did not manage trust contrary to deceased's intentions as manifested in will and codicil.

Parsons v. Zaransk ([2021](#)), [2021 CarswellBC 3375](#), [2021 BCSC 2092](#), Wilson J. (B.C. S.C.) [British Columbia]

EST.III.2.h.i.C

Subject Title: Estates and trusts

Classification Number: III.2.h.i.C

Trustees -- Powers and duties of trustees -- Conflict of interest -- Use of trust for own benefit -- Miscellaneous

Beneficiary's share of deceased's estate was put in trust that directed trustee to pay income and capital of trust as for beneficiary's care, maintenance, education and benefit -- Codicil provided fund was to begin on beneficiary's 60th birthday -- Trustee advised beneficiary of investment in start-up business that trustee made in her own name using trust funds because investment opportunity was available only to "accredited investors" -- Trustee made codicil to her will to indemnify trust and later deposited full amount of investment from her own money into fund -- Trustee paid only what trust paid initially without any adjustment for its anticipated success -- Beneficiary complained trustee failed to adequately report on trust activities, did not provide adequate funds from trust during times of need, and made improper investments -- Beneficiary's evidence confirmed he received emails trustee sent that included annual trust reports, acknowledged receipt of electronic spreadsheets, and conceded trustee accurately recorded all transactions -- Beneficiary brought application to remove trustee -- Application dismissed -- Beneficiary did not establish trustee was unfit to continue in role as trustee -- Trustee's decision to invest trust funds in start-up was error in judgment, decision was made in good faith, and trust was never at risk as trustee was always capable of reimbursing trust if investment failed.

Parsons v. Zaransk ([2021](#)), [2021 CarswellBC 3375](#), [2021 BCSC 2092](#), Wilson J. (B.C. S.C.) [British Columbia]

EST.III.5.d.i.B

Subject Title: Estates and trusts

Classification Number: III.5.d.i.B

Trustees -- Practice and procedure -- Costs -- Trustee's costs -- Payment out of trust funds

Beneficiary's share of deceased's estate was put in trust that directed trustee to pay income and capital of trust as for beneficiary's care, maintenance, education, and benefit -- Codicil provided fund was to begin on beneficiary's 60th birthday -- Trustee advised beneficiary of investment in start-up business that trustee made in

her own name using trust funds because investment opportunity was available only to "accredited investors" -- Trustee made codicil to her will to indemnify trust and later deposited full amount of investment from her own money into fund -- Trustee paid only what trust paid initially without any adjustment for its anticipated success -- Beneficiary complained trustee failed to adequately report on trust activities, did not provide adequate funds from trust during times of need, and made improper investments -- Beneficiary's evidence confirmed he received emails trustee sent that included annual trust reports, acknowledged receipt of electronic spreadsheets, and conceded trustee accurately recorded all transactions -- Beneficiary's application to remove trustee was dismissed -- Trustee sought reimbursement of costs out of trust -- Trustee's costs were to be reimbursed out of trust on special costs basis to be assessed -- Trustee was successful and order was appropriate in circumstances of case.

Parsons v. Zaransk ([2021](#)), [2021 CarswellBC 3375](#), [2021 BCSC 2092](#), Wilson J. (B.C. S.C.) [British Columbia]
