

# Trusts and Estates Litigation

The division of family assets frequently involves complex, highly charged and emotional litigation. It often results in permanent damage to both family relationships and estate assets. Whether the dispute requires the effective negotiation of a settlement or the intervention of the courts, the client needs representation by a law firm that is respected in the courtroom and known for strategic planning.

Lenczner Slaght's skills in quickly zeroing in on the heart of the dispute, finding the remedy, and strongly advocating for its clients' best interests are unparalleled. Responding to emergencies in high-stakes, high-profile cases that end up in court is our specialty—and we are experienced in handling volatile situations. Lawyers readily refer estates litigation matters to Lenczner Slaght when they need their clients' cases handled with maximum effectiveness, discretion, and speed.

We bring to bear the skills and courtroom experience that we have forged in complicated commercial litigation to estates cases where strength, sensitivity and fairness are important, and preservation of assets is a priority. In addition, our extensive experience in medical cases make us particularly effective in estates disputes involving incapacity and related issues.

Because we focus solely on litigation, other lawyers refer their clients and relatives of clients to us with confidence—in both the result and in the continuance of their client relationships. We also work with our clients' other professional advisors to ensure that no aspects of the case are neglected.

## RECOGNITION

- Best Lawyers in Canada (2014-2024)  
Administrative & Public Law, Corporate & Commercial Litigation, Health Care Law, Medical Negligence, Trusts and Estates

## SELECT CASES

- **Wood et al v Cook et al** – Counsel to the successful respondents in an Application by family members challenging the Will of a deceased on the basis of lack of testamentary capacity and undue influence.
- **Estate of Alan Cherry** – Counsel for the estates trustee in multiple legal proceedings including a solicitors' negligence action, passing of accounts and claim for dependent's support.
- **Presley v Van Dusen** – Counsel to the homeowners in a successful appeal to determine a question of law that the limitation period did not expire prior to the commencement of the action based on the

appropriateness requirement of the discoverability provisions in the *Limitations Act, 2002*.

- **Lateef v Barrage** – Counsel to the applicants in a will challenge involving an international estates and lost codicil.
- **The Estate of Vivian Maier v Stephen M. Bulger** – Counsel to the Stephen Bulger Gallery in an action for copyright infringement in fine art photographs taken by the posthumously-discovered photographer Vivian Maier.
- **Barrett v Saunders** – Counsel for beneficiary in a will challenge alleging negligent payment of a life interest under the Beck estate.
- **Pestotnik v Opara** – Counsel to successful beneficiary in administration of Estate, including stay application and appeal proceedings.
- **Jacot v Baxter** – Counsel for estate trustee and former family physician in a will challenge primarily based on alleged incapacity proceedings.
- **Estate Trustee During Litigation for the Estate of Paul Penna v Landen** – Counsel to Estate Trustee During Litigation of the Paul Penna Estate in a series of proceedings, including two appeals to the Ontario Court of Appeal and a contempt trial, arising out of a massive fraud perpetrated by former Estate Trustee in his administration of the Estate.
- **Mountain v Mountain Estate** – Counsel to the beneficiary of an estate in respect of an application for a declaration that another beneficiary, who had farmed the parents' land for 25 years, was entitled to receive the farm land and assets, outside the terms of a will, based on an alleged oral agreement or gift.
- **Shawn v The Bank of Nova Scotia Trust Company** – Counsel for beneficiary of a 50 year old trust claiming mismanagement by the Trustee.
- **Bikur Cholim Jewish Volunteer Services v Langston** – Counsel in an appeal addressing complex limitation issues in an estate proceeding.
- **McAllister Estate v Hudgin** – Counsel on a motion dealing with the rights of beneficiaries to estate disclosure.

## SELECT PUBLICATIONS AND PRESENTATIONS

- **Litigation Skills Part 2: Appellate Advocacy for Estate Litigators** – Anne E. Posno co-chaired the Ontario Bar Association's program for estates litigators on how to excel at appellate advocacy, including preparing for the appeal, drafting effective documents, and presenting a case persuasively.
- **Litigation Skills Part 1: Advocacy for Estate Litigators** – Anne E. Posno was invited to present at the Ontario Bar Association's estates program on how to navigate complex estate litigation files with confidence, including techniques for effectively managing applications for directions, guardianship applications, and will challenges.
- **A 2023 Snapshot: Through the Lens of Lenczner Slaght** – Lenczner Slaght launches *A 2023 Snapshot*, a look at the most significant developments, decisions, business takeaways, and trends in litigation from the last year, across 15 practice areas. Revisit 2023 and look ahead to 2024 through the lens of our expert litigators.

- **Top Cases in Estates Litigation 2024** – Anne E. Posno co-chaired The Advocates' Society's annual program on '*Top Cases in Estates Litigation*'. Anne shared her expert insights on trends and landmark cases from across Canada in 2023.
- **Top Cases in Estates Litigation** – Anne E. Posno shared her expertise at The Advocates' Society's annual Top Cases in Estates Litigation program on the top trends and cases from across Canada in 2022.
- **Estates Litigation Bench & Bar Reception** – As Vice-Chair of The Advocates' Society's Estates Litigation Practice Group, Anne E. Posno hosted its Estates Litigation Bench & Bar Reception. The event provided an opportunity for members of the estates litigation bench and bar to connect in an informal setting.
- **New Court-Ordered Validity of Will Under SLRA** – Anne E. Posno and Mari Galloway co-authored the article *New Court-Ordered Validity of Will Under SLRA* published by the Law Society of Ontario.
- **24th Estates and Trusts Summit** – Anne E. Posno shared her expertise at the LSO's 24th Estates and Trusts Summit. Anne spoke on the panel "Changes to the *Succession Law Reform Act*: Focus on Substantial Compliance."
- **Your Comprehensive Guide to Will Challenges: A Series** – Anne E. Posno co-chaired the Ontario Bar Association's program "Your Comprehensive Guide to Will Challenges: A Series". Anne shared invaluable advice and critical insights on key substantive, procedural, and practice issues related to will challenges.
- **Conduct of the Estates Motion** – Anne E. Posno presented at The Advocates' Society's program *Conduct of the Estates Motion*. Anne shared her expertise on the panel "Demonstration and Commentary: What to do on the Day of the Motion".
- **Top Cases in Estates Law** – Anne E. Posno spoke at The Advocates' Society's annual program on top cases and trends in estates litigation from across Canada in 2020.
- **The Great Debate: Tackling Unsettled Issues in Trusts and Estates Law** – Anne E. Posno presented at the Ontario Bar Association's Institute on the program *The Great Debate: Tackling Unsettled Issues in Trusts and Estates Law*. Anne shared her expertise on the current most pressing and unsettled issues in trusts and estates law.
- **Top Cases in Estates Litigation 2020** – Anne E. Posno spoke on The Advocates' Society's program *Top Cases in Estates Litigation 2020*. Anne shared her expert insights on top cases and trends from 2019 as well as recent developments in estates litigation.
- **22nd Estates and Trusts Summit (Day One)** – Anne E. Posno presented at the Law Society of Ontario's 22nd Estates and Trusts Summit. She discussed the latest developments on estate, trust, and capacity/elder law litigation.
- **Oppression Remedy and Family-Held Corporation** – Anne E. Posno authored a chapter that appeared in *Key Developments in Estates and Trusts Law in Ontario, 2017-2018 Edition*, edited by Melanie A. Yach. The chapter discusses significant oppression cases involving family-held corporations.

- **Recent Court of Appeal Decisions with Application to Estates & Trusts Law** – Anne Posno authored a chapter that appeared in *Key Developments in Estates and Trusts Law in Ontario, 2015-2016 Edition*, edited by Melanie A. Yach. The chapter discussed recent court of appeal decisions that had applications to Estates & Trusts Law.
- **The Time is Right to Start Planning Your Estate** – Anne E. Posno co-authored the article *The Right Time to Start Planning Your Estate* appeared on *TheGlobeandMail.com* on March 1, 2016. The article provides advice and insight into the often complicated world of estate planning.

## BLOG POSTS

- **Disappointed No Longer: Supreme Court Clarifies the Interplay between Insurance Act Beneficiary Designations and Unjust Enrichment** – Last Friday, the Supreme Court of Canada released its long-awaited decision in the case of *Moore v Sweet*, and settled a troubling issue in the trusts and estates world: the case of the disappointed life insurance beneficiary.
- **Cowper-Smith v Morgan: The Supreme Court Renovates Proprietary Estoppel** – Lord Denning once said that estoppel is a house with many rooms. In December 2017, in *Cowper-Smith v Morgan*, 2017 SCC 61, the Supreme Court of Canada undertook some significant renovations to an important, but little used, room in that house: proprietary estoppel. And just like your neighbour's renovations to build their monster home can have a real impact on your property, this is a decision that has impacts well beyond the particular facts of that case.
- **Court to estate litigants: Jurisdiction over real estate does not assure jurisdiction over all aspects of a case** – Questions of jurisdiction and conflict of laws are complicated at the best of times, let alone in the context of estate litigation.
- **Racist Will Thrown Out for Being Contrary to Public Policy** – An Ontario decision has expanded the application of public policy to void a will, and in so doing has raised concerns of floodgates and abuse. In *Spence v. BMO Trust Company*, 2015 ONSC 615, Justice Gilmore determined that the deceased, who was black, disinherited his adult daughter because she had a child with a Caucasian man – "a clearly stated racist principle".

## SELECT NEWS ARTICLES

- **Lenczner Slaght's Litigation Excellence Recognized in 2023 Lexpert Directory** – Following comprehensive peer review surveys and interviews with senior members in the legal profession, the *2023 Canadian Legal Lexpert Directory* has recognized 31 of the firm's expert litigators for their experience, knowledge, and precision, with 108 rankings spanning 17 practice areas.
- **Lenczner Slaght Litigators Elected to The Advocates' Society's Leadership** – We are pleased to announce that Brendan Morrison, Christopher Yung, Paul-Erik Veel, Andrew Parley, Nina Bombier, and Anne Posno will be serving prominent executive positions at The Advocates' Society, a preeminent organization dedicated to promoting effective advocacy and access to justice.
- **Lenczner Slaght Litigators Appointed to The Advocates' Society's Leadership** – We are pleased to announce that Brian Kolenda, Andrew Parley

, Shara Roy, Nina Bombier, Larry Thacker and Anne Posno have been elected to prominent leadership positions at The Advocates' Society, a preeminent organization dedicated to promoting effective advocacy and access to justice.

- **Best Lawyers in Canada Recognizes Lenczner Slaght's Litigation Expertise** – Lenczner Slaght is proud to announce that 33 of our expert litigators are recognized in *Best Lawyers in Canada 2021*. Our lawyers received a total of 128 rankings, up from 100 in 2020.
- **Lenczner Slaght Litigators Elected to The Advocates' Society's Leadership** – We are pleased to announce that Anne Posno, Nina Bombier and Shara Roy have been elected to prominent executive positions at The Advocates' Society, a preeminent organization dedicated to promoting effective advocacy and access to justice. Peter J. Osborne, Brian Kolenda, and Chris Kinnear Hunter will also be continuing their terms in their leadership positions.
- **Lexpert Highlights Lenczner Slaght's Professional Excellence** – Lenczner Slaght's litigators continue to be recognized by their peers as the foremost practitioners in their fields.
- **Best Lawyers in Canada Recognizes Lenczner Slaght with 100 Rankings** – In the latest edition of *Best Lawyers in Canada*, 28 Lenczner Slaght lawyers earned a total of 100 rankings, up from 86 in 2019.
- **Clarity needed in estates after divorce** – Nina Bombier was mentioned in the Law Times article "*Clarity needed in estates after divorce*" on October 22, 2018. This article discusses the need for clarification in trusts and estates law, in the event of divorce.
- **Lenczner Slaght Litigators Ranked in Best Lawyers in Canada** – Canada's leading litigation firm is proud to announce that 25 of the firm's 58 lawyers have been recognized in the *Best Lawyers in Canada 2019* publication across multiple categories.
- **20 Lenczner Slaght Lawyers Recognized in 2015 Lexpert Directory** – Recognized by Canadian Legal Lexpert® Directory as leading practitioners.
- **Ontario court nullifies minister's will for racism after he cuts out daughter** – Anne Posno was quoted in the Lawyers Weekly on February 27, 2015 in relation to a recent Ontario Superior Court decision in *Spence v. BMO Trust Company*, 2015 ONSC which deals with expanding application of public policy to void a will, and in so doing has raised concerns of floodgates and abuse.
- **Lenczner Slaght Welcomes Four New Associates** – Canada's leading litigation practice grows to 53 lawyers.
- **Lenczner Slaght Increases Rankings in 2014 Lexpert Directory** – Canada's leading litigation practice continues to add new names to the list.
- **Lenczner Slaght Welcomes Two New Partners** – Canada's leading litigation practice grows to 20 partners with newest additions.
- **Lenczner Slaght is at the Centre of the Lexpert Bull's-Eye** – Canada's leading litigation practice is once again ranked #1 in *The 2014 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada*.