Scott Kerwin

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Estate & Trust Litigation
Appellate Advocacy
Administrative and Public Law
Indigenous Law
Estate & Trust Administration
Team North®
Indigenous Power

M. Scott Kerwin is a litigation partner in our Vancouver office. He has a broad litigation practice, with specific expertise in trusts, probate, estate and incapacity disputes, Indigenous law, constitutional law and general litigation.

In his estates and trusts litigation practice, Scott counsels his clients in a variety of matters, including:

- probate litigation (disputes concerning the validity of wills and the succession of property)
- claims to rectify and validate wills under the *Wills, Estates and Succession Act*
- will variation claims under the *Wills, Estates and Succession Act*
- claims relating to joint bank accounts or other joint assets, or the misuse of a power of attorney
- applications to the court for the interpretation or constructions of wills and trust instruments
- restitution claims against estates
- the appointment of committees under the *Patients Property Act*
- variations of trusts pursuant to the *Trust and Settlement Variation Act*
- applications concerning the administration of estates and trusts, including executor's accounts, and the removal and replacement of executors and trustees

Scott also has significant expertise in Indigenous law, with a primary focus on Indigenous rights and title claims, and the Crown's duty to consult Indigenous groups.

Scott is the regional leader of our Estate Litigation Group and regional co-leader of our Private Client Group.

Prior to being called to the bar, Scott completed a judicial clerkship with the British Columbia Court of Appeal.

Experience - Estates and Trusts

- Provides strategic advice to banks, credit unions and other financial institutions about mental capacity and elder law issues, including the validity and scope of enduring powers of attorney, representation agreements, and committeeship orders.
- Successfully represented a beneficiary in a claim relating to a joint tenancy over real property in Vancouver, and whether the joint tenancy had been severed: *Zeligs Estate v. Janes, 2016 BCCA 280*, aff'g 2015 BCSC 7, further reasons at 2015 BCSC 525.
- Represented clients in proceedings under section 58 of the *WESA* relating to whether documents could be validated as "wills" and admitted to probate despite non-compliance with the legislation (*Re Cook Estate, 2019 BCSC 417*), including the validation of a solicitor's reporting letter as a will (*Re McGavin Estate*, 2023 BCSC 819) 2023 BCSC 819 (CanLII) | McGavin Estate (Re) | CanLII
- Successfully represented clients at trial as to whether real property passed to them by right of survivorship: *Mac v. Mak, 2016 BCSC 1140*, aff'd 2017 BCCA 115.
- Acted as co-counsel for the City of Vancouver in regards to whether City-owned property was being held on trust: *Aura Ventures Corp. v. City of Vancouver, 2022 BCSC 508* aff'd 2023 BCCA 209 2023 BCCA 209 (CanLII) | *Aura Ventures Corp. v. Vancouver (City)* | CanLII
- Successfully represented parties in a contested proceeding to be appointed as committees of their mother under the *Patients Property Act*: *Re Klop, 2021 BCSC 644*
- Counsel for the defendants in complex trust litigation concerning the distribution of a discretionary family trust and related corporate reorganization: *Pirani v. Pirani, 2022 BCCA 65 rev'g 2020 BCSC 974*
- Represented a major Canadian bank and trust company in a case involving whether funds in a Registered Disability Savings Plan could be seized by creditors or by a trustee in bankruptcy: Re Alary, 2016 BCSC 2108.
- Represented beneficiaries in disputes over whether a "pour over clause" in a will was valid: *Quinn Estate v. Rydland, 2019 BCCA 91* aff'g Quinn Estate, 2018 BCSC 365*.; Waslenchuk Estate, 2020 BCSC 1929*
- Represented a beneficiary in regards to the proper payment of income from a trust: *Louis Winkler Alter-Ego Trust No. 3 v. Winkler, 2019 BCSC 30*
- Successfully defended a claim made against an estate by creditors of a beneficiary and former executor: Braich Estate, 2017 BCSC 1140.
- Acted for an executor and trustee in litigation regarding allegations of testamentary fraud: *Nordgren v. Hjukström Estate, 2019 BCSC 1*.
- Represented the executor of a $10-million estate in a petition for the interpretation of a will with issues relating to misdescription of beneficiaries, whether certain language was precatory or binding in nature, and the application of the cy-près doctrine for charitable gifts: Re Eberwein Estate, 2012 BCSC 250.
- Represented executors and trustees in regards to the interpretation and construction of wills and trust instruments: *Royal Trust Corporation Of Canada v The Welfare Institution Of The Jews Of Athens, 2022 BCSC 1454 ; Re Thiemer Estate, 2012 BCSC 629*
- Acts for executors and trustees in regards to a passing of accounts: *Re Reagh Estate, 2021 BCSC 1807 (CanLII)*
- Successfully defended clients from being removed as an executor: *Re Estate of Ida Moreau, 2019 BCSC 383*
- Represented a trust beneficiary to obtain an order that Ontario, not British Columbia, was the proper jurisdiction to determine a dispute about a testamentary trust: *Gordon Estate v. Venables*,2008 BCSC 501.

Indigenous Litigation

- Represents clients in disputes concerning Indigenous rights and title and the Crown's duty to consult Indigenous groups.
- Co-counsel for British Columbia in a judicial review proceeding concerning the approval of a ski resort, with issues relating to the duty to consult Indigenous groups, the Honour of the Crown, sacred Indigenous sites, and freedom of religion under the *Charter of Rights and Freedoms: Ktunaxa Nation v. British Columbia, 2015 BCCA 352*, aff'g 2014 BCSC 568.
- Represented the City of Vancouver and the Vancouver Park Board in regards to an Aboriginal rights and title claim: *Hwlitsum First Nation v. Canada (Attorney General)*, 2018 BCCA 276.
- Co-counsel for CN Rail in an injunction application relating to the sale of railway corridor lands to local communities for use as a recreational trail: *Okanagan Indian Band v. Canadian National Railway Company*, 2015 BCSC 1365.
- Co-counsel for a mining company in a judicial review proceeding concerning whether a First Nation had been adequately consulted in regards to a bulk sample permit: *West Moberly First Nations v. British Columbia and CKD Mines*, 2014 BCSC 924.
- Co-counsel for British Columbia in an action brought by three First Nations for possession of lands near Chilliwack on the basis of Aboriginal title or a pre-Confederation reserve: Chief Joe Hall *v. Canada Lands Company Limited*, 2014 BCSC 1704.

Civil Litigation

- Successfully represented Bauer Hockey Corp. in a three-month trial and at the B.C. Court of Appeal in a complex product liability claim concerning the design and manufacture of a hockey helmet: *More v. Bauer Nike Hockey Inc., 2011 BCCA 419*, *aff'g 2010 BCSC 1395*.
- Successfully represented a securities dealer at a summary trial to successfully strike out an enforcement proceeding brought by the BC Securities Commission: *British Columbia Securities Commission v. Bapty (2006), 52 BCLR (4th) 372, 2006 BCSC 638*.
- Successfully represented British Airways PLC in regards to conspiracy claims by a travel agency made under the *Competition Act*: *Cimaco International Sales Inc. v. British Airways PLC, 2005 BCSC 1338*;
- Has resolved many claims at mediation and other forms of alternative dispute resolution.

Insights & Events

- Co-author, three chapters in the British Columbia Probate and Estate Administration Practice Manual (Chapters 15, 16 and 17), The Continuing Legal Education of BC (CLE BC), 2005-present.
- Author, "Making gifts of the Right of Survivorship: Jackson v. Rosenberg, 2023 ONSC 4403", BLG Article, November 2023
- Author, “A Coach and Four Horses: Roaming the Legislative Gap of British Columbia’s Wills Variation Regime”, Estates, Trusts & Pensions Journal, Volume 42, No.4, pp. 394-417, August 2023
- Author, "Solicitor’s reporting letters validated as list “will” of client: Re McGavin Estate, 2023 BCSC 819", BLG Article, June 2023
- Speaker/Author, “Validation and Rectification of Defective Wills Under the WESA: The Tranquil Revolution in Probate Law, Ten Years Later”, Estate Litigation Essentials, Trial Lawyers Association of British Columbia, June 2023
- Author, "Separation and Termination of Marital Relationships in B.C.: Impacts on Estate Litigation and Administration", BLG Article, February 2023

- Contributing author, "Estate Disputes in British Columbia: A Litigator’s Guide," CLEBC, 2022
- Author, "Summary Resolution of Probate Disputes in Canada", BLG Article, December 2022
- Author, "Divorce and discretionary trusts: what can be divided between spouses? – Cottrell v Cottrell, 2022 BCSC 1607", BLG Article, October 2022
- Author, "Recent cases on costs in estate litigation", BLG Article, October 2022
- Author, "Testamentary powers of appointment and gifts Virtute Officii: Royal Trust Corporation of Canada v. The Welfare Institution of the Jews of Athens, 2022 BCSC 1454", BLG Article, October 2022
- Author, "Understanding section 151 of the WESA: recent decisions provide clarity", BLG Article, October 2022
- Author, "Does the “presumption of resulting trust” apply to beneficiary designations?", BLG Article, October 2022
- Author, "Joint tenancy and making gifts of the right of survivorship", BLG Article, October 2022
- Speaker, "Current Cases of Note in Estate Litigation," Estate Planning Council of Vancouver, May 2022
- Speaker, “Discretionary Trusts in Canada: Recent Cases”, STEP Seattle, April 2022
- Speaker/co-author, “Capacity and Undue Influence Claims in British Columbia: An Introduction”, Estate Litigation Essentials, Trial Lawyers Association of British Columbia, March 2022
- Speaker/author, "Commencing an Estate Litigation Claim," Estate Litigation Basics, 2021, CLE BC, March 2021
- Speaker/co-author, "Avoiding the Pitfalls, Part II: Drafting to Avoid Trust Litigation," The Changing Landscape of Trusts, PBLI, June 2018
- Speaker, "It's a New Dawn, It's a New Day - WESA - The Court's Curative Power", Canadian Bar Association webinar, May 2018
- Speaker/author, "Commencing an Estate Litigation Claim: Pleadings, Proof in Solemn Form, and the 'Culture Shift' in Probate Litigation," Estate Litigation Basics, 2018, CLE BC, April 2018
- Speaker/co-author, "Avoiding the Pitfalls: Drafting Around Commonly Litigated Issues," Estate Planning Done Right, PBLI, January 2018
- Speaker, "The Duty to Consult Indigenous Groups: An Update," presentation to the BLG Mining Group, September 2017
- Author, "Federal Government Seeks Comments on CETA Implementation Regulations", BLG Article, July 2017
- Author, "Stick v. Onion Lake Cree Nation, 2017 SKQB 176, Saskatchewan Court of Queen's Bench (Barrington-Foote J.), 15 June 2017", BLG Article, July 2017

Beyond Our Walls

Professional Involvement

- Member, Canadian Bar Association, Aboriginal Law, Wills and Trusts, Elder Law, Constitutional and Civil Liberties Sections
- Member, Trial Lawyers Association of British Columbia (TLA BC)
- Student Member, Society of Trusts and Estates Practitioners (STEP)
- Member, Advocates' Club, 2007-10
- Member, Association of Contentious Trust and Probate Specialists (ACTAPS)

Community Involvement

- Volunteer/pro bono lawyer, Access Pro Bono
- Volunteer Reader, BLG Reads to Kids program
- Member, Osgoode Society for Canadian Legal History

- Board Member, St. James Community Service Society (charity assisting in-need residents of Downtown Eastside Vancouver), 2007-11

Awards & Recognition

- Recognized in the 2025 edition of *The Best Lawyers in Canada*® (Aboriginal Law / Indigenous Practice) and since 2014 (Trusts and Estates)

Bar Admission & Education

- British Columbia, 2001

- LLB, Osgoode Hall Law School, 1999, (top 1% of class)
- MA, University of British Columbia, 1996
- BA (Hons.), University of British Columbia, 1994

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

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