



## Gordon Behan

Partner

Estates & Trusts

Elder Law

Estates & Trusts Opinions and Appeals

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### Profile

Navigating legal matters involving the death or incapacity of a loved one is an emotionally-charged experience, which many clients find difficult. For a decade, clients have entrusted Gordon to guide them through their estates and trusts disputes with practical advice, sound strategy, and unwavering support throughout the process.

Whether client matters are ultimately resolved through negotiations or in the courtroom, Gordon knows that preparation and positioning from the outset are critical success factors. This proactive and strategic approach helps ensure that our clients are in the best possible position for a favourable resolution.

#### Estate Litigation Services

- > Undue influence and capacity or incapacity claims
- > Wills variation claims
- > Committeeship proceedings
- > Passing of executor and trustee accounts
- > Applications to have a document declared a will
- > Applications to rectify and address errors in a will
- > Abuse of power of attorney claims
- > Construction of wills applications

- > Executor and trustee compensation
- > Breaches of trust or fiduciary duty
- > Unjust enrichment claims

Appreciating that clients want their issues resolved efficiently, Gordon promotes alternative dispute resolution methods when appropriate. In scenarios where negotiations are unsuccessful, our clients benefit from Gordon's extensive litigation experience before all levels of court in British Columbia, including the Court of Appeal. While Gordon's practice covers all aspects of estates and trusts litigation, he has particular trial experience in incapacity and undue influence.

## Work Highlights

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### **Obtained costs award following successful trial**

- > Jung Estate v. Jung Estate, 2022 BCSC 2223 - Lead counsel obtaining a costs award for our client after a successful result at trial.

### **Successful appointment of trust company in contested committee ship**

- > Wong (Re), 2022 BCSC 2227 - Lead counsel in contested committee ship hearing in which we successfully had a trust company appointed as committee of estate rather than one of the incapable adult's children.

### **Successful incapacity claim to set aside a will**

- > Jung Estate v. Jung Estate, 2022 BCSC 1298 - Lead counsel in a 10-day trial in which our client succeeded in setting aside a will based on incapacity and lack of knowledge and approval of the deceased, notwithstanding opinions from a doctor and lawyer that the deceased did have capacity.

*[Additional work highlights below](#)*

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In 2020, Gordon authored the "Capacity and Undue Influence" chapter of the British Columbia Estate Litigation text, which addresses the key areas British Columbia estate practitioners face. This comprehensive textbook provides historical context, legal analysis, and commentary on practice and strategy.

Gordon's competitive nature drew him into the practice of law. He is dedicated to his craft, meticulous in the details, and enjoys anticipating opposing parties' next moves to develop winning strategies. What clients appreciate most about Gordon is his tenacious advocacy, sound judgment, frank advice, responsiveness, and, ultimately, the results he delivers.

## Credentials

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### **Awards & Distinctions**

- > Society of Trust and Estate Practitioners (STEP) Private Client Awards finalist for Contentious Trusts and Estates Team of the Year 2021
- > Bull Housser & Tupper Prize in Administrative Law, 2012

- > Law Foundation of British Columbia Award, 2010
- > Best Cross-Examination Award, Peter Burns Mock Trial Competition, 2010
- > Law Foundation of British Columbia Award, 2009

### **Industry Involvement**

- > Access Pro Bono's Court of Appeal Program, volunteer lawyer
- > Cambridge Forums, planning committee member
- > Canadian Bar Association, member
- > Clark Wilson Hooplaw Team, past team captain
- > Law Society of BC, member
- > The Advocates' Society, member
- > Trial Lawyers Association of BC, member
- > UBC Law Students Legal Advice Program, past supervising lawyer

### **Education & Call to Bar**

- > Call to Bar: British Columbia, 2013
- > University of British Columbia, Bachelor of Laws, 2012
- > University of Glasgow, Law Exchange Program, 2011
- > University of Victoria, Bachelor of Arts (graduated with Honours), Economics, 2009

### **External Presentations**

- > Presenter, "Solicitors - Documenting Your File Effectively, Litigators - Conducting An Effective Cross-Examination", Forum for Senior Estates & Trusts Practitioners: 3rd Generation, Cambridge Forum, May 2023
- > Panelist, "Family and Wills, Trusts & Estates Law Challenges and Solutions for British Columbia Legal Practitioners", LexisNexis Canada, 2022
- > Presenter, "Intersection Between Trusts & Family Law" and "Where There is an Error, Is There a Way (To Fix)? Errors in Estate Planning Documents - What can be Fixed?", Cambridge Forums' Forum for Senior Estates & Trusts Practitioners, 2022
- > Presenter, "Estate Litigation - Wills Variation", Pacific Business and Law Institute, 2021
- > Presenter, "Gifts, Loans, Attorney Compensation & Other Practical Issues", Canadian Bar Association Elder Law Section, 2021
- > Presenter, "Litigator vs. Planner - Battle Royale III - The Rubber Match", Advocis Planning Conference, 2020
- > Moderator, "Professional Ethics - Doing Things Right vs. Doing The Right Thing", Advocis Estate Planning Conference, 2020
- > Presenter, "Capacity, Undue Influence, & Other Estate Litigation Issues", Freedom 55 Financial, 2020
- > Presenter, "Litigator vs. Planner: Capacity and Undue Influence", Advocis Estate Planning Conference, 2019
- > Presenter, "Litigator vs. Planner - Battle Royale", Advocis Estate Planning Conference, 2018
- > Presenter, "Section 58 of the Wills, Estates and Succession Act (WESA)", Advocis Estate Planning Conference, 2017
- > Presenter, "Estate Litigation - Where There Isn't a Will, There May be a Way - Curing

Deficiencies and Rectification", Trial Lawyers Association of British Columbia, 2014

- > Presenter, "Case Comment: Reznik v. Matty, 2013 BCSC 1346", Canadian Bar Association BC Branch Wills & Estates Vancouver Subsection, 2013

### **External Publications**

- > Author, "The self-deal: Where does personal representative's loyalty lie?", Law360 Canada, 2023
- > Contributing author, British Columbia Estate Litigation textbook, Chapter 2: Incapacity and Undue Influence, LexisNexis Canada, 2020
- > Co-author, "Will-maker Does Not Need 'Encyclopedic Knowledge' to Understand Assets", The Lawyer's Daily, 2019
- > Author, "Court of Appeal in the Position of a Trial Court in Wills Variation Appeals", MONDAQ, 2014
- > Co-author, "Where There Isn't a Will, There May Be a Way", Trial Lawyers Association of BC, 2014
- > Author, "BCSC orders executor to make an interim distribution", Lexology, 2013

## **Additional Work Highlights**

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### **Secured costs award following a successful summary trial**

- > Nassim v. Healey, 2022 BCSC 728 - Lead counsel obtaining a costs award for our client after a successful result at summary trial. Our client received double her cost for a portion of the proceedings from the opposing parties.

### **Successful defence of a claim involving the "Slayer Rule"**

- > Stacey v. Martinello, 2022 BCSC 681 - Lead counsel in a 2-day hearing where our clients defended a claim based on the "Slayer Rule".

### **Successful contested will defence in multi-million dollar estate**

- > Nassim v. Healey, 2022 BCSC 402 - Lead counsel in a 3-day summary trial in which our client succeeded in upholding the will of the deceased, notwithstanding 2 doctors' opinions calling the deceased's capacity into question.

### **Obtained dismissal of trust claim under the Limitation Act**

- > Robinson v. Kuypers, 2020 BCSC 770 - Lead counsel in a hearing in which our clients succeeded in having the plaintiff's trust claim dismissed under the Limitation Act.

### **Precedent-setting case involving jurisdiction and choice of law**

- > Nordmark v. Frykman, 2019 BCCA 433 - Lead counsel at the Court of Appeal. Successfully argued that the claim should proceed in BC rather than Sweden. This appeal decision is a leading case on the concept of forum non conveniens.

### **Successful defence of application to dismiss will variation claim**

- > Mitchum Estate (Re) v. Wolfin, 2019 BCSC 1486 - Lead counsel in a hearing where our client resisted an attempt to dismiss our client's wills variation claim.

### **Obtained cost award hearing following a successful trial**

- > Halliday v. Halliday Estate, 2019 BCSC 1242 - Lead counsel at the costs hearing, following a successful trial result.

### **Successful claim to set aside a will based on incapacity and undue influence**

- > Halliday v. Halliday Estate, 2019 BCSC 554 - Lead counsel at an 8-day trial, where our client succeeded in setting aside a will based on incapacity, lack of knowledge and approval, and undue influence.

### **Secured jurisdiction before the Supreme Court**

- > Nordmark v. Frykman, 2018 BCSC 2219 - Lead counsel at the Supreme Court level, in a case in which our client resisted an attempt to avoid the claim proceeding in BC in favour of Sweden.

### **Secured choice of administrator for estate**

- > Estate of John Walter Novak (Re), 2018 BCSC 2154 - Co-counsel at a hearing in which our clients succeeded in having their selection of administrator pending litigation appointed.

### **Successful dismissal of claim against a committee**

- > Johnson v. Smith, 2018 BCSC 836 - Following a successful committee application, lead counsel for a hearing in which our clients succeeded in having a claim against them dismissed.

### **Successful contested committee proceeding**

- > Janisch, Re, 2016 BCSC 2003 - Lead counsel in a contested committee proceeding in which our client was appointed committee of her mother instead of a person who claimed to be incapable mother's spouse.

### **Successful contested committee proceeding**

- > Uhrick, Re, 2015 BCSC 1330 - Co-counsel for a contested committee proceeding in which our client, a niece, was appointed committee of her aunt.

### **Capacity, knowledge and approval, and undue influence claims**

- > As lead counsel, negotiated the successful resolution of various capacity, knowledge and approval, and undue influence cases, both on behalf of those seeking to uphold a will and set aside a will.

### **Contentious committee matters and incapacity claims**

- > As lead counsel, negotiated the successful resolution of emotionally-charged committee matters, including obtaining orders that a corporate trustee investigate potential claims on behalf of the incapacitated individual.

### **Complex wills variation claims on behalf of charities and non-profits**

- > As co-counsel on behalf of a charity, mediated the successful resolution of a multi-million dollar complex wills variation claim made by a spouse against family members and the charity.

### **Complex wills variation claims on behalf of plaintiffs and defendants**

- > As lead counsel resolved many wills variation cases, each with its unique factual circumstances and levels of complexity, on behalf of plaintiffs and defendants, through mediation or direct negotiations between counsel.

### **Successfully negotiated complex estate case on behalf of a plaintiff child**

- > As co-counsel on behalf of a plaintiff child, negotiated the successful resolution of a complex estate case based on proprietary estoppel, estate contract, unjust enrichment, and breach of fiduciary duty.

### **Rectifying and curing deficiencies in testamentary documents and wills**

- > Obtained court orders and negotiated settlements involving the rectification of testamentary documents and having documents made by the deceased declared a will.

### **Multi-jurisdictional estate matters involving choice of law disputes**

- > Negotiated the successful resolution of estate cases with international aspects, including the jurisdiction issues and the application of foreign law in BC.