

Clare Burns

Partner

Toronto

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Practice Areas

Litigation & Dispute

Resolution

Wills, Trusts & Estates

Clare Burns is an experienced litigator who acts in complex and highly sensitive matters. Her practice focuses on trusts, estates and capacity litigation. In 2014, Clare received the Lexpert Zenith Award for her demonstrated excellence and thought leadership in trusts and estates.

She served as the Children's Lawyer for the Province of Ontario from 2003 to 2008 pursuant to an Order-in-Council appointment.

As the Children's Lawyer, Clare's office was responsible to investigate, advocate, protect and represent persons under the age of 18 in proceedings before the courts and tribunals of Ontario. In this role, she supervised more than 11,000 cases including variations of trust, will challenges, passings of accounts, guardianships and all kinds of dependant's relief matters. She also developed expertise in personal injury matters.

As the Children's Lawyer, Clare appeared in the *Ontario* Superior Court and the Court of Appeal for Ontario on behalf of children. Notably she was counsel for the child in *A. (A.) v. B. (B.)*, the case which determined that a child could have more than two parents.

Prior to her appointment as the Children's Lawyer, Clare's private practice was restricted to civil litigation. She appeared at the *Ontario* Superior Court (including many appearances at the Estates List), the Court of Appeal for Ontario, the Tax Court of Canada, the Federal Court of Canada, the Supreme Court of Canada and on various matters dealt with by way of ADR both in Ontario and internationally, pursuant to ICC Rules.

Significant commercial litigation briefs included: Bank of Montreal *ats* Bourgeois (concerning allegations related to the operation of the Bank's managed futures business), Nesbitt Burns Inc. *ats* Ukrainain (Fort William) Credit Union Limited (concerning allegations of negligent derivatives trading); Exxon Chemical Company *ats* Lubrizol (motor oil patent infringement); and Lurgi AG *ats* Cominco (concerning

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allegations of negligent construction of a lead smelter).

Significant briefs in trust and estate litigation included: acting for estate trustees on passings of accounts seeking approval of commercial transactions involving assets with a value in excess of Cdn \$1 billion; and acting for a major trust corporation defending allegations that it failed to obtain an adequate rate of return on trustee investments.

In the three years prior to her appointment as the Children's Lawyer, Clare was designated by Lexpert as a Leading Practitioner of Estate Litigation.

Outside the firm, she is actively engaged in the profession and broader community. She has been a Director of The Advocates' Society and Vice President of the National Association of Public Trustees and Guardians. Clare has taught estates, children's law and trial advocacy at the University of Toronto Law School, Osgoode Hall Law School and Western University Law School.

Clare has spoken widely in a variety of venues and has published many professional papers. She is a Past Director of World Literacy of Canada and About Face Craniofacial Family Society. She received an Ontario Volunteer Award in 2002.

Called to the Bar	Education	Affiliations
<ul style="list-style-type: none">• Ontario (1991)	<ul style="list-style-type: none">• LL.B., Osgoode Hall Law School, 1988• LL.M., London School of Economics and Political Science, University of London, 1990• ADR Certificate of Achievement, University of Windsor/Stitt Feld Handy Group, 2009	<ul style="list-style-type: none">• Ontario Bar Association• The Advocates Society• The ADR Institute of Ontario Inc.
Languages <ul style="list-style-type: none">• French		

Reported Cases

Debono v. Debono, 2021 ONSC 3472

S.B. v. W.B., 2020 ONSC 5023

Neuberger v. York, 2016 ONCA 303 (Ont CA)

Neuberger v. York, 2016 ONCA 191 (Ont CA)

Neuberger v. York, 2014 ONSC 7512

Leibel v. Leibel, 2014 ONSC 6482

Eaton v. Eaton-Kent, 2013 ONSC 7985

Feinstein v. Freedman, 2013 ONSC 4420

Orfus Estate v. The Samuel and Bessie Orfus Family Foundation, 2013 ONCA 314

Orfus Estate v. The Samuel and Bessie Orfus Family Foundation, 2013 ONCA 225

Feinstein v. Freedman, 2013 ONSC 1616

Perino v. Perino, 2012 ONSC 5260

K.S.W. v. S.W., 2012 ONSC 4545

Parker v. Fockler, 2012 ONSC 699
Perino v. Perino, 2012 ONSC 328
Dryden v. Dryden, 2011 ONSC 7060
Cherry v. Cherry, 2011 ONSC 4574
Wright v. Love, 2010 ONSC 3441
Orfus Estate (Re) (2010), 62 ETR (3d) 290 (Ont SC)
A (A) v B (B) (2007) 220 OA C115
Bhandari v Bhandari 2004 Carswell Ont 4918 (Ont CA)
Dabirian v Dabirian (2004), 193 OA C193
Simone v Cheifetz (2000) 137 OA C193
Re Thomson Kernaghan & Co (2003), 50 CBR (4th) 287 (Ont SC)
Headway Property Investments 78-1 In. v Edgcombe Properties Ltd 1998 CarswellOnt 2655 (Ont CA)
Bourgeois v Bank of Montreal 2002 CarswellOnt 1225 (Ont SC)
Ukrainian (Fort William) Credit Union Ltd v Nesbitt, Burns Ltd 104 OAC 273
Re Hicks Estate 2002 CarswellOnt 1163 (Ont SC)
Wilson v Simeunovich 2000 CarswellOnt 2436 (Ont SC)
Blatchford (Litigation guardian of) v Blatchford Estate; (1999) 45 OR (3d) 784 (Ont SC)
Re Phelan (1999) 29 ET. (2d) 82 (Ont SC)
Wallace v Laurentian Heights Ltd 1999 Carswell Ont 986 (Ont SC)
Laird v Mulholland (1998), 21 ETR (2d) 204 (Ont Ct (Gen Div))
Pet Valu Canada Inc v Thorsteinssons (1996), 48 CPC (3d) 332 (Ont Ct (Gen Div))
Re Maria Brown Trust (1995), 8 ETR, (2d) 197 (Ont Ct (Gen Div))
Morgan v Hoogovens Technical Services Canada Inc (1994), 5 WDCP (2d) 334 (Ont Ct (Gen Div))
Dunn v Dunn Estate (1992), 9 OR (3d) 95 (Ont Ct (Gen Div))
620637 Ontario Ltd. v Axton 1992 CarswellOnt 2266 (Ont Ct (Gen Div))
Rothwell Corp v Amstel Brewery Canada Ltd (1991) 6 OR (3d) 651 (Ont Ct (Gen Div))
Adler v Ontario [1996] 3 SCR 609

Awards

- Repeatedly recognized by *Chambers HNW: The World's Leading High Net Worth Advisors* as a leading lawyer in the top category in the Private Wealth Disputes – Canada category
- Repeatedly recognized as a leading lawyer in the Private Client category in *Lexology Index: Canada*
- Recognized as one of the 2019 Toronto “Lawyers of the Year” by *Best Lawyers in Canada* for her work in the area of Trusts and Estates

- Repeatedly recognized by *Best Lawyers in Canada* as a leading lawyer in Trusts and Estates, and Alternative Dispute Resolution

- Repeatedly recognized in the *Canadian Legal Lexpert Directory* as a leading lawyer in Estate & Personal Tax Planning (Estate Litigation)

- *Lexpert Zenith Award* for excellence in Estate and Tax Planning, 2014

Professional Activities

- TEP (Trusts & Estates Professional) Designation , STEP Canada
- Adjunct Professor, University of Toronto Law School (Estates)
- Executive Member, OBA Trusts and Estates Section

Speaking Engagements

- Co-Chair, 27th Estates and Trusts Summit, Law Society of Ontario, Toronto, ON, October 22, 2024
- Speaker, "Estate Freezes for Beginners (Litigation Issues)", Issues in Family and Estates Law, Wagner Sidlofsky LLP, Online, November 12, 2024
- Speaker, "Litigation Skills Part 2: Appellate Advocacy for Estate Litigators", Ontario Bar Association, April 16, 2024
- Speaker, "When Worlds Collide: Corporate Issues, Matrimonial Breakdown and Death", Toronto Lawyers Association, Toronto, ON, November 23, 2023
- Co-Chair, 26th Estates and Trusts Summit, Law Society of Ontario, Toronto, ON, October 18-19, 2023
- Speaker, "The Ever-Open Eye: Video Surveillance in Long-Term Care Homes", AdvantAge Ontario, Online, May 25, 2023
- Chair, "The Difficult Witness", Dealing With Difficult People Series, The Advocates' Society, Online, October 19, 2021
- Speaker, "23rd National Conference", Step Canada, Online, June 14 and June 15, 2021
- Speaker, "Tackling Financial Abuse of Elders", The Osgoode Certificate in Elder Law, Online, April 21, 2021
- Speaker, "Turning the Page: The Future of Virtual Witnessing and Electronic Wills", Estate Planning Council of Vancouver, Online, February 23, 2021
- Frequent speaker at: The Law Society of Upper Canada Special Lectures - Estates, Personal Injury, LSUC Estates and Trusts Forum, LSUC Continuing Education Programmes; The Advocates' Society Lunch Bag Series; National Judicial Institute; Society of Trust and Estate Practitioners; Ontario Bar Association; Ottawa-Carleton Law Association; Ontario Trial Lawyers Association; Ontario Psychiatric Association; Judicial Continuing Education Programs for the Superior Court of Justice and the Ontario Court of Justice; Osgoode Hall Law School; University of Western Ontario Law School; University of Toronto.
- Speaker, "Capacity to Retain and Instruct Counsel", Canadian Elder Law Conference - Bridging the gap: Elder law for everyone, Vancouver, BC, November 14, 2019
- Co-Presenter (with Hayley Peglar), "The Role of Accountants in Estate Litigation", GTA Accountants Network/GTA Finance Network, Toronto, ON, November 12, 2019
- Speaker, "Estate Tax Planning Gone Awry", B'nai Brith Canada, Toronto, ON May 20, 2018.
- Speaker, "Increasing the Odds of a Successful Mediation", Advocates' Society 6 Minute Estates Lawyer, May 3, 2018
- Speaker, Senior Estate Planning & Litigation Forum, April 22-24, 2018
- Speaker, "Dealing with Opinion Evidence of Lay Witnesses and Treating Physicians", Ontario Bar Association, April 5, 2018

- Speaker, "Professionalism, Ethics and Older Clients", Osgoode Certificate in Elder Law, January 31, 2018
- Co-speaker, "Debate: Be It Resolved That Video Surveillance Should Be Permitted In Long-Term Care Facilities", Canadian Elder Law Conference, November 3, 2017
- Co-presenter, "Professionalism, Ethics and Older Clients", Osgoode Certificate in Elder Law, January 31, 2017.
- Speaker, "Effective Tax Planning for Estates with a Focus on Estate Law and Family Law to Minimize Litigation", Ontario Tax Foundation, October 23-24, 2017.
- Co-Chair, "Will Challenge Advocacy for Estate Litigators", The Advocates' Society, September 28, 2017.
- Speaker, "Case Law Update", the 2017 CIDEL Provence Conference, Seillans, France, September 12-17, 2017.
- Speaker, "Planning and Dealing with Unique Estate Assets", 19th National STEP Canada Conference, June 12-13, 2017
- Panelist, "Validity of Gifts to Powers of Attorney While the Donor/Grantor is of Questionable Capacity", B'nai Brith Canada, May 23, 2017.
- Speaker, "The Six-Minute Estates Lawyer 2017", Law Society of Upper Canada, May 8, 2017
- Speaker, "Tips, Traps and Select Issues in Trust Drafting and Administration", STEP Calgary Branch, January 25, 2017
- Speaker, "Advocacy", Will, Estate and Trust Fundamentals for Estate Practitioners, Canadian Bar Association, October 26-30, 2016
- Speaker, "Intersection Between Assisted Human Reproduction and Estates", Ontario Bar Association, September 27, 2016
- Speaker, "When Client Instructions Make You Wary", Six Minute Estates Lawyer, May 3, 2016
- Speaker, "Expert Evidence", Langdon Hall Senior Practitioners Estate Litigation Forum, April 24-26, 2016
- Speaker, "Representation of a Person Alleged to be Incapable", The Annotated Guardianship Application 2016, Law Society of Upper Canada, February 25, 2016.
- Speaker, "100 Questions about a Will Challenge", Shaarei Shomayim Synagogue, Toronto, June 2, 2015
- Speaker, "How to Overcome Common Challenges in Dealing with Foreign Trusts", Litigation and Administration of Foreign Trusts and Assets, Ontario Bar Association, April 9, 2015 (with Frank Walwyn)
- Speaker, "Passing of Accounts: Best Practices", The Law Society of Upper Canada, Toronto, April 24, 2013
- Speaker, "Practice Gems: Administration of Estates 2011: Avoiding the Pitfalls," The Law Society of Upper Canada, Toronto, September 14 and October 31, 2011
- Speaker, "Mom Always Liked You Best", ADR Section Speaking Series, Ontario Bar Association, 2009
- Speaker, "The Children's Lawyer: What You Need to Know", The Institute of Law Clerks of Ontario, 2009

Additional Publications

- Co-Author, "Traps for the Unwary: Joint Asset Planning", *The Six-Minute Estates Lawyer* 2022, May 25, 2022
- Co-Author, "The Role of the Medical Expert in the Retrospective Assessment of Testamentary

Media Mentions

- [“What are the responsibilities of an executor?”](#), *Matters Beyond Wealth*, Episode 52, RBC Wealth Management.

Publications

- Recent Trends and Obligations When Assessing Undue Influence, November 02, 2023
- 21st Century Estate Practice: Shrunken heads and sperm, August 01, 2017
- Toronto Ponders Controversial New Parking Tax to Help Balance City Books, October 03, 2016
- Genetic Material as Property: Rethinking the Common Law View, June 11, 2012
- Mission Impossible: Estate Planning and Assisted Human Reproduction, December 01, 2010
- Frye Ruling a Recipe for Litigation, October 13, 2009
- Guardianship: What You Need to Know, October 01, 2009
- Can You Create An Economic Disincentive to Litigation from Beyond the Grave, September 14, 2009
- Estate Litigation Quiz, April 01, 2009
- Shareholder Agreements Gone Wrong, February 10, 2009
- Guardianships, September 01, 2008