Index

ABATEMENT Generally, 30

ADEMPTION Generally, 30

ADMINISTERING ESTATE

Assets See ASSETS, LOCATING AND DEALING WITH Finalizing estate See FINALIZING ESTATE Liabilities See LIABILITIES, LOCATING AND DEALING WITH

ADMINISTRATION BOND Generally, 481

ADMINISTRATOR, USE OF TERM

Generally, 481

APPLICATIONS

See CERTIFICATE OF APPOINT-MENT; CONTENTIOUS PROCEEDINGS; PASSING OF ACCOUNTS; TORONTO REGION PRACTICE DIREC-TION, ESTATES LIST

ASSETS, LOCATING AND DEALING WITH

Bonds

declaration of transmission, power of attorney to transfer, valuing bonds, with certificate, without certificate, Canada Pension Plan benefits generally, ASSETS, LOCATING AND **DEALING WITH—Cont'd** Canada Pension Plan benefits -Cont'd application for, 260 children's benefit, 243 death benefit, 241 survivor's pension, 242 Canada Savings Bond/Government of Canada securities letter to Bank of Canada, 263 with certificate, 236 without certificate, 235 Estate Administration Tax generally, 228 estate bank account, opening, 230 estate trustee's duties, 229 guaranteed investment certificates, 233 letters re, 262, 266 to 268 Life insurance estate beneficiary, 239, 255 generally, 238 named beneficiary, where, 239, 256 Miscellaneous assets, 244 Money on deposit generally, 232 with certificate, 232, 263 without certificate, 232, 262 Motor vehicles, 243 Old Age Security, cancellation of cheques, 261 Pension plans, 241 Probative value of, affidavits decrease in, 275 increase in, 274 Proof of death, 230, 255

ASSETS, LOCATING AND **DEALING WITH—Cont'd** Real estate Land Titles Act, under, 234 possible difficulties, 235 Registry Act, under, 233 Revenue Canada, final clearance certificate. 259 **RRSPs** generally, 240 spouses and, 240 Safety deposit box, 231, 268 Shares declaration of transmission. 269 letter to broker, 257 power of attorney to transfer, 268 valuing public shares, 237 with certificate, 238 without certificate, 237 Term deposits, 233 BONDS

See ASSETS, LOCATING AND DEALING WITH; CERTIFI-CATE OF APPOINTMENT; POWERS OF ATTORNEY

CANADA PENSION PLAN See ASSETS, LOCATING AND DEALING WITH

CANADA SAVINGS BONDS See ASSETS, LOCATING AND DEALING WITH

CAPACITY Generally, 14 to 16, 43

CAPITAL GAINS Generally, 430, 432

CAPITAL PROPERTY See TAXATION ON DEATH

CERTIFICATE OF APPOINTMENT

Affidavits condition of will/codicil, **106**, **135 to 137, 162 to 164** **CERTIFICATE OF** APPOINTMENT—Cont'd Affidavits—Cont'd execution of will/codicil, 105, 138 to 140, 159 to 161 handwriting and signature of holograph will, attesting to, 106, 165 service of application for certificate, 104, 152 to 155 Application for generally See certificate application ancillary appointment of estate trustee with will, 122 court fees, 96 estate trustee during litigation, 124 estate trustee without will, 116 estate trustee with will limited to assets referred to in will. as. 116 foreign estate trustee's nominee as estate trustee without will, 108, 123, 185 Form 74A, 104, 141 to 151 Form 74J, 108, 177 to 184 notice, 102, 113 small estate See small estate certificate application succeeding estate trustee without will, as, 119 succeeding estate trustee with will, as, 117 Beneficiaries, notice of entitlement, 102, 113 Bonds (Rule 74.11) insurance/guarantee company, 108, 187 personal sureties, 108, 189 to 191 requirements, **130** Certificate application Children's Lawyer/Public Guardian and Trustee, 114

CERTIFICATE OF APPOINTMENT—Cont'd Certificate application-Cont'd documents to be filed with court, 115 Form 74A, 104, 141 to 151 mentally incapable persons, 114 minors, 113 notification requirements, 113 Registrar's notice, 108, 194 to 196 Rule 74.04, 112 to 116 service, method of, 114 unborn/unascertained persons, 113 Confirmation appointment, of, application for, 108, 177 to 184 estate trustees, of (status certificate), 131 to 133 resealing of appointment of estate trustee with/without will, by, 121 Consent, 106, 169 Court contact information. 109 to 111 Court role as will depository, 100 to 102 Estate Administration Tax application of, 96 calculation re, 97 deposit payable at application, 97 exclusions, 97 Estate forms, January 1, 2022 amendments to, 103 to 110 Estate Information Return filing, 98 to 100 form, 198 Form 74C, 156 to 158 Information Form, 205 Jurisdiction to file, 95 Notice of commencement of proceeding, request for, 109, 197, 278, 323 No will, certificate where, 116

CERTIFICATE OF APPOINTMENT—Cont'd Objections to issuing, 311 Order in estate proceeding, 107, 171 to 176 Registrar's notices, 108, 192 to 196 Renunciation, 106, 167 Revocation of. 312 Small estate certificate application generally, 125 amended certificate, 109, 129, 218 to 221, 224 application Form, 109, 207 to 217 application requirements, 126 to 128 asset value, 125 certificate, 109, 222 documents required to be filed, 130 estate ceasing to be small, where, 130 Registrar's requirements, 128 request to file application/amend certificate, 109, 218 to 221 revocation of certificate, 130 CLAIMS AGAINST ESTATE Generally, 315

Claim against Estate (Form 75.14), 355 to 357 Notice of Contestation (Form 75.13), 353, 355 to 357

CODICIL

Generally, 19, 105, 106, 135 to 140, 159 to 164

CONSENT

Generally, 106, 169, 273, 280

CONTENTIOUS PROCEEDINGS Generally, 282 Application for motion/directions, 313

CONTENTIOUS PROCEEDINGS

-Cont'd Mandatory mediation See MANDATORY MEDIA-TION Notice of Appearance (Form 75.4), 340 Notice of Application for Directions (Form 75.5), 341 to 343 Notice of Motion for Directions (Form 75.6), 343 to 345 Notice that objection has been filed (Form 75.2), **337** Notice to Objector (Form 75.3), 338 Objection to issuing certificate of appointment, 311 Order Giving Directions Where Pleadings Directed (Form 75.8), 347 Return of certificate, 312 Revocation of certificate of appointment, 312 Statement of Claim Pursuant to Order Giving Directions (Form 75.7), 345 Statement of submission of rights (Form 75.10), **314, 349 Toronto Region Practice Direction** See TORONTO REGION PRACTICE DIRECTION, ESTATES LIST

COSTS

Passing of accounts See PASSING OF ACCOUNTS Toronto Region, **299**

CREDITORS

Generally, 246, 258

DEATH

Proof of, **230, 255** Taxation See TAXATION ON DEATH

DEBTS

Generally, 246, 445

DEFINITIONS

See GLOSSARY

DEPENDANT'S RELIEF CLAIMS

Succession Law Reform Act provisions, **315 to 318**

DIRECTIONS

Application for, **313**, **341 to 345** Order giving, **345**, **347** Passing of accounts, **367**, **369** Toronto Region See TORONTO REGION PRACTICE DIRECTION, ESTATES LIST

DISPUTES

Claims against estate See CLAIMS AGAINST **ESTATE** Contentious proceedings See CONTENTIOUS PROCEEDINGS Dependant's relief claims See DEPENDANT's RELIEF **CLAIMS** Family Law Act claims See FAMILY LAW ACT Orders for assistance See ORDERS FOR ASSIS-TANCE Passing of accounts See PASSING OF ACCOUNTS Request for notion of commencement of proceedings (Form 74P), 109, 197, 278, 323 Rule 74 generally, 278 **Toronto Region** See TORONTO REGION PRACTICE DIRECTION, ESTATES LIST

ESTATE ADMINISTRATION TAX See CERTIFICATE OF APPOINT-MENT

ESTATE INFORMATION RETURN See CERTIFICATE OF APPOINT-MENT ESTATE TAXATION Generally, 465 Estate capital, distributions of generally, 472 clearance certificates, 473 land transfer tax, 474 21-year deemed disposition rule, 474 Estate income, distribution of generally, 468 benefits to beneficiaries, 469 cashing out income interest, 472 flow-through/sourcing of trust income, 470 income paid/payable to beneficiary, **468** non-resident beneficiaries, 471 preferred beneficiary elections, 469 Filing requirements, 467 Goods and services tax generally, 476 business assets, supply/ distribution of, 476 clearance certificate, 477 executor's fees, 477 other assets, supply/distribution of, 476 Part IX of ETA, 476 Multiple trusts, 467 Notice of objection, 475 Residence of estate, 465 Testamentary vs. inter-vivos trusts vs. graduated rate estate, 465 to 467 U.S. estate tax generally, 478 exemptions and credits, 479 filing requirements, 479 foreign tax credit, 479

U.S. estate tax-Cont'd taxable estate, 478 U.S. situs assets, 478 ESTATE TRUSTEE, USE OF TERM Generally, 481 **EXECUTOR, USE OF TERM** Generally, 481, 484 **EXECUTOR'S COMPENSATION** See PASSING OF ACCOUNTS FAMILY LAW ACT Beneficiaries protection, 10 Consent. 273 Election, 244 to 246, 272, 301, 358 Entitlement claims, 318 to 321 Exclusion from net family property, letter to beneficiary, 264 Form 1. 358 Letter to court re filing election, 265 Limitations on property disposition, 38 to 40 Spouse, definition, 82 Succession Law Reform Act and, 39, 245, 319 Toronto Region, 301 FARM PROPERTY Generally, **463 to 465** FINALIZING ESTATE Generally, 247 Distributions. 249 Documents, filing of, 248 Ongoing estates, 250 Payment of money into court generally, 251 minor/mentally incapable person beneficiary, Trustee Act provisions, 251 Security, return of from court, 249 Status certificates, obtaining, 253 Succession duty, 253 Tickler system, 252

ESTATE TAXATION—Cont'd

FINALIZING ESTATE—Cont'd Value of estate, finalizing with court, 247

FOREIGN ESTATE TRUSTEE Generally, 108, 123, 185

FOREIGN WILLS Generally, 12

GLOSSARY General terms, **481 to 488** "Personal representative," use of term, **481** Rules of Civil Procedure, Rule 74.01 definitions, **481**

GOODS AND SERVICES TAX See ESTATE TAXATION

HOLOGRAPH WILL Generally, 12, 106, 165

INCOME CALCULATION See TAXATION ON DEATH

INCOME SOURCES See TAXATION ON DEATH

INSOLVENCY Generally, **246**

INSTRUCTIONS See WILL DRAFTING

INSURANCE Life insurance See ASSETS, LOCATING AND DEALING WITH Life insurance proceeds, 440 Personal information, 24

INTESTACY

See also CERTIFICATE OF APPOINTMENT Generally, **80** Application as estate trustee without will, entitlement, **82** Distribution, **80 to 82** Rules of, **5 to 7, 117** Security, posting, **83 to 85 LEGACIES** See WILL DRAFTING **LIABILITIES, LOCATING AND DEALING WITH** Creditors, advertisement for, **246**, **258**

INTESTACY—Cont'd

Debts, payment of, **246** Family Law Act election See FAMILY LAW ACT Insolvent estates, **246**

MEDIATION, MANDATORY

Certificate of Non-compliance (Form 75.1D), **336** Court-ordered estates mediation (Rule 75.2), **307 to 311** Directions re, **369** Estates, trusts and substituted decisions (Rule 75.1), **301 to 307** Notice by Mediator (Form 75.1B), **332 to 334** Request for Assignment of Mediator (Form 75.1A), **331** Statement of Issues (Form 75.1C), **334 to 336**

Toronto Region, 295

MONEY

Estate asset, as See ASSETS, LOCATING AND DEALING WITH Payment into court See FINALIZING ESTATE

MOTOR VEHICLES Generally, 243

ORDER IN ESTATE PROCEEDING Generally, 107, 171 to 176, 325

ORDERS FOR ASSISTANCE

Generally, **279** Acceptance/refusal of appointment, **279**

ORDERS FOR ASSISTANCE -Cont'd Beneficiary witness, 280 Consent/objection to proposed appointment, 280 Former spouse, 281 Form 74I, 325 to 329 Further particulars, 280 Miscellaneous matters, 282 Pass accounts, 281 Statement of assets of estate, file, 280 PASSING OF ACCOUNTS Generally, 361 to 363 Affidavit in Support of Unopposed Judgment on Passing of Accounts (Form 74.47), 364, 395 Affidavit Verifying Estate Accounts (Form 74.43), 383 to 385 Contested passing requiring hearing, 366 to 369 directed trial, 368 directions re issues. 367 directions re mediation. 369 form of judgment, 369 Judgment on Contested Passing of Accounts (Form 74.51), 406 to 408 procedure, 367 Costs generally, 365 to 366 contested passings, 381 Request for Costs (Forms 74.49, 74.49.1), 398 to 400 Request for Increased Costs (Forms 74.49.2, 74.49.3), 366, 400 to 403 Tariff C, 365, 380 Court jurisdiction to pass accounts of estate trustees, 381 Documents required for filing, 363 Executor's compensation, 372 to 374 "care and management fee," 373

PASSING OF ACCOUNTS -Cont'd Executor's compensation, 372 to 374—Cont'd determining factors, 372 pre-taking, 374 Substitute Decisions Act 1992 fee scale, 373 three-stage determination process. 373 Form and records of accounts, 370 to 372 Notice of Application to Pass Accounts (Form 74.44), 363, 385 to 389 Notice of Non-participation in Passing of Accounts (Form 74.46). 369.394 Notice of No Objection to Accounts (Form 74.46.1), 369, 393 Notice of Objection to Accounts (Form 74.45), 369, 389 Notice of Withdrawal of Objection (Form 74.48), 364, 369, 397 Order to Pass Accounts, 382 Powers of investment, 374 to 378 Trustee Act "prudent investor" rule, 374 to 378 Reply to Notice of Objection to Accounts (Form 74.49.4), 390 Request for further notice (Form 74.45.1), 370, 391 Sample Accounts (Form 74.15), 408 to 420 Special fee, 378 to 379 Specific preparation problems Uncontested passings, 364 to 366 Judgment on Unopposed Passing of Accounts (Form 74.50), 403 to 406 Unprobated wills, 381 PENSIONS Generally, 241, 438 PERSONAL INFORMATION See WILL DRAFTING

PERSONAL REPRESENTATIVE

Defined, **487** Lawyer vs., **68 to 72** Responsibilities of, **68 to 70, 73, 74**, 77 Use of term, **481**

POWERS OF ATTORNEY

Generally, **42** Appointment issues, 44, 51, 53 Bonds, transfer of, **268** Original document, use of, 54 Personal care, for appointment, 51 duties of attorney, 53 formal requirements, 51 generally, 50 Human Tissue Gift Act, 53 resignation of attorney, 52 specific instructions, **52** termination, 52 Property, continuing power for appointment, 44 capacity to give, 43 duties of attorney, 50 effective date, 46 formal requirements, 45 general vs. restricted powers, 47 resignation of attorney, 49 termination. 48 Safekeeping, 55 Shares, transfer of, 268 Terminology, 43

PROBATE FEES

Generally, 9, 13, 23, 36

REAL ESTATE

See ASSETS, LOCATING AND DEALING WITH

RENUNCIATION Generally, 106, 167

RESIDUE

See WILL DRAFTING

ROLLOVERS

Children, property left to, **463**, **465** Farm property, **463 to 465** RRSP and RRIF proceeds, **465** Spousal/common-law partner trust, **460 to 463**

RRIF

Income, **437** Rollovers, **465**

RRSP

Estate asset, as, **240** Income See TAXATION ON DEATH Rollovers, **465**

SECURITIES

See SHARES SECURITY

> Posting, **83 to 85** Return from court, **249**

SETTLEMENTS

Notice of Settlement (Form 75.11), 350 Rejection of Settlement (Form 75.12), 352 Toronto Region See TORONTO REGION PRACTICE DIRECTION, ESTATES LIST

SHARES

Estate asset, as See ASSETS, LOCATING AND DEALING WITH Private corporation shares, tax avoidance, **446** Transfer of, **268**

SMALL ESTATE

See CERTIFICATE OF APPOINT-MENT

SOLICITOR, ROLES OF

Generally, **15 to 17, 21, 47, 55, 70 to 72**

SPOUSAL TRUST Generally, 35, 423, 462

SPOUSE

Capital property transfer to, **430** Defined, **82** Dispositions to, **35** Family Law Act provisions re See FAMILY LAW ACT Former, **19, 281** Information re, **21** Lapse and, **31** Matrimonial home, **24** Residue to, **35** RRSPS, **240** Survivorship clause and, **36**

SUCCESSION LAW REFORM ACT

Anti-lapse provision, Dependants' relief provisions, **40**, **315 to 318** Extended power to Superior Court of Justice (s. 21.1), Family Law Act and, **39**, **245**, Formal will requirements, **10 to 15** Intestacy rules, **5 to 7**, **80 to 82**, Revival of will, Revocation of will, Will provisions,

TAXATION

See ESTATE TAXATION; ROLLOVERS; TAXATION ON DEATH

TAXATION ON DEATH

Capital property capital gains exemption, **432** depreciable capital property, **431** non-depreciable capital property, **431** personal use property, **431** principal residence exemption, **432** rollovers, **430**, **431** taxable capital gains, **430** **TAXATION ON DEATH—Cont'd** Capital property—Cont'd transfer to spouse/common law partner, 430 Glossary of terms, 451 to 457 Income calculation in terminal year cash vs. accrual basis accounting, 426 residence, 424 sources See sources of income sourcing income, 425 Interpretation Bulletins, 446 to 449 Partnership income, 429, 450 **RRSP** income matured RRSP, 436 terminal year contribution, 437 unmatured RRSP, 434 to 436 Sources of income capital property See capital property deferred profit sharing plan income, 439 eligible capital property, 433 employee stock options, 442 graduated rate estate income, 430 income received prior to death, 426 land inventories, 434 life insurance proceeds, 440 periodic payments, 426 proprietorship/partnership income, **429** registered pension plan income, 438 reserves, 441 resource properties, 434 rights/things, 426 to 429 RRIF income, 437 **RRSP** income See RRSP income Special rules alternative minimum tax, 445 capital losses, 444 charitable donations, 443

INDEX

TAXATION ON DEATH—Cont'd

Special rules—Cont'd death benefits, 444 debt forgiveness, 445 double tax re private corporation shares, avoidance, 446 foreign tax credits, 444 medical expenses, 443 tax credits in year of death, 442 to 444 tax instalments, 445 Terminal year tax returns, preparation of generally, 422 elective returns, 423 filing deadlines, 423 income splitting, 424 spouse/common law partner trust context, 423 tax accountant, use of, 422

TAX RETURNS See TAXATION ON DEATH

TORONTO REGION PRACTICE DIRECTION, ESTATES LIST

Generally, 282 Adjournments, 290 to 292 Administrative matters, 285 Contested matters generally, 292 confirmation of applications/ motions, 292 documents and forms, 285 pre-trial conference/trial dates, 292 urgent applications/motions, 292 Contested matters, estates orders giving directions generally, 293 passing of accounts, 295 Costs, 299 Estates Office, 283 Family Law Act elections, 301 Guardianship applications, 289 Mandatory mediation, 295

TORONTO REGION PRACTICE DIRECTION, ESTATES LIST ---Cont'd

Materials for use of court compendium of documents, 298 evidence at trial, 298 factums and short statements of issues, **298** general requirements, 296 multiple-appearance proceedings, 297 Matters heard, 283 Matters without hearing, 299 Miscellaneous applications/ motions, 289 Passing of accounts applications, 286 Principles guiding, 283 Scheduling, 285 Settlements civil proceedings, 300 Estates List proceedings, 300 parties under disability, affecting, 299 Succession Law Reform Act applications, 301 Transfer of matters to, 284 Wills applications where order giving directions required, 288

TRUSTS

Multiple, **467** Spousal, **35, 423, 462** Taxation, types of, **465 to 467**

U.S. ESTATE TAXTION See ESTATE TAXATION

VALUING ESTATE Generally, 79

WILL DRAFTING

Information gathering generally, **21** personal information See personal information

WILL DRAFTING—Cont'd Instructions, taking executors and trustees, appointment of, 25 to 28 funeral arrangements, 29 generally, 25 legacies See legacies organ donation, 29 policies and plans, 29 residue See residue Legacies generally, 29 abatement, 30 ademption, 30 charitable gifts, 32 individual gifts, 33 lapse, 31 memoranda re personal property, 31 precatory memorandum, 32 Limitations on property disposition generally, 37 contractual obligations, 41 dependants' relief, 40 Family Law Act provisions, 38 to **40** jointly-owned property (survivorship right), 37 miscellaneous restrictions, 41 Personal information asset locations, 24 assets and liabilities, 23 children, 22 citizenship, 21 marital status, 21 ownership of property, types of, 24 plans, policies and insurance, 24 Residue outright vs. in trust, 33 to 35 spousal trust, 35 spouse, to, 35 survivorship clause, 36

WILLS

Generally, 4, 42 Advantages generally, 5 beneficiaries, choice of, 8 executors, choice of, 8 Family Law Act beneficiaries protection, **10** guardians, appointment of, 8 immediate effectiveness, 7 intestacy, rules of, 5 to 7 minor beneficiaries, property provision for, 8 tax and probate fee planning, 9 Alterations to, 19 Capacity to make age requirement, 14 testamentary capacity, 14 to 16 Codicils, 19 Definition, 4 Drafting See WILL DRAFTING Example, 56 to 65 Formal requirements for execution armed services member on active service, by, 12 foreign wills, 12 formal/attested wills, 10 to 12 generally, 10 holograph wills, 12 international wills, 12, 13 multiple wills, 13 Invalidation, grounds for fraud/forgery, 17 improper execution, 16 SLRA, s. 21.1, 17 suspicious circumstances, 16 testamentary capacity, lack of, 16 undue influence, 16 Revival of Revocation of generally, 18 destruction, 19 divorce, 19

WILLS—Cont'd

Revocation of—Cont'd marriage, 18 subsequent will, 18

WILLS—Cont'd

Revocation of—Cont'd written declaration, **18**