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MILLER THOMSON ON ESTATE PLANNING

Miller Thomson

Release No. 2, December 2024

Miller Thomson on Estate Planning offers insight into estate planning, trusts, estate administration, insurance planning, charitable planning, business succession and corporate restructuring and the legal implications of immigration, emigration, and other cross board issues. This practical looseleaf service is updated regularly to ensure that you'll always have access to the latest information and developments.

What's New in this Update:

This release features the addition of an Appendix – Words and Phrases to the text.

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Commentary Highlights:

- **APPENDIX WP WORDS AND PHRASES— INTER VIVOS GIFT**—An *inter vivos* gift, must be distinguished from a testamentary gift. An *inter vivos* gift, takes effect immediately, whereas a testamentary gift takes effect only upon the death of the testator. *Wiffin v. Lau*, 2024 ONSC 224, 2024 CarswellOnt 200 (Ont. S.C.J.) at para. 35 Antoniani J.
- **APPENDIX WP WORDS AND PHRASES—PRESUMED UNDUE INFLUENCE**—Presumed undue influence . . . arises where the relationship between the donor and the donee creates a rebuttable presumption that the donor was unduly influenced by the recipient to make the transfer . . . An analysis of presumed undue influence must arise with an examination of the relationship between the parties. *Abbruzzese v. Tucci*, 2024 CarswellOnt 2277, 2024 ONSC 957.
- **APPENDIX WP WORDS AND PHRASES—PROFIT FROM**—In the case before us, the judge found that the phrase used in [*Hall v. Hebert*, 1993, 39 A.C.W.S. (3d) 1080, (S.C.C.)] “profit from” [regarding doctrine of *ex turpi causa*] could stretch to encompass the negation of a witness’s ability to testify in the action, saying that the plaintiff’s ability to recover a remedy may be assisted by the witness’s absence. That benefit, he held, may be adjudged “profit” for the purpose of the defence. There is a degree of speculation in this reasoning for it presumes the witness would have given evidence that only assisted the defendants on the merits of the claim for breach of trust. This sort of speculation, on my understanding, is not within the narrow constraints of the doctrine which, on my review, have not been “loosened” as the judge said, but rather have been more tightly tied to a central organizing principle, being the integrity of the justice system. (*Bang v. Kim* (2024), 2024 BCCA 88, 2024 CarswellBC 590 (B.C. C.A.) at para. 31 Saunders J.A.)