

# Index

## **ABATEMENT**

Generally, **APP B § B:12**

## **ACCUMULATED INCOME**

Generally, **§ 7:23, § 7:64; APP B § B:2**

## **ACCUMULATIONS**

Generally, **APP B § B:12**

Payment of debts, for, **APP B § B:12**

Raising portions, for, **APP B § B:12**

## **ADMINISTRATION**

See also **ESTATE ADMINISTRATION ACT**

Clauses, **APP B § B:3 to APP B § B:5, § 3:12, § 3:162, § 3:164; APP B § B:2**

## **ADMINISTRATION TAX, AVOIDANCE OF**

21-year rule, **APP B § B:2, APP B § B:4**

Generally, **§ 3:22**

## **ADULT CHILDREN**

Generally, **APP B § B:5, APP B § B:6, § 2:1 et seq., § 3:164; APP B § B:2**

Residence trust for child, **§ 7:14, § 7:59**

## **ADVANCES, POWER TO MAKE**

Generally, **APP B § B:12**

## **AMENDMENTS**

Domestic contract, **§ 4:1 et seq.**

Trust deed

generally, **§ 3:164**

deed of appointment of trustee, **§ 7:44**

deed of rectification, **§ 7:46**

deed of removal and appointment of trustee, family trust, **§ 7:45**

deeds of amendment to trust deed, **§ 7:43**

exercise of power of appointment under a trust, **§ 7:47**

Will, see **CODICILS**

terms of trust by settlor, **§ 7:12, § 7:20, § 7:57, § 7:62**

## **APPOINTMENT, POWERS OF**

Generally, **APP B § B:2, APP B § B:4, APP B § B:12, § 2:1 et seq., § 3:1 et seq., § 3:164; APP B § B:1**

Execution of general powers, **APP B § B:12**

Execution of special powers, **APP B § B:12**

Fraud, **APP B § B:12**

## **ASSETS**

Generally, **§ 2:1 et seq.**

Allocation of between shares by trustee, **§ 3:10, § 3:372**

Bare trustee of

beneficiaries, see (this index) **BENEFICIARIES**

corporation, **§ 7:24, § 7:65**

joint owner, **§ 7:25, § 7:66**

Business, separate trustee for, **APP B § B:4**

Checklist, **APP A § A:1, APP A § A:2, APP A § A:9**

Deemed realization, **APP B § B:2**

Digital, treatment of, **APP B § B:39**

Family Law Act (Ontario), see **FAMILY LAW ACT (ONTARIO)**

Family Property Act (Manitoba), **APP B § B:19**

Foreign, **§ 3:1, § 3:4**

Memorandum to trustees, **§ 3:15**

Pay debts, **§ 2:1 et seq., § 3:1, § 3:7, § 3:10, § 3:12, § 3:372 et seq., § 3:491 et seq., § 3:670 et seq., § 7:1 to § 7:27, § 7:33 to § 7:37, § 7:48 to § 7:68**

in re primary & secondary wills, **§ 3:7**

Primary will, see **PRIMARY WILL**

Protection of, **APP B § B:2, APP B § B:4**

Retention of by trustees, **§ 2:1 et seq., § 3:12, § 3:491 et seq.**

Secondary will, see **SECONDARY WILL**  
Support (after *Cummings v. Cummings*), **APP B § B:5**

Tax, **APP B § B:2 to APP B § B:5**

checklists, **APP A § A:1, APP A § A:2**

## **ASSETS—Cont'd**

Tax, **APP B § B:2 to APP B § B:5**

—Cont'd

see(this index) also **INCOME TAX ACT**

Transfer of

discharging trust company, **§ 3:3, § 3:88, § 3:125, § 3:143, § 3:217**  
to trustees, **§ 2:1 et seq., § 3:1 et seq., § 7:1 to § 7:29, § 7:33 to § 7:37, § 7:48 to § 7:68**

## **BANK ACCOUNTS, JOINT**

Generally, **APP B § B:12**

## **BENEFICIARIES**

Generally, **APP B § B:2 to APP B § B:5**

Amendment, **§ 3:16, § 7:43 to § 7:45**

Checklist, **APP A § A:2**

Exercise of trustee's discretion binds,  
**§ 3:1, § 3:8 to § 3:10, § 3:12, § 3:15, § 3:372 et seq., § 3:491 et seq., § 7:1 to § 7:27, § 7:33 to § 7:37, § 7:48 to § 7:68**

Lump sum, declaration of trust for,  
**§ 7:27, § 7:68**

## **BENEFICIARY**

Generally, **§ 2:1 et seq., § 3:15, § 3:164**

## **BUSINESS CORPORATIONS ACT**

Generally, **APP D § APP D:18**

## **CANADIAN CHARTER OF RIGHTS & FREEDOMS**

Generally, **APP B § B:1 et seq.**

## **CAPITAL GAIN**

Generally, **APP A § A:7, APP B § B:2 to APP B § B:5, § 2:1 et seq., § 3:1 et seq., § 3:163, § 7:1 to § 7:27, § 7:33 to § 7:37, § 7:48 to § 7:68; APP A § A:2**

## **CAPITAL LOSS**

Generally, **APP B § B:2**

## **CHARITIES**

Generally, **APP B § B:12**

## **CHECKLIST**

Generally, **APP A § A:2, § 1:1**

Annotated checklists

testator interview checklist, **APP A § A:12**

will drafting checklist, **APP A § A:14**

## **CHECKLIST—Cont'd**

Will instructions and execution checklist,  
**APP A § A:11**

Will precedent clause checklists, **§ 3:1 to § 3:16**

will procedure checklist, **APP A § A:13**

## **CHILDREN**

Generally, **APP B § B:2 to APP B § B:7, § 1:1**

Administration clauses, **§ 3:12, § 3:491 et seq.**

As alternate executors, **§ 2:11, § 2:12, § 2:33, § 2:34**

Description of, **APP B § B:12**

Distribution of residue, **§ 3:9**

Domestic contracts, **§ 4:1 et seq.**

care of from prior marriage, **§ 4:13**  
remain in matrimonial home, **§ 4:11, § 4:14**

statement of from prior marriage,  
**§ 4:12**

Gifts of personal property, **§ 3:5**

Homes, cottages and other real estate,  
**§ 3:6**

Illegitimacy, **APP B § B:12**

Legacies, **§ 3:8**

distribution to multiple legatees,  
**§ 3:325 to § 3:328**

Life insurance, **§ 3:2, § 3:32 et seq.**

Life insurance declarations

gift over to at certain age, **§ 6:4**

gift over to per stirpes, **§ 6:2**

Lump sum, declaration of trust for,  
**§ 7:27, § 7:68**

Memorandum to trustees re liberal pay-  
ments to guardians of, **§ 3:15**

Older couple with adult children or  
expecting grandchildren, **§ 2:6 to § 2:8, § 2:22, § 2:23, § 2:30, § 2:31**

Payment of debts, **§ 3:7**

Primary will, **§ 2:11, § 2:34**

Secondary will, **§ 2:12, § 2:35**

Single parent with, **§ 2:9, § 2:24, § 2:25, § 2:32**

Single parent with children or expecting  
grandchildren, **§ 2:10, § 2:33**

Trillium Gift of Life, **APP D § APP D:16**

Trust for residue

generally, **§ 3:10, § 3:372 et seq.**  
and disabled child, **§ 7:9, § 7:54**

## CHILDREN—Cont'd

- Trust for residue—Cont'd
  - trust for income to age 40, § 7:23, § 7:64
  - trust of cottage and gift over to adult children, § 7:10, § 7:13, § 7:55, § 7:58
  - trust of life insurance, § 7:16, § 7:60
    - to fund support pre domestic contract, § 7:22, § 7:63
  - trusts for and 21-year rule, § 7:3, § 7:50
    - and disabled child, § 7:7, § 7:53
  - trusts for and distribution on majority, § 7:4, § 7:51
  - trusts for excluding named person, § 7:7, § 7:53
  - trusts for with immediate distribution, § 7:1, § 7:48
  - trusts for with protector, § 7:2, § 7:49
- Young couple with or anticipating, § 2:1 to § 2:5, § 2:21, § 2:28 to § 2:30

## CLASS GIFTS

- Generally, APP B § B:12

## CLAUSES

- Generally, § 3:1 et seq.
- Administration clauses
  - all jurisdictions
    - generally, § 3:491 et seq.
  - addendum requiring child/
    - beneficiary to produce marriage contract or cohabitation agreement before distribution will be made, § 3:611
  - appointment of executor to carry on administration of unadministered estate, § 3:606
  - appointment of guardian for minor children of testator, § 3:620
  - authorization for child acting as trustee to receive remuneration for acting as director, etc., § 3:619
  - authorization for trustee who is also a professional to receive usual professional fees, § 3:616
  - authorization for trustees to achieve remuneration for acting as a director, etc., § 3:618
  - authorization of trustees to resign without court order, § 3:628

## CLAUSES—Cont'd

- Administration clauses—Cont'd
  - all jurisdictions—Cont'd
    - authorization to make RESP contributions for minor beneficiary, § 3:636
    - authorization to pay amounts pledged to charities which remain unpaid at time of death, § 3:626
    - authorization to take reasonable compensation as may be agreed upon between the trustees and the audit beneficiaries, § 3:605
    - authorization to trustees to request environmental audit and to pay for audit, monitoring and clean up out of the estate, § 3:623
    - authorization to trustees to retain and pay solicitor to attend to administration, § 3:617
    - child to be treated as natural child of testator whether or not adoption finalized at time of death, § 3:624
    - cy-pres authority given to governing body of charity where gift becomes impossible or impractical to effect for purposes stated, § 3:631
    - declaration of trustee's compensation, § 3:609
    - declaration that children adopted out of family are to be treated as issue of the testator, § 3:622
    - declaration that no gift will fall into community of property, including exclusion from net family property under Family Law Act, § 3:600
    - declaration that no gift will fall into community of property, including exclusion from net family property under Family Law Act and declaration of private property under Civil code of Quebec, § 3:601
    - declaration that provision made for children to be in full satisfaction of obligations under separation agreement, § 3:621
    - direction as a subscriber, to maintain RESP for beneficiary, § 3:637

## CLAUSES—Cont'd

- Administration clauses—Cont'd
- all jurisdictions—Cont'd
  - direction that stock dividends to be dealt with as capital, § 3:597
  - direction to accelerate remainder interests if a beneficiary disclaims, § 3:643
  - direction to apply same trusts to company shares represented at death by different holdings, § 3:625
  - direction to consider beneficiary's other income when exercising discretion, § 3:646
  - direction to fund bequests from assets disposed of under primary will, § 3:629
  - direction to trustees to consider non-financial as well as financial interests of beneficiaries, § 3:602
  - exclusion of illegitimate children, § 3:599
  - general trust power to hold funds in trust until a specified age with perpetuity limit, § 3:574
  - hotchpot clause, § 3:612
  - hotchpot clause for legacies set aside for grandchildren so that each child and his or her issue as a group are treated equally in distribution (may be used in conjunction with 3 h.7 or h.7a), § 3:613
  - income to be treated as income, property not producing income to be treated as such, § 3:595
  - meaning of "for the benefit of a beneficiary," § 3:642
  - named individual to have right of first refusal on business, § 3:610
  - payment in specie of Family Law Act entitlement, § 3:633
  - power of investment, § 3:578
  - power of sale, postponement and power to retain, § 3:577
  - power of trustees to resign without court order, § 3:608
  - power to allocate expenses to income and/or capital, § 3:645
  - power to amend administrative provisions, § 3:641

## CLAUSES—Cont'd

- Administration clauses—Cont'd
- all jurisdictions—Cont'd
  - power to appoint a trust company to act as agent, § 3:591
  - power to appoint trust property among beneficiary and his or her issue, § 3:615
  - power to continue spousal trust for up to 3 years following death of surviving spouse, § 3:644
  - power to continue to carry on business of deceased with attendant powers, § 3:582
  - power to deal with investment in corporations and to retain such investments, § 3:581
  - power to delegate income tax decisions to specialists, § 3:635
  - power to employ and pay professional advisors, § 3:590
  - power to hold and purchase life insurance, § 3:634
  - power to hold funds for minor beneficiaries, § 3:573
  - power to lend and enter guarantees for benefit of beneficiaries, power to borrow and to lend to the guardians of the testator's children, § 3:587
  - power to lend and enter guarantees for benefit of beneficiaries but postponed until after death of testator and his or her spouse where a qualifying spousal trust is intended, § 3:588
  - power to lend and enter guarantees for the benefit of beneficiaries and power to borrow, § 3:586
  - power to make division of assets and fix value for that purpose, § 3:582
  - power to make division of assets and fix value for that purpose with precatory declaration that real property be distributed to children in specie, § 3:583
  - power to make elections under Income Tax Act, § 3:584
  - power to make post mortem RRSP contribution, § 3:639
  - power to make spousal RRSP contribution, § 3:640

## CLAUSES—Cont'd

### Administration clauses—Cont'd

#### all jurisdictions—Cont'd

- power to pay funds for minors to parent or guardian, **§ 3:575**
- power to pre-take compensation, **§ 3:604**
- power to purchase assets out of estate, **§ 3:603**
- power to purchase life insurance, **§ 3:638**
- power to reorganize assets to effect an estate freeze, **§ 3:598**
- power to reorganize corporate holdings, etc., **§ 3:630**
- power to sell real estate, mortgage, borrow, lease, repair or rebuild, **§ 3:585**
- power to settle claims on behalf of estate, **§ 3:592**
- power to settle new trusts and transfer assets to those trusts, **§ 3:614**
- powers of discretion of trustees to be unfettered and exercised by majority, **§ 3:627**
- protection of trustees for exercise of discretion; exclusion of even-handed rule, **§ 3:589**
- specific power to employ and pay investment counsel, **§ 3:580**
- specific power to settle Family Law Act claim on behalf of estate, **§ 3:593**
- spendthrift bankruptcy clause, **§ 3:607**
- trustees given discretion to determine what constitutes income and capital, **§ 3:596**
- trustees responsible only for funds actually received, **§ 3:594**

#### Ontario

- generally, **§ 3:12**
- accounting format, **§ 3:571**
- addendum requiring child/beneficiary to produce marriage contract or cohabitation agreement before distribution will be made, **§ 3:530**
- appointment of executor to carry on administration of unadministered estate, **§ 3:525**

## CLAUSES—Cont'd

### Administration clauses—Cont'd

#### Ontario—Cont'd

- appointment of guardian for minor children of testator, **§ 3:539**
- authority to deal with digital assets, **§ 3:569**
- authorization for child acting as trustee to receive remuneration for acting as director, etc., **§ 3:538**
- authorization for trustee who is also a professional to receive usual professional fees, **§ 3:535**
- authorization for trustees to achieve remuneration for acting as a director, etc., **§ 3:537**
- authorization of trustees to resign without court order, **§ 3:547**
- authorization to make RESP contributions for minor beneficiary, **§ 3:555**
- authorization to pay amounts pledged to charities which remain unpaid at time of death, **§ 3:545**
- authorization to take reasonable compensation as may be agreed upon between the trustees and the audit beneficiaries, **§ 3:524**
- authorization to trustees to request environmental audit and to pay for audit, monitoring and clean up out of the estate, **§ 3:542**
- authorization to trustees to retain and pay solicitor to attend to administration, **§ 3:536**
- child to be treated as natural child of testator whether or not adoption finalized at time of death, **§ 3:543**
- cy-pr?s authority given to governing body of charity where gift becomes impossible or impractical to effect for purposes stated, **§ 3:550**
- declaration of trustee's compensation, **§ 3:528**
- declaration that children adopted out of family are to be treated as issue of the testator, **§ 3:541**
- declaration that no gift will fall into community of property, includ-

## CLAUSES—Cont'd

### Administration clauses—Cont'd

#### Ontario—Cont'd

- ing exclusion from net family property under Family Law Act, § 3:519
- declaration that no gift will fall into community of property, including exclusion from net family property under Family Law Act and declaration of private property under Civil code of Quebec, § 3:520
- declaration that provision made for children to be in full satisfaction of obligations under separation agreement, § 3:540
- direction as a subscriber, to maintain RESP for beneficiary, § 3:637
- direction that stock dividends to be dealt with as capital, § 3:516
- direction to accelerate remainder interests if a beneficiary disclaims, § 3:562
- direction to apply same trusts to company shares represented at death by different holdings, § 3:544
- direction to fund bequests from assets disposed of under primary will, § 3:548
- direction to trustees to consider non-financial as well as financial interests of beneficiaries, § 3:521
- directions to consider beneficiary's other income when exercising discretion, § 3:565
- distribution to wholly owned Canadian corporation, § 3:570
- exclusion of illegitimate children, § 3:518
- general trust power to hold funds in trust until a specified age with perpetuity limit, § 3:493
- hotchpot clause, § 3:531
- hotchpot clause for legacies set aside for grandchildren so that each child and his or her issue as a group are treated equally in distribution (may be used in conjunction with 3h.7 or h.7a), § 3:532

## CLAUSES—Cont'd

### Administration clauses—Cont'd

#### Ontario—Cont'd

- income to be treated as income, property not producing income to be treated as such, § 3:514
- meaning of "for the benefit of a beneficiary," § 3:561
- named individual to have right of first refusal on business, § 3:529
- payment in specie of Family Law Act entitlement, § 3:552
- power of investment, § 3:497
- power of sale, postponement and power to retain, § 3:496
- power of trustees to resign without court order, § 3:527
- power to allocate expenses to income and/or capital, § 3:564
- power to amend administrative provisions, § 3:560
- power to appoint a trust company to act as agent, § 3:510
- power to appoint trust property among beneficiary and his or her issue, § 3:534
- power to continue spousal trust for up to 3 years following death of surviving spouse, § 3:563
- power to continue to carry on business of deceased with attendant powers, § 3:501
- power to deal with investment in corporations and to retain such investments, § 3:500
- power to delegate income tax decisions to specialists, § 3:554
- power to employ and pay professional advisors, § 3:509
- power to hold and purchase life insurance, § 3:553
- power to hold funds for minor beneficiaries, § 3:491
- power to hold funds on Henson trust terms if beneficiary receiving disability support payments, § 3:492
- power to lend and enter guarantees for benefit of beneficiaries, power to borrow and to lend to the guardians of the testator's children, § 3:506



**CLAUSES—Cont'd**

Administration clauses—Cont'd

Ontario—Cont'd

- power to lend and enter guarantees for benefit of beneficiaries but postponed until after death of testator and his or her spouse where qualifying spousal trust is intended under, **§ 3:507**
- power to lend and enter guarantees for the benefit of beneficiaries and power to borrow, **§ 3:505**
- power to make division of assets and fix value for that purpose, **§ 3:501**
- power to make division of assets and fix value for that purpose with precatory declaration that real property be distributed to children in specie, **§ 3:502**
- power to make elections under Income Tax Act, **§ 3:503**
- power to make post mortem RRSP contribution, **§ 3:558**
- power to make spousal RRSP contribution, **§ 3:559**
- power to pay funds for minors to parent or guardian, **§ 3:494**
- power to pre-take compensation, **§ 3:523**
- power to purchase assets out of estate, **§ 3:522**
- power to purchase life insurance, **§ 3:557**
- power to reorganize assets to effect an estate freeze, **§ 3:517**
- power to reorganize corporate holdings, etc., **§ 3:549**
- power to sell real estate, mortgage, borrow, lease, repair or rebuild, **§ 3:504**
- power to settle claims on behalf of estate, **§ 3:511**
- power to settle new trusts and transfer assets to those trusts, **§ 3:533**
- powers of discretion of trustees to be unfettered and exercised by majority, **§ 3:546**
- protection of trustees for exercise of discretion; exclusion of even-handed rule, **§ 3:508**

**CLAUSES—Cont'd**

Administration clauses—Cont'd

Ontario—Cont'd

- references to child or issue of person, **§ 3:572**
  - specific power to employ and pay investment counsel, **§ 3:499**
  - specific power to settle Family Law Act claim on behalf of estate, **§ 3:512**
  - spendthrift bankruptcy clause, **§ 3:526**
  - trustees given discretion to determine what constitutes income and capital, **§ 3:515**
  - trustees responsible only for funds actually received, **§ 3:513**
- Appointment of executors
- Alberta
- generally, **§ 3:88**
  - husband with first and second alternates, **§ 3:94**
  - husband with single alternate, **§ 3:93**
  - majority rule clause, **§ 3:103**
  - majority rule clause where more than two trustees including named executor required to be in majority, **§ 3:102**
  - multiple executors and corporate trustee with power to personal trustee to change corporate trustee, **§ 3:98**
  - multiple executors with provision for minimum number to act and roster of alternates, **§ 3:95**
  - power to appoint additional trustees, including trust company, **§ 3:105**
  - release of executors from obligation to post security, **§ 3:104**
  - simple appointment of more than one executor, **§ 3:88**
  - simple appointment of single executor, **§ 3:89**
  - single executor with appointment of each child as they reach specified age, **§ 3:99**
  - single executor with direction for substitutes, **§ 3:96**
  - single executor with partners of firm as alternates, **§ 3:97**

## CLAUSES—Cont'd

### Appointment of executors—Cont'd

#### Alberta—Cont'd

single executor with single alternate,  
§ 3:90

special appointment of parents of  
grandchild as trustee for  
grandchild, § 3:101

special appointment of trustees for  
specific trusts, § 3:100

wife with first and second alternates,  
§ 3:92

wife with single alternate, § 3:91

#### British Columbia

generally, § 3:106

husband with first and second  
alternates, § 3:113

husband with single alternate,  
§ 3:112

majority rule clause, § 3:122

majority rule clause where more than  
two trustees including named  
executor required to be in  
majority, § 3:121

multiple executors and corporate  
trustee with power to personal  
trustee to change corporate  
trustee, § 3:117

multiple executors with provision for  
minimum number to act and  
roster of alternates, § 3:114

power to appoint additional trustees,  
including trust company,  
§ 3:124

release of executors from obligation  
to post security, § 3:123

simple appointment of more than one  
executor, § 3:107

simple appointment of single execu-  
tor, § 3:108

single executor with appointment of  
each child as they reach speci-  
fied age, § 3:118

single executor with direction for  
substitutes, § 3:115

single executor with partners of firm  
as alternates, § 3:116

single executor with single alternate,  
§ 3:109

special appointment of parents of  
grandchild as trustee for  
grandchild, § 3:120

## CLAUSES—Cont'd

### Appointment of executors—Cont'd

#### British Columbia—Cont'd

special appointment of trustees for  
specific trusts, § 3:119

wife with first and second alternates,  
§ 3:111

wife with single alternate, § 3:110

#### Manitoba

generally, § 3:125

husband with first and second  
alternates, § 3:131

husband with single alternate,  
§ 3:130

majority rule clause, § 3:140

majority rule clause where more than  
two trustees including named  
executor required to be in  
majority, § 3:139

multiple executors and corporate  
trustee with power to personal  
trustee to change corporate  
trustee, § 3:135

multiple executors with provision for  
minimum number to act and  
roster of alternates, § 3:132

power to appoint additional trustees,  
including trust company,  
§ 3:142

release of executors from obligation  
to post security, § 3:141

simple appointment of more than one  
executor, § 3:125

simple appointment of single execu-  
tor, § 3:126

single executor with appointment of  
each child as they reach speci-  
fied age, § 3:136

single executor with direction for  
substitutes, § 3:133

single executor with partners of firm  
as alternates, § 3:134

single executor with single alternate,  
§ 3:127

special appointment of parents of  
grandchild as trustee for  
grandchild, § 3:138

special appointment of trustees for  
specific trusts, § 3:137

wife with first and second alternates,  
§ 3:129

wife with single alternate, § 3:128



**CLAUSES—Cont'd**

Appointment of executors—Cont'd

New Brunswick

- generally, § 3:143
- husband with first and second alternates, § 3:149
- husband with single alternate, § 3:148
- majority rule clause, § 3:158
- majority rule clause where more than two trustees including named executor required to be in majority, § 3:157
- multiple executors and corporate trustee with power to personal trustee to change corporate trustee, § 3:153
- multiple executors with provision for minimum number to act and roster of alternates, § 3:150
- power to appoint additional trustees, including trust company, § 3:160
- release of executors from obligation to post security, § 3:159
- simple appointment of more than one executor, § 3:143
- simple appointment of single executor, § 3:144
- single executor with appointment of each child as they reach specified age, § 3:154
- single executor with direction for substitutes, § 3:151
- single executor with partners of firm as alternates, § 3:152
- single executor with single alternate, § 3:145
- special appointment of parents of grandchild as trustee for grandchild, § 3:156
- special appointment of trustees for specific trusts, § 3:155
- wife with first and second alternates, § 3:147
- wife with single alternate, § 3:146

Newfoundland

- generally, § 3:161
- husband with first and second alternates, § 3:168
- husband with single alternate, § 3:167

**CLAUSES—Cont'd**

Appointment of executors—Cont'd

Newfoundland—Cont'd

- majority rule clause, § 3:177
  - majority rule clause where more than two trustees including named executor required to be in majority, § 3:176
  - multiple executors and corporate trustee with power to personal trustee to change corporate trustee, § 3:172
  - multiple executors with provision for minimum number to act and roster of alternates, § 3:169
  - power to appoint additional trustees, including trust company, § 3:179
  - release of executors from obligation to post security, § 3:178
  - simple appointment of more than one executor, § 3:162
  - simple appointment of single executor, § 3:163
  - single executor with appointment of each child as they reach specified age, § 3:173
  - single executor with direction for substitutes, § 3:170
  - single executor with partners of firm as alternates, § 3:171
  - single executor with single alternate, § 3:164
  - special appointment of parents of grandchild as trustee for grandchild, § 3:175
  - special appointment of trustees for specific trusts, § 3:174
  - wife with first and second alternates, § 3:166
  - wife with single alternate, § 3:165
- Nova Scotia
- generally, § 3:180
  - husband with first and second alternates, § 3:187
  - husband with single alternate, § 3:186
  - majority rule clause, § 3:196
  - majority rule clause where more than two trustees including named executor required to be in majority, § 3:195

## CLAUSES—Cont'd

### Appointment of executors—Cont'd

#### Nova Scotia—Cont'd

multiple executors and corporate trustee with power to personal trustee to change corporate trustee, § 3:191

multiple executors with provision for minimum number to act and roster of alternates, § 3:188

power to appoint additional trustees, including trust company, § 3:198

release of executors from obligation to post security, § 3:197

simple appointment of more than one executor, § 3:181

#### Ontario

generally, § 3:3

authorization for trustee to resign and to appoint successor(s), § 3:86

husband with first and second alternates, § 3:72, § 3:205

husband with single alternate, § 3:71, § 3:204

majority rule clause, § 3:83, § 3:214

majority rule clause where more than two trustees including named executor required to be in majority, § 3:82, § 3:213

multiple executors and corporate trustee with power to personal trustee to change corporate trustee, § 3:76, § 3:209

multiple executors with provision for minimum number to act and roster of alternates, § 3:73, § 3:206

power to appoint additional trustees, including trust company, § 3:85, § 3:216

Prince Edward Island, § 3:199

release of executors from obligation to post security, § 3:84, § 3:215

removal of as sole executor in case of s. 5(2)FLA claim and appointment of substitutes, § 3:80

removal of spouse as one of several trustees in case of s. 5(2) FLA claim, § 3:81

## CLAUSES—Cont'd

### Appointment of executors—Cont'd

#### Ontario—Cont'd

role of spouse as trustee in case of s. 5(2) FLA claim, § 3:87

simple appointment of more than one executor, § 3:66, § 3:199

simple appointment of single executor, § 3:67, § 3:200

single executor with appointment of each child as they reach specified age, § 3:77, § 3:210

single executor with direction for substitutes, § 3:74, § 3:207

single executor with partners of firm as alternates, § 3:75, § 3:208

single executor with single alternate, § 3:68, § 3:201

special appointment of parents of grandchild as trustee for grandchild, § 3:79, § 3:212

special appointment of trustees for specific trusts, § 3:211

special appointment of trustees for specific trusts, § 3:78

wife with first and second alternates, § 3:70, § 3:203

wife with single alternate, § 3:69, § 3:202

#### Saskatchewan

generally, § 3:217

husband with first and second alternates, § 3:223

husband with single alternate, § 3:222

majority rule clause, § 3:232

majority rule clause where more than two trustees including named executor required to be in majority, § 3:231

multiple executors and corporate trustee with power to personal trustee to change corporate trustee, § 3:227

multiple executors with provision for minimum number to act and roster of alternates, § 3:224

power to appoint additional trustees, including trust company, § 3:234

release of executors from obligation to post security, § 3:233

## CLAUSES—Cont'd

### Appointment of executors—Cont'd

#### Saskatchewan—Cont'd

- simple appointment of more than one executor, § 3:217
- simple appointment of single executor, § 3:218
- single executor with appointment of each child as they reach specified age, § 3:228
- single executor with direction for substitutes, § 3:225
- single executor with partners of firm as alternates, § 3:226
- single executor with single alternate, § 3:219
- special appointment of parents of grandchild as trustee for grandchild, § 3:230
- special appointment of trustees for specific trusts, § 3:229
- wife with first and second alternates, § 3:221
- wife with single alternate, § 3:220
- simple appointment of single executor generally, § 3:182
- single executor with appointment of each child as they reach specified age, § 3:192
- single executor with direction for substitutes, § 3:189
- single executor with partners of firm as alternates, § 3:190
- single executor with single alternate, § 3:183
- special appointment of parents of grandchild as trustee for grandchild, § 3:194
- special appointment of trustees for specific trusts, § 3:193
- wife with first and second alternates, § 3:185
- wife with single alternate, § 3:184

### Codicils

- all jurisdictions
  - generally, § 3:3
  - confirming will made previously (female, e.g. before divorce or marriage), § 3:693
  - confirming will made previously (male, e.g. before divorce or marriage), § 3:692

## CLAUSES—Cont'd

### Codicils—Cont'd

#### all jurisdictions—Cont'd

- general, with no specific provisions (female), § 3:691
- general, with no specific provisions (male), § 3:690
- primary will (female), § 3:695
- primary will (male), § 3:694
- secondary will (female), § 3:695
- secondary will (male), § 3:696
- separation, on, interpret will if spouse died, § 3:698

#### Ontario

- generally, § 3:16
- confirming will made previously (female, e.g. before divorce or marriage), § 3:684
- confirming will made previously (male, e.g. before divorce or marriage), § 3:683
- Family Law Act codicil (female), § 3:682
- Family Law Act codicil (male), § 3:681
- general, with no specific provisions (female), § 3:680
- general, with no specific provisions (male), § 3:679
- primary will (female), § 3:686
- primary will (male), § 3:685
- secondary will (female), § 3:688
- secondary will (male), § 3:687
- separation, on, interpret will as if spouse died, § 3:3

### Distribution of property to trustees, all jurisdictions

- generally, § 3:4
- all property except personal articles, shares and loans receivable in a private corporation, § 3:240, § 3:241
- all property except private company shares, § 3:239
- all property except that in a named jurisdiction to trustee, § 3:27, § 3:237
- all property wheresoever situate including powers of appointment to trustees, § 3:235
- all property wheresoever situate including powers of appointment to

## CLAUSES—Cont'd

- Distribution of property to trustees, all jurisdictions—Cont'd
  - trustees and insurance policies, § 3:236
  - Ontario real estate, § 3:28, § 3:246
  - personal articles, shares and loans receivable in a private corporation only, § 3:29, § 3:243
  - private company shares only, § 3:242
  - property situate in a named jurisdiction only, § 3:238
  - property subject to power of appointment under a deed of trust, § 3:245
  - property subject to power of appointment under will, § 3:244
- Family disaster
  - generally, § 3:11
  - charities on death of last survivor of named individual, issue and testator, § 3:490
  - divided into equal parts on death of survivor of named individual, issue and testator, § 3:483
  - equal parts on death of survivor of named individual, issue and testator, gift over to issue of named beneficiary of each part, § 3:486
  - equally among siblings of spouses on death of survivor of spouse, testator and issue gift over to issue of deceased sibling, § 3:487
  - equally to named individuals if anything undisposed of after all other provisions effected, § 3:484
  - named individual with alternate named individual and gift over to issue if second named individual is deceased, § 3:485
  - specified foundation on death of last survivor of named individual, testator and issue, § 3:488
  - two equal shares, one to spouse's parents or the survivor or if both deceased then to issue of spouse's parents; other share to testator spouse's parents or the survivor or if both deceased then to issue of spouse's parents, § 3:489
- Funeral directions, all jurisdictions generally, § 3:13

## CLAUSES—Cont'd

- Funeral directions, all jurisdictions—Cont'd
  - authorization for donation of organs for transplant, § 3:655
  - authorization for donation of organs for transplants and medical research, § 3:657
  - cremation, § 3:653
  - cremation and simple funeral, § 3:654
  - instructions as to internment of remains, § 3:13
  - instructions as to prearranged funeral, § 3:13
- Gifts of personal property, all jurisdictions generally, § 3:5
  - bequest to female (bonds, etc.), § 3:284
  - bequest to female (bonds, etc.) with gift over, § 3:285
  - bequest to female of personal articles, § 3:249
  - bequest to female with gift over, § 3:250
  - bequest to male (bonds, etc.), § 3:286
  - bequest to male (bonds, etc.) with gift over, § 3:287
  - bequest to male of personal articles, § 3:251
  - bequest to male with gift over, § 3:252
  - children, § 3:266
  - disposal of jewellery according to precatory memorandum, with remaining jewellery to named individual, § 3:276
  - disposal of jewellery according to precatory memorandum, with remaining jewellery to named individual, with further gift over to testator's children, § 3:275
  - disposal of personal articles according to memorandum, § 3:272
  - disposal of personal articles according to memorandum with gift of remaining articles to children and grandchildren in discretion of trustees, § 3:273
  - genetic material to be destroyed, § 3:291
  - genetic material to spouse, § 3:289, § 3:290
  - jewellery to be held for class of beneficiaries until youngest attains a

**CLAUSES—Cont'd**

- Gifts of personal property, all jurisdictions—Cont'd
  - specified age if named individual predeceases or dies within 30 days of testator, trustees given discretion to distribute earlier, **§ 3:278**
- jewellery to be held for named individual until a certain age, **§ 3:277**
- personal articles to be divided among children of testator living at death, power of appointment to named individual with one alternate appointment, **§ 3:270**
- personal articles to be held for life of a named individual, **§ 3:258**
- personal articles to children as they agree, sold if dispute, **§ 3:271**
- personal articles to children as they agree, with provision for minor, **§ 3:266**
- personal articles to husband with gift over to children in discretion of trustees but no provision for minor children, **§ 3:264**
- personal articles to husband with gift over to children in discretion of trustees with provision for minor children, **§ 3:263**
- personal articles to husband with gift over to minor child, **§ 3:265**
- personal articles to husband with gift over to testatrix's living issue at the trustee's discretion, precatory memorandum, **§ 3:269**
- personal articles to minor child, **§ 3:259**
- personal articles to named individual, **§ 3:257**
- personal articles to named individual to be distributed in manner and proportions determined by trustees subject to precatory memorandum, **§ 3:274**
- personal articles to wife with gift over to children in discretion of trustees but no provision for minor children, **§ 3:261**
- personal articles to wife with gift over to children in discretion of trustees with provision for minor children, **§ 3:260**

**CLAUSES—Cont'd**

- Gifts of personal property, all jurisdictions—Cont'd
  - personal articles to wife with gift over to minor child, **§ 3:262**
  - personal articles to wife with gift over to testator's living issue at the trustee's discretion, precatory memorandum, **§ 3:268**
  - pet or pets together with legacy, **§ 3:288**
  - shares to children equally, **§ 3:283**
  - shares to named individual, **§ 3:279**
  - shares to named individual with gift over, **§ 3:281**
- Homes, cottages and other real estate all jurisdictions
  - generally, **§ 3:6**
  - cottage and contents and boats to named individual, **§ 3:294**
  - cottage to children as equal tenants in common, **§ 3:295**
  - cottage to children at discretion of trustee, with hotchpot provision (to avoid land transfer tax), **§ 3:296**
  - cottage to children entering a co-tenancy agreement within one year of death, **§ 3:315**
  - hold cottage for children until youngest reaches a specified age at which time cottage or proceeds therefrom fall into residue, **§ 3:304**
  - hold cottage for children until youngest reaches a specified age at which time property to be transferred to children as tenants in common, **§ 3:305**
  - hold cottage for husband for life, maintenance to be paid by husband, **§ 3:314**
  - hold cottage for husband for life, maintenance to be paid by trustees, **§ 3:313**
  - hold cottage for testator's children; children load funds to a separate trust to fund expenses, **§ 3:308**
  - hold cottage for testator's children until one of them no longer wants the cottage to be held for his benefit, at which time other

## CLAUSES—Cont'd

- Homes, cottages and other real estate—Cont'd
  - all jurisdictions—Cont'd
    - children have right to purchase cottage from estate, § 3:307
  - hold cottage for wife for life, maintenance etc. to be paid by trustees, § 3:311
  - hold cottage for wife for life, maintenance to be paid by wife, § 3:312
  - hold cottage until testator's children make written direction that it be sold or failing such direction at death of last surviving child, until youngest grandchild attains specified age, § 3:306
  - hold home for children and the guardian until youngest child reaches a specified age, at which time home falls into residue, § 3:303
  - hold home for children for so long as a child is under a specified age, § 3:301
  - hold home for children until youngest reaches a specified age at which time residence transferred to child or children or proceeds therefrom fall into residue, § 3:302
  - hold home for father for life, taxes, maintenance, etc. to be paid by trustees, § 3:310
  - hold home for husband for life, taxes, maintenance, etc. to be paid by husband, § 3:300
  - hold home for husband for life, taxes, maintenance, etc. to be paid by trustees, § 3:299
  - hold home for mother for life, taxes, maintenance, etc. to be paid by trustees, § 3:309
  - hold home for wife for life, taxes, maintenance, etc. to be paid by trustees, § 3:297
  - hold home for wife for life, taxes, maintenance, etc. to be paid by wife, § 3:298
  - home to husband, § 3:293
  - home to wife, § 3:292

## CLAUSES—Cont'd

- Introductory and revocation, all jurisdictions
  - generally, § 3:1
  - all Ontario real estate, § 3:28
  - all property, excluding Ontario real estate and personal and financial assets, § 3:27
  - all property, excluding property in foreign jurisdiction, § 3:21
  - governing law, § 3:26
  - primary will anticipating secondary will for financial assets, § 3:22
  - primary will anticipating secondary will for personal articles and financial assets, § 3:23
  - primary will anticipating secondary will for privately held business assets, § 3:24
  - secondary will for foreign assets (no revocation), § 3:20
  - secondary will for personal articles and financial assets, § 3:25, § 3:29
  - simple revocation, § 3:18
  - simple revocation in contemplation of marriage, § 3:19
- Legacies, all jurisdictions
  - generally, § 3:8
  - annuity created for joint lives of parents, § 3:339
  - annuity created for life of named individual with discretion to purchase annuity from life insurance company, § 3:338
  - annuity for life of individual, § 3:340
  - charity, § 3:329
  - children, to be held on trust for any child under a specific age, § 3:333
  - children, to be held on trust for any child under a specific age with distribution in three stages, § 3:334
  - debts owed testator by children, amount set off by debts of each, § 3:349
  - debts owed testator's private companies by children, retired, § 3:348
  - debts owed to testator, forgiveness of, § 3:346
  - debts owed to testator by children, retired, § 3:347
  - distribution in three stages, § 3:337



**CLAUSES—Cont'd**

- Legacies, all jurisdictions—Cont'd
  - distribution to multiple legatees, § 3:325 to § 3:328
  - estate of deceased spouse to pay tax liability of survivor's estate where testator's children named beneficiary of RRSP or RRIF by survivor spouse annuitant, § 3:352
  - fund for benefit of named disabled child for life with discretion to sprinkle income among other children, § 3:332
  - fund for named individual for life, § 3:331
  - fund to be held on trust for daughter's education and then distribute to issue of testator in equal shares per stirpes, § 3:343
  - fund to be held on trust for son's education and then distribute to issue of testator in equal shares per stirpes, § 3:342
  - grandchildren, education fund for the benefit of those born after a specified date, § 3:351
  - grandchildren, fund for benefit of all born before specified date, § 3:350
  - grandchildren, to be held on trust for any child under a specific age, § 3:336
  - grandchildren, to be held on trust for any child under a specific age with insurance proceeds equally to children as survive testator on trust until certain age, § 3:341
  - named individual to be held on trust to a specified age, § 3:323
  - several legacies, including charities, § 3:330
  - several legacies, no charities, § 3:324
  - simple legacy to named individual, no gift over, § 3:321
  - simple legacy to named individual with gift over, § 3:322
  - wife's daughter, income to be accumulated to age eighteen with capital distribution in two stages at specified age, § 3:344
- Lump sum, declaration of trust for, § 7:27, § 7:68

**CLAUSES—Cont'd**

- Memoranda, all jurisdictions, § 3:15
  - authorizing trustees to convert shares, § 3:677
  - directing assets to be placed in tainted and untainted spousal trust (to be used with j.3), § 3:676
  - gifting personal articles (to be used with e.11 or e.12), § 3:675
  - liberal payments to daughter's guardian for home-life, § 3:672
  - liberal payments to guardians for home-life, § 3:670
  - liberal payments to son's guardian for home-life, § 3:671
  - payments to guardian to include compensation for added responsibility, § 3:673
  - payments to guardians to include compensation for added responsibility, § 3:674
- Payment of debts, all jurisdictions
  - generally, § 3:7
  - long-term debts, § 3:317
  - payment of debts, primary will, § 3:319
  - payment of debts, secondary will, § 3:320
  - payment of support pursuant to separation agreement, § 3:318
  - short-term debts, § 3:316
- Residue, outright distribution, all jurisdictions
  - generally, § 3:9
  - charitable foundation, § 3:370
  - charities, § 3:371
  - equal parts; specified parts to named individuals, § 3:365
  - equally to children if spouse fails to survive by 30 days; gift over surviving spouse, or in trust to children of non-surviving spouse, § 3:369
  - equally to named children; gift over per stirpes, § 3:360
  - equally to named children if named individual fails to survive testator by 30 days; gift over to issue in equal shares per stirpes, § 3:363
  - equally to named children of testator and children of spouse if named individual fails to survive testator by 30 days; gift over to issue in

## CLAUSES—Cont'd

Residue, outright distribution, all jurisdictions—Cont'd

equal shares per stirpes, § 3:364

equally to named individuals in event prior named individual has predeceased, gift over to issue of that predeceased individual, § 3:367

husband if survives 30 days, § 3:358

issue in equal shares per stirpes, § 3:359

issue in equal shares per stirpes if named individual dies within 30 days of testator, § 3:361

issue in equal shares per stirpes upon death of survivor of testator and named individual (following trust to that named individual for life), § 3:362

lump sum, declaration of trust for, § 7:27, § 7:68

specified shares to named individuals in the event prior named individual predeceases testator, § 3:366

unequal shares to named individuals or their issue if spouse fails to survive testator by 30 days, § 3:368

wife if survives 30 days, § 3:357

Residue, trust clauses

all jurisdictions, § 3:372 et seq.

generally

children, all, so long as youngest under specified age discretion to pay income and capital to any one or more as required; equally to children or their issue per stirpes on youngest reaching requisite age, § 3:457

children, individual trusts for, distribution in four stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:449

children, individual trusts for, distribution in three stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:446

children, individual trusts for, distribution in two stages upon

## CLAUSES—Cont'd

Residue, trust clauses—Cont'd

all jurisdictions, § 3:372 et seq.

—Cont'd

attaining certain age; gift over to remoter issue vest immediately, § 3:443

children, individual trusts for, distribution in two stages with maximum limits placed on income payments and first instalment of capital, gift over to remoter issue vests immediately, § 3:451

children, individual trusts for, distribution upon attaining certain age; gift over to remoter issue vest immediately, § 3:440

children, introductory clause, individual trusts for, distribution in three stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:455

children in equal shares; trust for youngest daughter only, § 3:460

children in equal shares; trust for youngest son only, § 3:459

children of spouse and testator (second marriage) upon death of survivor, distribution in three stages, § 3:463

daughter, held in trust for, distribution in two stages upon attaining specified ages; gift over to remoter issue vests immediately, § 3:466

daughter, youngest, in trust until he attains specified age and the distribution equally per stirpes, § 3:462

daughter to specified age in event prior named individual predeceases testator; gift over to issue on same trusts, § 3:436

discretionary trust for one child and his/her issue for child's life, gift over to child's issue per stirpes alive at child's death, to be held on trust to age 35 with distributions in 3 stages at 25, 30 and 35, § 3:480

divide among issue per stirpes on testator's death with provision

**CLAUSES—Cont'd**

Residue, trust clauses—Cont'd

all jurisdictions, § 3:372 et seq.

—Cont'd

for trust for son, his wife and issue with distribution in three stages, § 3:458

divided into two equal parts; one to named child absolutely, gift over to issue; other part set aside for daughter with immediate capital distribution of specified amount, residue to be held for her lifetime, gift over to her issue, or if no issue living, to named child or issue thereof, § 3:464

divided into two equal parts; one to named child absolutely, gift over to issue; other part set aside for son with immediate capital distribution of specified amount, residue to be held for his lifetime, gift over to his issue, or if no issue living, to named child or issue thereof, § 3:465

division, unequal, between two children; on trust with distribution in three stages upon attaining specified ages; gift over to remoter issue vests immediately, § 3:469

division among issue per stirpes living at death of testator with provision of special trust for disabled child or grandchild, § 3:468

division into separate parts to be set aside for children and grandchildren respectively, § 3:470

division into two equal parts, one for children of testator and one for children of spouse (for second marriages where each spouse has children from prior relationship), § 3:472

equal discretionary, for each child and his/her issue for the respective child's life, gift over to each child's issue per stirpes alive at child's death, to be held on trust to age 35 with distribu-

**CLAUSES—Cont'd**

Residue, trust clauses—Cont'd

all jurisdictions, § 3:372 et seq.

—Cont'd

tions in 3 stages at 25, 30 and 35, § 3:481

equal shares per capita among children and grandchildren, § 3:471

grandchildren, individual trusts for, distribution in four stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:450

grandchildren, individual trusts for, distribution in three stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:447

grandchildren, individual trusts for, distribution in two stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:444

grandchildren, individual trusts for, distribution in two stages with maximum limits placed on income payments and first instalment of capital, gift over to remoter issue vests immediately, § 3:451

grandchildren, individual trusts for, distribution upon attaining certain age; gift over to remoter issue vest immediately, § 3:441

grandchildren, individual trusts for, to divide equally on testator's death with provision for issue of deceased grandchild, distribution upon reaching specified age, § 3:456

individual discretionary income splitting trusts for children, spouse and issue, to be held for life of each child, with broad encroachment power and power to terminate early, § 3:473

introductory clause, to divide among issue per stirpes if prior named individual fails to survive by 30 days, § 3:438

introductory clause, to divide among issue per stirpes on testator's death, § 3:437

## CLAUSES—Cont'd

Residue, trust clauses—Cont'd

all jurisdictions, § 3:372 et seq.

—Cont'd

introductory clause, to divide among issue per stirpes upon death of testator and named individual, § 3:439

introductory clause, to issue equally at death of survivor of testator and named individual, § 3:454

introductory clause, to issue per stirpes if named individual does not survive testator by 30 days testator, § 3:453

introductory clause, to issue per stirpes on death of testator, § 3:452

pure and tainted spousal trusts of equal value for spouse, § 3:433

pure and tainted spousal trusts of unequal value where trustees are given discretion to determine allocation of assets to the trusts, § 3:434

son, held in trust for, distribution in two stages upon attaining specified ages; gift over to remoter issue vests immediately, § 3:467

son, youngest, in trust until he attains specified age and the distribution equally per stirpes, § 3:461

son to specified age in event prior named individual predeceases testator; gift over to issue on same trusts, § 3:435

spousal trust for Canadian resident husband of testator where spouse is U.S., citizen, with “helm” language, § 3:475

spousal trust for Canadian resident husband who is a citizen of U.S. with discretion to allocate outright gift or to spousal trust containing the “helm” language, and appointment of special trustees for the spousal trust, § 3:477

spousal trust for Canadian resident wife of testator where spouse is U.S., citizen, with “helm” language, § 3:474

spousal trust for Canadian resident wife who is a citizen of U.S.

## CLAUSES—Cont'd

Residue, trust clauses—Cont'd

all jurisdictions, § 3:372 et seq.

—Cont'd

with discretion to allocate outright gift or to spousal trust containing the “helm”

language, and appointment of special trustees for the spousal trust, § 3:476

spousal trust for husband, § 3:431

spousal trust for husband where testator is Canadian resident but U.S. citizen, with discretion to allocate outright gift, or to a qualifying domestic trust, with appointment of special trustees for the trust, § 3:479

spousal trust for husband with power of appointment among issue on her death, § 3:432

spousal trust for wife, § 3:429

spousal trust for wife where testator is Canadian resident but U.S. citizen, with discretion to allocate outright gift, or to a qualifying domestic trust, with appointment of special trustees for the trust, § 3:478

spousal trust for wife with power of appointment among issue on her death, § 3:430

income from, APP B § B:12

Ontario

generally, § 3:10

children, all, so long as youngest under specified age discretion to pay income and capital to any one or more as required; equally to children or their issue per stirpes on youngest reaching requisite age, § 3:400

children, individual trusts for, distribution in four stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:392

children, individual trusts for, distribution in three stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:389

children, individual trusts for, distribution in two stages upon

**CLAUSES—Cont'd**

Residue, trust clauses—Cont'd

Ontario—Cont'd

- attaining certain age; gift over to remoter issue vest immediately, **§ 3:386**
- children, individual trusts for, distribution in two stages with maximum limits placed on income payments and first instalment of capital, gift over to remoter issue vests immediately, **§ 3:394**
- children, individual trusts for, distribution upon attaining certain age; gift over to remoter issue vest immediately, **§ 3:383**
- children, introductory clause, individual trusts for, distribution in three stages upon attaining certain age; gift over to remoter issue vest immediately, **§ 3:398**
- children in equal shares; trust for youngest daughter only, **§ 3:404**
- children in equal shares; trust for youngest son only, **§ 3:403**
- children of spouse and testator (second marriage) upon death of survivor, distribution in three stages, **§ 3:407**
- daughter, held in trust for distribution in two stages upon attaining specified ages; gift over to remoter issue vests immediately, **§ 3:410**
- daughter, youngest, in trust until he attains specified age and the distribution equally per stirpes, **§ 3:406**
- daughter to specified age in event prior named individual predeceases testator; gift over to issue on same trusts, **§ 3:379**
- discretionary trust for one child and his/her issue for child's life, gift over to child's issue per stirpes alive at child's death, to be held on trust to age 35 with distributions in 3 stages at 25, 30 and 35, **§ 3:425**
- divide among issue per stirpes on testator's death with provision for trust for son, his wife and

**CLAUSES—Cont'd**

Residue, trust clauses—Cont'd

Ontario—Cont'd

- issue with distribution in three stages, **§ 3:401**
- divided into two equal parts; one to named child absolutely, gift over to issue; other part set aside for daughter with immediate capital distribution of specified amount, residue to be held for her lifetime, gift over to her issue, or if no issue living, to named child or issue thereof, **§ 3:408**
- divided into two equal parts; one to named child absolutely, gift over to issue; other part set aside for son with immediate capital distribution of specified amount, residue to be held for his lifetime, gift over to his issue, or if no issue living, to named child or issue thereof, **§ 3:409**
- division among issue per stirpes living at death of testator with provision of special trust for disabled child or grandchild, **§ 3:412**
- division into separate parts to be set aside for children and grandchildren respectively, **§ 3:415**
- division into two equal parts, one for children of testator and one for children of spouse (for second marriages where each spouse has children from prior relationship), **§ 3:417**
- equal discretionary, for each child and his/her issue for the respective child's life, gift over to each child's issue per stirpes alive at child's death, to be held on trust to age 35 with distributions in 3 stages at 25, 30 and 35, **§ 3:426**
- equal shares per capita among children and grandchildren, **§ 3:416**
- grandchildren, individual trusts for, distribution in four stages upon attaining certain age; gift over to remoter issue vest

## CLAUSES—Cont'd

### Residue, trust clauses—Cont'd

#### Ontario—Cont'd

- immediately, § 3:393
- grandchildren, individual trusts for, distribution in three stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:390
- grandchildren, individual trusts for, distribution in two stages upon attaining certain age; gift over to remoter issue vest immediately, § 3:387
- grandchildren, individual trusts for, distribution in two stages with maximum limits placed on income payments and first instalment of capital, gift over to remoter issue vests immediately, § 3:394
- grandchildren, individual trusts for, distribution upon attaining certain age; gift over to remoter issue vest immediately, § 3:384
- grandchildren, individual trusts for, to divide equally on testator's death with provision for issue of deceased grandchild, distribution upon reaching specified age, § 3:399
- individual discretionary income splitting trusts for children, spouse and issue, to be held for life of each child, with broad encroachment power and power to terminate early, § 3:418
- introductory clause, to divide among issue per stirpes if prior named individual fails to survive by 30 days, § 3:381
- introductory clause, to divide among issue per stirpes on testator's death, § 3:380
- introductory clause, to divide among issue per stirpes upon death of testator and named individual, § 3:382
- introductory clause, to issue equally at death of survivor of testator and named individual, § 3:397
- introductory clause, to issue per stirpes if named individual does

## CLAUSES—Cont'd

### Residue, trust clauses—Cont'd

#### Ontario—Cont'd

- not survive testator by 30 days testator, § 3:396
- introductory clause, to issue per stirpes on death of testator, § 3:395
- lump sum, declaration of trust for, § 7:27, § 7:68
- pure and tainted spousal trusts of equal value for spouse, § 3:376
- pure and tainted spousal trusts of unequal value were trustees are given discretion to determine allocation of assets to the trusts, § 3:377
- son, held in trust for, distribution in two stages upon attaining specified ages; gift over to remoter issue vests immediately, § 3:411
- son, youngest, in trust until he attains specified age and the distribution equally per stirpes, § 3:405
- son to specified age in event prior named individual predeceases testator; gift over to issue on same trusts, § 3:378
- spousal trust, Canadian resident husband who is a citizen of U.S. with discretion to allocate outright gift or to spousal trust containing the "helm" language, and appointment of special trustees for the spousal trust, § 3:422
- spousal trust, Canadian resident wife who is a citizen of U.S. with discretion to allocate outright gift or to spousal trust containing the "helm" language, and appointment of special trustees for the spousal trust, § 3:421
- spousal trust, husband where testator is Canadian resident but U.S. citizen, with discretion to allocate outright gift, or to a qualifying domestic trust, with appointment of special trustees for the trust, § 3:424
- spousal trust, wife where testator is Canadian resident but U.S. citizen, with discretion to allocate outright gift, or to a qualifying



## CLAUSES—Cont'd

Residue, trust clauses—Cont'd

Ontario—Cont'd

domestic trust, with appointment of special trustees for the trust, § 3:423

spousal trust for Canadian resident husband of testator where spouse is U.S., citizen, with “helm” language, § 3:420

spousal trust for Canadian resident wife of testator where spouse is U.S., citizen, with “helm” language, § 3:419

spousal trust for husband, § 3:374

spousal trust for husband with power of appointment among issue on her death, § 3:375

spousal trust for wife, § 3:372

spousal trust for wife with power of appointment among issue on her death, § 3:373

unequal division between two children; on trust with distribution in three stages upon attaining specified ages; gift over to remoter issue vests immediately, § 3:414

RRSP, TFSA and life insurance designations

all jurisdictions

generally, § 3:32 et seq.

life insurance designation in favour of issue per stirpes per to be held on trusts in will, § 3:61

life insurance designation of all but specific policy to trustees, § 3:56

life insurance designation of all policies to named beneficiary, § 3:58

life insurance designation of specific policy to named beneficiary, § 3:57

life insurance designation to named beneficiary, gift over to children, further gift over to issue of deceased child, § 3:60

life insurance designation to trustees, § 3:55

life insurance designation with alternate designation in favour of issue per stirpes to be held on

## CLAUSES—Cont'd

RRSP, TFSA and life insurance designations—Cont'd

all jurisdictions—Cont'd

trusts set out in will, § 3:59

policies affected, § 3:32 et seq.

RRSP, RRIF, DPSP, pension and annuity designation to named beneficiary, § 3:51

RRSP designation to issue per stirpes to be held on trusts in will, § 3:53

RRSP designation to named beneficiary, § 3:50

RRSP designation to named beneficiary, gift over to children, or their issue per stirpes, § 3:54

RRSP with alternate designation to issue per stirpes, § 3:52

TFSA designation in favour of issue per stirpes to be held in trusts set out in will, § 3:64

TFSA designation to be named beneficiary, § 3:62

TFSA designation to named beneficiary, gift over to children, further gift over to issue of a deceased child, § 3:65

TFSA designation to named beneficiary with alternate designation in favour of issue per stirpes to be held on trusts set out in will, § 3:63

Ontario

generally, § 3:2

life insurance designation in favour of issue per stirpes per to be held on trusts in will, § 3:44

life insurance designation of all but specific policy to trustees, § 3:39

life insurance designation of all policies to named beneficiary, § 3:41

life insurance designation of specific policy to named beneficiary, § 3:40

life insurance designation to named beneficiary, gift over to children, further gift over to issue of deceased child, § 3:43

life insurance designation to trustees, § 3:38

## CLAUSES—Cont'd

RRSP, TFSA and life insurance designations—Cont'd

Ontario—Cont'd

life insurance designation with alternate designation in favour of issue per stirpes to be held on trusts set out in will, § 3:42

policies affected, § 3:2

RRSP, RRIF, DPSP, pension and annuity designation to named beneficiary, § 3:34

RRSP designation to issue per stirpes to be held on trusts in will, § 3:36

RRSP designation to named beneficiary, § 3:33

RRSP designation to named beneficiary, gift over to children, or their issue per stirpes, § 3:37

RRSP with alternate designation to issue per stirpes, § 3:35

TFSA designation in favour of issue per stirpes to be held on trust set out in will, § 3:47, § 3:64

TFSA designation to named beneficiary, § 3:45, § 3:65

TFSA designation to named beneficiary, gift over to children, further gift over to issue of a deceased child, § 3:48, § 3:65

TFSA designation to named beneficiary with alternate designation in favour of issue per stirpes to be held on trusts set out in will, § 3:46, § 3:63

Testimonium, all jurisdictions generally, § 3:14

affidavit of execution of will, § 3:667, § 3:668

female, § 3:660

male, § 3:659

special affidavit of testator and witness in satisfaction of requirements of international will, § 3:666

special affidavit of testator and witnesses where Florida property may form part of estate, § 3:665

testator who is blind or illiterate—female, § 3:662

testator who is blind or illiterate—male, § 3:661

## CLAUSES—Cont'd

Testimonium, all jurisdictions—Cont'd  
testator with no/limited knowledge of English - female, § 3:663

testator with no/limited knowledge of English - male, § 3:664

## CODICILS

Generally, APP A § A:3, APP B § B:5, § 2:1 et seq., § 3:3, § 3:7, § 3:12, § 3:16, § 3:491 et seq., § 4:1 to § 4:10

## COMMON-LAW TRUSTS

See CONSTRUCTIVE TRUST and RESULTING TRUST

## CONDITIONS

Generally, APP B § B:12

Contrary to public policy

generally, APP B § B:12

ineffective, APP B § B:12

precedent, APP B § B:12

repugnant, APP B § B:12

restraint of marriage, in, APP B § B:12

subsequent, APP B § B:12

time, as to, APP B § B:12

uncertain, APP B § B:12

## CONSTRUCTIVE TRUST

Generally, APP B § B:4, APP B § B:6, APP B § B:7, § 4:1 to § 4:10; APP B § B:2

## DEED

Generally, APP B § B:3 to APP B § B:5, § 3:161, § 3:180, § 7:1 to § 7:29, § 7:33 to § 7:37, § 7:48 to § 7:68; APP B § B:2

Deemed realization, § 3:12, § 3:491 et seq., § 7:10, § 7:16, § 7:17, § 7:20, § 7:55, § 7:60 to § 7:62

## DEPENDANTS' RELIEF

Generally, APP B § B:8

After Cummings v. Cummings, APP B § B:8

Trusts arising, APP B § B:10

## DESCRIPTION OF PERSONS

See PERSONS, DESCRIPTION OF

## DIVIDEND INCOME

Generally, § 7:33 to § 7:37; APP B § B:2

## DOMESTIC CONTRACTS

Generally, **APP B § B:3 to APP B § B:5, § 4:1 et seq.; APP A § A:1**

British Columbia

generally, **§ 4:1 to § 4:17**

assets of a more complex nature,  
including potential inheritance and  
interest in trusts, **§ 4:12**

categories of assets to remain separate,  
converted one party property  
traced, all joint assets and loss or  
gain on matrimonial home to be  
divided equally, neither party to  
claim interest in the estate of the  
other, **§ 4:11**

categories of assets to remain separate,  
including income, and each party  
to maintain a will providing for a  
life estate for the other, **§ 4:13**

couple who intend to cohabit with  
one another then marry, **§ 4:14**

Ontario

generally, **§ 4:1 to § 4:10**

basic separate as to property with mini-  
mum rights on death, **§ 4:1**

cohabitation agreement, **§ 4:8**

variation of, **§ 4:9**

cohabitation agreement excluding sup-  
port and common law property  
rights, **§ 4:5**

cohabitation agreement for same sex  
couples excluding support and  
common law property rights, **§ 4:6**

marriage contract dealing with rights  
upon death only, agreement to  
provide benefits upon death equal  
to interests under present wills,  
**§ 4:2**

marriage contract excluding business  
assets and gifted or inherited prop-  
erty from net family property,  
**§ 4:7**

marriage contract excluding business  
assets only from net family prop-  
erty, **§ 4:3**

marriage contract excluding gifted and  
inherited property only from net  
family property, **§ 4:4**

persons ceasing to cohabit, agreement  
for, **§ 4:10**

## DOMESTIC TRUSTS

Generally, **3:372; APP B § B:2, § 3:423**

## ELECTRONIC LAND REGISTRATION SYSTEM

Access requirements, **APP C § APP C:1**

Registration requirements

powers of attorney, **APP C § APP C:1**  
transfers, **APP C § APP C:1**

## EMPLOYEES

Generally, **APP B § B:12**

## ESTATE ADMINISTRATION ACT

Generally, **APP B § B:5**

## ESTATE ADMINISTRATION TAX ACT

Generally, **APP B § B:2, APP B § B:4,  
APP B § B:5, § 3:1**

## ESTATE FREEZE

Generally, **APP B § B:2, APP B § B:15**

## ESTATE PLANNING

Generally, **APP B § B:2 to APP B  
§ B:6, APP B § B:7, APP B § B:15,  
§ 1:1, § 7:33 to § 7:37; APP B § B:1**

Information form, **APP A § A:1**

## EVEN-HANDED RULE

Generally, **§ 3:508**

## FAIR MARKET VALUE

Generally, **APP B § B:3, APP B § B:4,  
§ 3:6, § 3:12, § 3:164; APP B § B:2,  
§ 3:491 et seq., § 4:11 to § 4:17**

## FAMILY LAW ACT (ONTARIO)

Generally, **APP B § B:3 to APP B § B:5,  
§ 2:1 et seq., § 3:3, § 3:12, § 3:16,  
§ 3:162, § 3:163, § 4:1 to § 4:7,  
§ 4:11 to § 4:14, § 7:1 to § 7:27,  
§ 7:48 to § 7:68; APP B § B:2**

Gifted or inherited property, **APP B  
§ B:2, APP B § B:4, § 4:4, § 4:7**

Matrimonial home, **APP B § B:4, APP B  
§ B:5 to APP B § B:7, § 3:162, § 4:1  
to § 4:7, § 4:11 to § 4:14; APP B  
§ B:2**

Net family property, **APP A § A:7, APP B  
§ B:2 to APP B § B:7, § 2:1 et seq.,  
§ 3:1 et seq., § 3:163, § 5:1 et seq.,  
§ 7:1 to § 7:27, § 7:48 to § 7:68**

Principal residence, **APP B § B:2, APP B  
§ B:3, § 3:6, § 7:13, § 7:58; APP A  
§ A:1**

Spouse, **§ 3:162, § 4:1 to § 4:10, § 7:1 to  
§ 7:27, § 7:48 to § 7:68**

## **FAMILY LAW ACT (ONTARIO)**

### **—Cont'd**

Support, **APP A § A:2, APP B § B:2 to APP B § B:7, § 3:6, § 3:7, § 3:10, § 3:12, § 3:15, § 3:162, § 3:372 et seq., § 3:491 et seq., § 5:1 et seq., § 7:22, § 7:63; APP A § A:1**

## **FAMILY PROPERTY ACT (MANITOBA)**

Generally, **APP B § B:19**

## **FIDUCIARY**

Generally, **APP B § B:3 to APP B § B:5, § 7:1 to § 7:27, § 7:48 to § 7:68; APP B § B:2**

## **GENERAL ATTRIBUTION**

Generally, **APP B § B:2**

## **GIFTS**

Class, **APP B § B:12**

Limited or not, **APP B § B:12**

precatory words, **APP B § B:12**

rule in *Lassence v. Tierney*, **APP B § B:12**

Residuary, **APP B § B:12**

Substitutionary, **APP B § B:12**

Witnesses, to, **APP B § B:12**

## **GUARDIANS, TESTAMENTARY**

Generally, **APP B § B:12**

## **ILLEGITIMACY**

Generally, **APP B § B:12**

## **INCOME FROM RESIDUE**

Generally, **APP B § B:12**

Rule in *Re Earl of Chesterfield's Trusts*, **APP B § B:12**

Rules in *Dimes v. Scott* and *Howe v. Lord Dartmouth*, **APP B § B:12**

## **INCOME PAYABLE TO BENEFICIARY**

Generally, **APP B § B:2**

## **INCOME SPLITTING**

Generally, **APP B § B:3, APP B § B:4, § 7:34, § 7:37; APP B § B:2**

## **INCOME TAX ACT**

Section 74, **APP B § B:2 to APP B § B:5, § 3:163, § 4:1, § 4:5, § 4:12, § 7:5, § 7:33, § 7:34, § 7:52**

Section 75, **§ 7:2 to § 7:10, § 7:49 to § 7:55**

## **INCOME TAX ACT—Cont'd**

Section 107, **§ 7:2 to § 7:10, § 7:49 to § 7:55**

Section 146.3(6), **§ 3:8**

## **INSTRUCTIONS**

Generally, **APP B § B:3, APP B § B:5, § 1:1, § 2:1 et seq., § 3:162; APP B § B:2**

Checklist, **APP A § A:2**

Release power of attorney, to, **§ 3:162**

Signing, **APP A § A:2, APP A § A:3, APP A § A:5, APP B § B:2, APP B § B:3, APP B § B:5**

inter-vivos trusts, **APP B § B:3 to APP B § B:5, § 7:17, § 7:20, § 7:61, § 7:62; APP B § B:2**

see(this index) also TRUSTS

signing instructions, primary and secondary wills, **APP A § A:4**

## **INVESTMENTS, POWERS OF EXECUTORS AND TRUSTEES RE**

Generally, **APP B § B:12**

## **JEWELLERY**

Generally, **§ 3:274 to § 3:278**

## **JOINT BANK ACCOUNTS**

Generally, **APP B § B:12**

## **JOINT LIFE INTEREST**

Generally, **APP B § B:2**

## **JOINT OWNERSHIP**

Applicable presumptions, **APP B § B:9**

Factors which the Courts will review in determining the transferor's intention bank documents supporting the transfer, **APP B § B:9**

conduct of transferor during lifetime, **APP B § B:9**

control and use of jointly held funds during the transferor's lifetime, **APP B § B:9**

declaration and payment of income tax on the jointly held property, **APP B § B:9**

documents supporting the transfer of beneficial ownership, **APP B § B:9**

power of attorney granted to the survivor, **APP B § B:9**

statements made by or to the transferor at the time of the transfer which

**JOINT OWNERSHIP—Cont'd**

- Factors which the Courts will review in determining the transferor's intention—Cont'd
  - reveal the transferor's intention, **APP B § B:9**
- Rebutting presumptions, **APP B § B:9**

**JOINT RETAINER**

- Client letter for multiple generation estate planning, **APP A § A:20**
- Direction, termination of, **APP A § A:22**
- Joint estate planning retainer confirmation, **APP A § A:19**
- Letter for husband/wife wills, **§ 2:18**

**JOINT TENANCY, SEVERANCE**

- Generally, **APP B § B:18**

**LEGACIES**

- Demonstrative, **APP B § B:12**
- General, **APP B § B:12**
- Specific, **APP B § B:12**

**LIFE INSURANCE DECLARATIONS**

- Generally, **§ 3:163**
- Specified policy to named beneficiary, gift over to named trustee to hold for the benefit of issue per stirpes on trust for children under a certain age, **§ 6:2**
- Specified policy to named trustee to be held for the benefit of named individual on trust for life with gift over to issue per stirpes, **§ 6:5**
- Specified policy to named trustee to hold for issue per stirpes on trust for children under a certain age, **§ 6:4**
- Specified policy to named trustee to hold for named individual on trust until a certain age, **§ 6:3**

**LIVING WILLS**

- See **POWERS OF ATTORNEY—personal care**

**MULTIPLE WILLS**

- Generally, **APP B § B:6, APP B § B:7**

**NON-ARM'S LENGTH BENEFICIARY**

- Generally, **APP B § B:2**

**OPTIONS**

- Generally, **APP B § B:12**

**PERPETUITIES**

- Generally, **APP B § B:12**
- Administrative conditions, **APP B § B:12**
- Class gifts, **APP B § B:12**
- Limitations dependent upon life interests to persons who may be unborn at testator's death, **APP B § B:12**
- Rule against
  - re charitable gifts, **APP B § B:12**
  - re powers, **APP B § B:12**

**PERSONAL REPRESENTATIVES, BEQUESTS TO**

- Generally, **APP B § B:12**

**PERSONS, DESCRIPTION OF**

- Generally, **APP B § B:12**
- Children and issue, **APP B § B:12**

**POWER OF APPOINTMENT**

- Generally, **APP B § B:3, APP B § B:5, § 2:1 et seq., § 3:1 et seq., § 3:164; APP B § B:2**
- Execution of general powers, **APP B § B:12**
- Execution of special powers, **APP B § B:12**
- Fraud, **APP B § B:12**

**POWER TO MAKE ADVANCES**

- Generally, **APP B § B:12**

**POWERS OF ATTORNEY**

- Generally, **APP B § B:1 et seq., § 3:162**
- Alberta
  - enduring, in favour of spouse, **§ 5:28**
  - enduring, naming alternative attorneys, **§ 5:32**
  - enduring, naming more than one attorney, **§ 5:31**
  - enduring, naming one attorney, **§ 5:30**
  - immediate enduring, in favour of spouse, **§ 5:27**
  - immediate enduring, naming one attorney (not spouse), **§ 5:29**
  - personal directive giving specific instructions to agent, **§ 5:35**
  - personal directive naming alternate agents, **§ 5:34**
  - personal directive naming one agent, **§ 5:33**
- British Columbia
  - basic form1, **§ 5:53**

## POWERS OF ATTORNEY—Cont'd

### British Columbia—Cont'd

- basic form2, § 5:54
- direction to retain in safekeeping, § 5:55
- enduring, multiple attorneys, § 5:59
- enduring, one attorney, § 5:58
- expiring, multiple attorneys, § 5:61
- expiring, one attorney, § 5:60
- multiple attorneys, § 5:57
- one attorney, § 5:56
- representation agreement precedent (multiple), § 5:51
- representation agreement precedent (one), § 5:50
- representation agreement precedent (section 7), § 5:52

### Electronic land registration system, and, APP C § APP C:1

### Manitoba

- direction to solicitors re release of, § 5:25
- direction to solicitors re release of alternate, § 5:26
- enduring, for the management of property in favour of spouse, § 5:17
- enduring, for the management of property naming alternative attorneys in the event first named attorney cannot act, § 5:21
- enduring, naming more than one attorney, § 5:19
- enduring, naming one attorney (not spouse), § 5:18
- health care directive for personal care naming alternate proxies, § 5:23
- health care directive in favour of more than one person, § 5:24
- health care directive in favour of one person, § 5:22
- non-enduring, for the management of property, effective for specified period only, § 5:20

### Ontario

- continuing, for the management of property, naming alternate attorneys in the event the first cannot act, § 5:8
- continuing, for the management of property in favour of spouse, § 5:2

## POWERS OF ATTORNEY—Cont'd

### Ontario—Cont'd

- continuing, for the management of property naming more than one attorney, § 5:4
  - business assets, restricted to, § 5:5
  - non-resident attorney, § 5:6
  - continuing, for the management of property naming one attorney (not spouse), § 5:3
  - direction to solicitors regarding release of power of attorney for management of property, § 5:13
  - direction to solicitors regarding release of power of attorney for personal care, § 5:14
  - non-continuing, for the management of property, effective for specified period only, § 5:7
  - personal care, in favour of one person, § 5:9
  - personal care, naming alternate attorneys in the event the first cannot act, § 5:10
  - personal care, naming more than one attorney, § 5:11
  - registration requirements for transfers and powers of attorney, APP C § C:8
  - springing power of attorney for private company shares only, § 5:12
  - summary of powers of attorney for personal care and property, § 5:15
- ### Saskatchewan
- contingent enduring, appointing a personal attorney, § 5:40
  - contingent enduring, appointing a personal attorney (decisions requiring expenditures of money), § 5:41
  - contingent enduring, appointing a property attorney, § 5:49
  - enduring, appointing a personal attorney grantor unable to sign, § 5:42
  - enduring, appointing a personal attorney grantor unable to sign (two witnesses), § 5:43
  - enduring, appointing a personal attorney (one attorney), § 5:37
  - enduring, appointing a personal attorney (one attorney with crimi-



**POWERS OF ATTORNEY—Cont'd**

- Saskatchewan—Cont'd
  - nal record), § 5:39
  - enduring, appointing a personal attorney (two attorneys), § 5:38
  - enduring, appointing a personal attorney (with revocation), § 5:44
  - enduring, appointing a property attorney, § 5:47
  - enduring, appointing a property attorney (two attorneys, with revocation), § 5:48
  - enduring, appointing a property attorney (two witnesses), § 5:45
  - enduring, appointing a property attorney (with revocation), § 5:46

**PRECATORY MEMORANDUM**

- Generally, § 3:268, § 3:269, § 3:274 to § 3:276
- Preferred beneficiary, APP B § B:1 et seq., § 7:2, § 7:5, § 7:9, § 7:23, § 7:49, § 7:52, § 7:54, § 7:64; APP B § B:2

**PRIMARY WILL**

- Generally, § 2:11, § 2:13, § 2:26, § 2:34

**PROBATE**

- Generally, § 3:3, § 3:4, § 3:88, § 3:106, § 3:125, § 3:143, § 3:161, § 3:180, § 3:199, § 3:217
- Avoidance of, APP B § B:3 to APP B § B:5, § 3:4, § 7:11 to § 7:13, § 7:16, § 7:17, § 7:20, § 7:56 to § 7:58, § 7:60, § 7:61, § 7:62; APP B § B:2
- In re secondary will, § 3:1

**PROBATE FEES**

- Generally, § 3:1, § 3:4
- Protective trust, § 7:9, § 7:54; APP B § B:2
- Trusts, and, § 3:163, § 3:164; APP B § B:1 et seq.

**REGISTERED EDUCATION SAVINGS PLAN**

- Generally, § 2:1 et seq., § 3:12, § 3:491 et seq., § 7:1 to § 7:27, § 7:48 to § 7:68

**RESIDENCE TRUST FOR CHILD**

- Generally, § 7:14, § 7:30, § 7:59

**RESIDUARY GIFTS**

- Generally, APP B § B:12

**RESIDUE, INCOME FROM**

- See INCOME FROM RESIDUE

**RESULTING TRUST**

- Generally, APP B § B:17, § 3:164; APP B § B:2, § 4:1 to § 4:10

**REVOCACTION**

- Conditional, APP B § B:12
- Destruction, by, APP B § B:12
- Marriage, by, APP B § B:12
- Voluntary, APP B § B:12

**RULE AGAINST PERPETUITIES**

- Generally, APP B § B:4, § 3:372 et seq., § 7:1 to § 7:27, § 7:48 to § 7:68; APP B § B:2

**SECONDARY WILL**

- Generally, § 2:12, § 2:13, § 2:27, § 2:35

**SETTLOR WHO MAY ACT AS TRUSTEE**

- Generally, § 7:1 to § 7:29, § 7:48 to § 7:68

**SEVERANCE, JOINT TENANCY**

- Generally, APP B § B:18

**SUBSTITUTIONARY GIFTS**

- Generally, APP B § B:12

**TAX-FREE ROLLOVER**

- Generally, APP B § B:2
- Testamentary trust, APP B § B:3, APP B § B:5, § 3:163, § 7:16, § 7:60; APP B § B:2

**TAXATION OF TRUSTS**

- Generally, APP B § B:2, APP B § B:10, APP B § B:15

**TESTAMENTARY GUARDIANS**

- Generally, APP B § B:12

**TRUSTS**

- Generally, § 3:164
- Advancement, presumption of, APP B § B:17
- Business/commercial trusts, APP B § B:1
- Charitable gifts intended on death, § 7:18, § 7:21
- Charitable remainder trust, APP B § B:10
- Civil law trusts, APP B § B:1

**TRUSTS—Cont'd**

- Common-law partner trust, **APP B § B:10**
- Cottage or residence trust to hold for life times of husband and wife with gift over to children in equal shares subject to power of appointment conferred on husband and wife or survivor (to avoid probate fees and defer realization of capital gain), **§ 7:16, § 7:60**
- Cottage trust for adult children, **§ 7:10, § 7:55**
- Declaration of bare trust by joint owner, **§ 7:25, § 7:66**
- Declaration of trust by RESP subscriber, **§ 7:26, § 7:67**
- Discretionary family trust excluding designated person (s. 74.5(5)), **§ 7:5, § 7:52**
- Discretionary family trust excluding “designated person” (s. 74.5(5)) during lifetime of parent, with power of appointment, and failing the exercise of which, distribution to beneficiaries in parts, **§ 7:6**
- Discretionary family trust with discretionary distribution prior to death of the survivor of the last parent to die when division among issue per stirpes to be held on trust terms, **§ 7:3, § 7:50**
- Discretionary family trust with distribution immediately prior to expiration of 21 years from death of survivor of settlor, spouse and issue alive at settlement, or such earlier date as trustees determine, **§ 7:1, § 7:48**
- Discretionary family trust with distribution immediately prior to expiration of 21 years from death of survivor of settlor, spouse and issue alive at settlement, or such earlier date as trustees determine, with disabled child as beneficiary, **§ 7:7, § 7:53**
- Discretionary family trust with distribution on death of survivor of settlor and spouse, or such earlier date as trustees determine, no minor beneficiaries, **§ 7:4, § 7:51**
- Discretionary family trust with protector, **§ 7:2, § 7:49**
- Discretionary trust, Generally, **APP B § B:2**

**TRUSTS—Cont'd**

- Education trust, **§ 7:28**
- Elements of trust, **APP B § B:1**
- Fiduciary administration, **APP B § B:1**
- Florida real property, trust for, **§ 7:31**
- Future of
  - business/commercial trusts, **APP B § B:1**
  - civil law Asia, **APP B § B:1**
  - civil law trusts, **APP B § B:1**
  - elements of trust, **APP B § B:1**
  - fiduciary administration, **APP B § B:1**
  - future models, **APP B § B:1**
  - Islamic law, **APP B § B:1**
  - managerial independence, **APP B § B:1**
  - models of trust, **APP B § B:1**
  - offshore estate planning trusts, **APP B § B:1**
  - United States “Statutory Business Trusts,” **APP B § B:1**
- Information form, **APP A § A:23**
- Inheritance trust, **§ 7:29**
- Insurance trust, **APP B § B:10**
- Inter vivos trust, **APP B § B:10**
- Joint spousal trust, **APP B § B:10**
- Life insurance (to be nominally funded until death of life insured), **§ 7:17, § 7:61**
- Managerial independence, **APP B § B:1**
- Minor beneficiaries, trust for, **APP B § B:10**
- Models of trust, **APP B § B:1**
- Offshore estate planning trusts, **APP B § B:1**
- Protective trust, Generally, **APP B § B:12**
- Protective trust for disabled child, **§ 7:9, § 7:54**
- Reporting letters
  - letter to be used with t-ont.1, **§ 7:33**
  - letter to be used with t-ont.2, **§ 7:34**
  - letter to be used with t-ont.3a, **§ 7:35**
  - letter to be used with t-ont.4a, **§ 7:36**
  - letter to be used with t-ont.8, **§ 7:37**
  - letter to be used with t-ont.8b, **§ 7:38**
  - letter to be used with t-ont.10, **§ 7:39**
  - letter to be used with t-ont.11, **§ 7:40**
  - letter to be used with t-ont.20, **§ 7:41**
  - letter to be used with t-ont.21, **§ 7:42**

## TRUSTS—Cont'd

- Residence trust
  - for child, § 7:14, § 7:59
  - for child and custodial parent, § 7:30
- Resolution declaring bare trust by corporation, § 7:24, § 7:65
- Resulting trusts, APP B § B:17
- Secret, APP B § B:12
- Spousal trust, Generally, APP B § B:10
- Spousal trust (to avoid probate fees, for example) with gift over to issue of settlor (taxpayer under 65), § 7:11, § 7:56
- Taxpayer at least 65, APP B § B:10, § 7:17, § 7:20, § 7:61, § 7:62
- Testamentary trust, APP B § B:10
- Trust, declaration of for lump sum, § 7:27, § 7:68
- Trust reporting letter, § 3:164
  - sample reporting letters, § 7:33 to § 7:37
- Trust residency, APP B § B:20
- Trust to hold life insurance proceeds, to fund support obligations under a separation agreement, § 7:23, § 7:64
- Trust with retained life interest (to avoid probate fees, for example) (taxpayer under 65), § 7:13, § 7:58
- Types, Generally, APP B § B:10
- United States “Statutory Business Trusts,” APP B § B:1
- Voting trusts, APP B § B:2

## UNMARRIED, MEANING OF

- Generally, APP B § B:12

## VESTING

- Generally, APP B § B:12
- Die without issue, APP B § B:12
- Double conditions, APP B § B:12
- Presumption in favour of early vesting, APP B § B:12
- Tests, APP B § B:12

## VOTING TRUST

- Generally, APP B § B:2

## WILL PLANNING & DRAFTING

- Generally, APP B § B:5, APP B § B:9
- Appointment of executors (estate trustees), § 2:1 et seq., § 3:1 et seq., § 3:164; APP B § B:5
  - considerations, solicitor as, business associates as, special purpose,

## WILL PLANNING & DRAFTING

### —Cont'd

- Appointment of executors (estate trustees), § 2:1 et seq., § 3:1 et seq., § 3:164; APP B § B:5—Cont'd
  - minors, trust companies, compensation, APP B § B:5
- Ascertaining assets, APP B § B:5
- Beneficiaries, APP B § B:5
- Charitable gifts, APP B § B:5
- Charitable remainder trust, APP B § B:10
- Civil law trusts, APP B § B:1
- Common-law partner trust, APP B § B:10
- Construction of, APP B § B:5
- Dispositive provisions: names, future events, gifts to minors, survivorship, ademption, abatement, lapse, residue, trust wills, partial intestacies, class gifts, rule in Saunders v. Vautier (perpetuities), beneficiaries, donation of organs, administrative provisions, APP B § B:5
- Execution, APP B § B:5
- Executor and trustee provisions: sale of assets to trustees, compensation, passing of accounts, assistance from specialists, foreign executors, custody and guardianship, persons born outside marriage, use of memoranda, use of language, execution, holograph wills, international and multiple wills, mechanical aids and paralegals, APP B § B:1 et seq.
- Executors, APP B § B:5
- Family Law Act, APP B § B:5
- Insurance trust, APP B § B:10
- Inter vivos trust, APP B § B:10
- Joint spousal trust, APP B § B:10
- Malpractice: Generally, taking instructions, carrying out instructions, failure to properly execute, record keeping, cases, APP B § B:5
- Marriage, APP B § B:5
- Minor beneficiaries, trust for, APP B § B:10
- Perpetuities and accumulation, APP B § B:5, § 3:372 et seq.
- Probate fees, APP B § B:5
- Provision for dependent, APP B § B:5
- Restriction on alienation, APP B § B:5
  - signing instructions, primary and secondary wills, APP A § A:4

**WILL PLANNING & DRAFTING**

**—Cont'd**

Spousal trust, Generally, **APP B § B:10**  
Spouse's interest, **APP B § B:5**  
Structure, **APP B § B:5**  
Taxes and duties, **APP B § B:5**  
Testamentary capacity, **APP B § B:5**  
Testamentary trust, **APP B § B:10**

**WILLS**

See also CLAUSES  
Generally, § 1:1  
Alterations, **APP B § B:12**

**WILLS—Cont'd**

Conditional, **APP B § B:12**  
Execution, see EXECUTION,  
FORMALITIES OF  
Form of Will Precis, **APP A § A:10**  
Multiple, drafting, **APP B § B:6, APP B  
§ B:7**  
Multiple will letter, § 2:19  
Primary, § 2:11, § 2:14, § 2:26  
Revocation, see REVOCATION  
Secondary, § 2:12, § 2:15, § 2:27

**WITNESSES, GIFTS TO**

Generally, **APP B § B:12**