

TABLE OF CONTENTS

PART I

CHAPTER 1

INTRODUCTION TO PLANNING FOR DEATH AND INCAPACITY

1	Planning for death and incapacity .....	1-2
2	Introduction to the <i>Wills and Succession Act</i> .....	1-3
	2.1 The effect of the <i>Wills and Succession Act</i> .....	1-3
	2.2 Related reforms .....	1-4
3	Interpretation and application of the <i>Wills and Succession Act</i> .....	1-5
	3.1 Definitions .....	1-5
	3.2 Interpretation.....	1-8
4	Survivorship .....	1-9
5	Advances and the abolition of presumptions .....	1-10
	5.1 Advances .....	1-10
	5.2 Presumptions and doctrines .....	1-12
6	Regulations .....	1-14

CHAPTER 2

UNDERSTANDING THE LEGAL REQUIREMENTS FOR WILLS

1	Introduction to wills .....	2-2
	1.1 A brief history of wills and the “subjective intention” approach .....	2-2
	1.2 The rules governing creating a will.....	2-4
	1.3 Legal effect of wills .....	2-4
2	Formalities for making a will .....	2-5
	2.1 Capacity .....	2-5
	2.2 In writing and signed.....	2-8
	2.3 The signature.....	2-9
	2.4 The witnesses.....	2-13
	2.5 The military .....	2-14
	2.6 Gifts to a witness.....	2-14
3	Alteration, revocation and revival .....	2-15
	3.1 Alteration .....	2-15
	3.2 Revocation.....	2-16

3.3	Effect of marriage or adult interdependent relationship.....	2-17
3.4	Revival .....	2-18
3.5	Gifts to an ex-spouse or former adult interdependent partner .....	2-18
4	Interpreting wills .....	2-20
4.1	Rules of interpretation .....	2-20
4.2	Children, descendants, issues, heirs, and kin .....	2-24
4.3	Rules for lapse and other failed gifts.....	2-25
5	Court orders and validating wills .....	2-26
5.1	Clear and convincing evidence of a testator’s intentions .....	2-27
5.2	Validating wills that do not comply with formalities.....	2-29
5.3	Validating alterations that do not comply with formalities .....	2-30
5.4	Rectifying wills by adding or deleting characters, words, or provisions .....	2-31
5.5	Validating gifts to witnesses that would otherwise be void.....	2-33

### CHAPTER 3

#### INTERVIEWING AND ADVISING A CLIENT SEEKING A WILL

1	Interviewing and advising a client seeking a will.....	3-2
2	Property excluded from an estate .....	3-2
2.1	Designated beneficiaries.....	3-2
2.2	Advancement - transfers into joint names .....	3-4
3	Duties and responsibilities of an estate lawyer .....	3-6
3.1	Lawyers’ duties owed to clients .....	3-7
3.2	Lawyers’ duties owed to beneficiaries.....	3-15
4	Use of questionnaires and checklists .....	3-16
4.1	Background information about the testator.....	3-16
5	Assisting a client in selecting appropriate persons .....	3-19
5.1	Personal representatives.....	3-19
5.2	Guardians .....	3-22
5.3	Beneficiaries.....	3-23
6	Limits on testamentary freedom .....	3-24
6.1	Rights of spouses - matrimonial property claims.....	3-25
6.2	Rights of spouses and adult interdependent partners – family maintenance and support .....	3-27
7	Funeral and burial arrangements and donation of organs.....	3-27
8	Tax issues.....	3-28
8.1	Estate tax.....	3-28

8.2	Capital gains tax.....	3-29
8.3	Principal residence.....	3-29
8.4	Spousal rollover.....	3-29
8.5	Spousal trust rollover.....	3-30
8.6	Farm rollover .....	3-30
8.7	Capital gains exemption .....	3-30
8.8	Registered Retirement Savings Plans and Registered Retirement Income Funds.....	3-31
9	Safekeeping wills and instructions to and from a client .....	3-31

## CHAPTER 4

### DRAFTING A WILL

1	Drafting wills .....	4-3
1.1	Plain language drafting.....	4-3
2	Components of a will .....	4-3
2.1	Statement of intention and name.....	4-4
2.2	Contemplation of marriage.....	4-5
2.3	Revocation.....	4-5
2.4	Appointment of a personal representative/executor .....	4-6
2.5	General clauses relating to personal representatives.....	4-7
2.6	Transmission .....	4-9
2.7	Debt payment.....	4-9
3	Dispositive clauses of specific and personal property .....	4-10
3.1	Household goods and personal effects.....	4-10
3.2	Memorandum of household goods and personal effects .....	4-11
3.3	Specific gifts .....	4-13
3.4	Gifts to charities.....	4-13
3.5	Gifts paid only once.....	4-15
3.6	Residuary gifts.....	4-16
3.7	Trusts .....	4-19
3.8	Family disaster clause .....	4-23
4	Advances, set-offs, loans.....	4-24
5	Family maintenance and support declaration .....	4-25
6	Administrative provisions and specific powers.....	4-26
7	Standard powers of the personal representative.....	4-26
7.1	Power to sell or retain .....	4-27

7.2	Power to distribute property .....	4-27
7.3	Power to invest.....	4-28
7.4	Power to delegate .....	4-29
7.5	Power to pay taxes .....	4-29
8	Other specific powers of the personal representative .....	4-30
8.1	Power to deal with a business.....	4-30
9	Executor’s compensation and exoneration.....	4-31
9.1	Setting the fee .....	4-31
9.2	Professional charging clause .....	4-32
9.3	General exoneration clause .....	4-33
10	Survivorship .....	4-34
11	<i>In Terrorem</i> or forfeiture clauses.....	4-34
12	interpretation clauses .....	4-35
12.1	Definitions .....	4-35
12.2	Interpretation.....	4-35
12.3	Common words and phrases.....	4-36
13	Guardians.....	4-36
13.1	Appointment.....	4-36
13.2	Payments.....	4-38
13.3	Renovations.....	4-38
14	Burial/cremation/funeral instructions .....	4-39
15	Attestation clause.....	4-40
16	Affidavit of signature to a will.....	4-41
17	Precedents .....	4-42
18	Some other considerations .....	4-43
18.1	“Absolutely” .....	4-43
18.2	Beneficiaries.....	4-43
18.3	Lapses/gifts over .....	4-44
18.4	Ademption .....	4-45
18.5	Difficult beneficiaries .....	4-45
18.6	Gifts to minors.....	4-46
18.7	Gifts to social assistance recipients .....	4-47
18.8	Protecting disability benefits .....	4-48
18.9	Mutual wills .....	4-48
18.10	Codicils.....	4-49
18.11	A note about holograph and home-made wills.....	4-49

## CHAPTER 5

## UNDERSTANDING FAMILY MAINTENANCE AND SUPPORT

1	Family maintenance and support.....	5-2
2	History of family maintenance and support.....	5-2
3	Availability of relief.....	5-3
3.1	Adequate provision for proper maintenance and support .....	5-3
3.2	<i>Tataryn v Tataryn Estate</i> .....	5-4
3.3	Statutory and other bases for support obligations .....	5-4
3.4	Rights of spouses and adult interdependent partners.....	5-5
4	Legal and moral obligations.....	5-6
4.1	Legal obligations generally .....	5-7
4.2	Legal obligations to spouses .....	5-8
4.3	Legal obligations to adult interdependent partners .....	5-9
4.4	Legal obligations to children .....	5-10
4.5	Moral obligations.....	5-10
5	Qualifying for family maintenance and support.....	5-12
5.1	Categories of dependants .....	5-12
5.2	Factors considered on application for relief.....	5-22
5.3	Practice points relating to “family members” .....	5-23
6	Introduction to temporary possession of a family home.....	5-24
7	Definition of a “family home” .....	5-24
8	The right to temporary possession of a home and household goods .....	5-25
9	Obligations and rights of the estate .....	5-26
10	Obligations and rights of a surviving spouse and effect of an order.....	5-27
11	Temporary possession and the <i>Matrimonial Property Act</i> .....	5-28

CHAPTER 6

ADULT INTERDEPENDENT RELATIONSHIPS

1	Who is an adult interdependent partner? .....	6-2
1.1	Required elements.....	6-2
1.2	What is a “relationship of interdependence”? .....	6-2
1.3	How is a relationship of interdependence terminated? .....	6-3
1.4	The adult interdependent partner agreement .....	6-4
1.5	Onus of proof.....	6-4
2	Determining if someone is an Adult Interdependent Partner .....	6-4
3	The impact of the <i>Adult Interdependent Relationships Act</i> on estate administration.....	6-5
3.1	The <i>Surrogate Rules</i> .....	6-5
3.2	The <i>Wills and Successions Act</i> .....	6-7
3.3	The <i>Estate Administration Act</i> .....	6-8
3.4	The <i>Dower Act</i> and the <i>Matrimonial Property Act</i> .....	6-8

CHAPTER 7

PLANNING FOR INCAPACITY: ENDURING POWER OF ATTORNEY

1	Powers of attorney at common law .....	7-2
2	Enduring powers of attorney .....	7-2
2.1	Requirements for a valid enduring power of attorney .....	7-3
2.2	Types of enduring powers of attorney.....	7-4
3	Determining capacity.....	7-4
3.1	Test for necessary capacity to sign an enduring power of attorney .....	7-5
3.2	Privacy issues .....	7-6
4	Authority of attorney .....	7-7
5	Powers of attorney and trusts.....	7-9
6	Terminating an attorney’s power .....	7-9
7	Applying for advice and direction.....	7-10
8	Accounting.....	7-10
9	Characterizing an attorney’s role.....	7-10
10	Compensating an attorney.....	7-11
11	Form of enduring power of attorney .....	7-11
12	Assets in other jurisdictions .....	7-11

**CHAPTER 8**

**PLANNING FOR INCAPACITY: PERSONAL DIRECTIVES**

1	Personal directives at common law.....	8-2
2	Personal directives .....	8-2
	2.1 Requirements for a valid personal directive .....	8-3
3	The test for capacity to sign a personal directive .....	8-4
	3.1 Determining capacity .....	8-4
4	Content of personal directives.....	8-5
5	Bringing a personal directive into effect .....	8-6
6	When a personal directive ceases to have effect.....	8-7
	6.1 Revoking a personal directive .....	8-8
7	Agents’ duties, authority, and limitations on authority.....	8-8
8	Compensating an agent .....	8-10
9	Service providers .....	8-10
10	Public guardian .....	8-10
11	Court review .....	8-11
12	Agents’ liability and protections.....	8-11
13	Forms and technical rules.....	8-12
14	Other jurisdictions.....	8-13

**CHAPTER 9**

**DEALING WITH INCAPACITY: ADULT GUARDIANSHIP AND TRUSTEESHIP ACT**

1	Introduction to <i>Adult Guardianship and Trusteeship Act</i> .....	9-3
	1.1 “Capacity” defined .....	9-4
	1.2 Jurisdiction.....	9-5
	1.3 Types of orders.....	9-5
2	Help with decision-making on personal matters .....	9-6
	2.1 Supported decision-making.....	9-6
	2.2 Co-decision-makers.....	9-7
3	Guardians.....	9-10
	3.1 Guardianship orders .....	9-12
	3.2 Review of guardianship orders.....	9-13
	3.3 Who may be appointed as a guardian?.....	9-13
	3.4 Guardian compensation .....	9-13

4	Procedures for specific circumstances .....	9-14
4.1	Guardianship orders granted in urgent situations.....	9-14
4.2	Urgent health-related decisions .....	9-14
4.3	Emergency health care .....	9-16
5	Trusteeship .....	9-16
5.1	Threshold test for trusteeship order .....	9-16
5.2	Who may be a trustee?.....	9-17
5.3	Trustees' authority and responsibilities.....	9-19
5.4	Ability to make gifts.....	9-21
5.5	Trusteeship plans.....	9-21
5.6	Wills and testamentary dispositions.....	9-21
5.7	Trustee compensation .....	9-22
5.8	Review of trusteeship orders.....	9-23
5.9	Accounting requirements .....	9-23
5.10	When a trustee dies or loses capacity .....	9-24
5.11	Death of a represented adult .....	9-24
6	Access to and use of personal information.....	9-24
6.1	Guardians .....	9-24
6.2	Trustees .....	9-25
7	Transitional provisions .....	9-25
8	Interested persons and conflicts of interest .....	9-26
9	Application for appointment/review of order.....	9-27
9.1	Applications .....	9-27
9.2	Review applications .....	9-27
9.3	Review officer .....	9-27
9.4	Documents .....	9-28
10	Applications to examine and approve accounts.....	9-30
11	Costs.....	9-31
12	Finalizing the file.....	9-32



PART II

CHAPTER 1

INTRODUCTION TO ESTATE ADMINISTRATION

1	Introduction to estate administration.....	1-2
2	The <i>Estate Administration Act</i> and <i>Surrogate Rules</i> .....	1-3
2.1	The effect of the <i>Estate Administration Act</i> .....	1-4

CHAPTER 2

THE PERSONAL REPRESENTATIVE

1	Introduction.....	2-2
2	Identification of the personal representative.....	2-2
2.1	“Personal representative” defined.....	2-2
2.2	Executor.....	2-2
2.3	Administrator.....	2-3
3	Deciding whether to act as a personal representative .....	2-5
3.1	Requirement to act as a personal representative .....	2-5
3.2	Dealing with estate assets before deciding to act as a personal representative .....	2-5
3.3	Issues to review before deciding to act.....	2-7
3.4	Alternatives to acting as a personal representative: renouncing, nominating, or reserving the right to apply.....	2-11
4	Duties of the personal representative.....	2-12
4.1	General duties.....	2-12
4.2	Disposition of human remains .....	2-12
4.3	Making funeral arrangements.....	2-13
4.4	Core tasks of the personal representative .....	2-14
5	Failing to perform the core tasks or failing to provide notice .....	2-19

CHAPTER 3

TESTAMENTARY DOCUMENTS

1	Introduction.....	3-2
2	Original documents or copies .....	3-2
3	Locating the original will.....	3-3
4	When a will cannot be located.....	3-4
5	Technical requirements.....	3-4
5.1	Affidavit of a witness to a will .....	3-4
5.2	Affidavit of a witness unavailable .....	3-5
5.3	Initialing each page of a will .....	3-5
5.4	Dating a will .....	3-5
5.5	Affidavit of a witness where the testator is unable to sign.....	3-6
5.6	Wills made by minors.....	3-6
5.7	Military wills.....	3-7
5.8	Arrangement for payment of fees .....	3-7

CHAPTER 4

DEALING WITH INTESTACY

1	Intestacy.....	4-2
1.1	What is an “intestate estate”? .....	4-2
1.2	Who is “family” in an intestacy?.....	4-2
1.3	Distribution of intestate estates.....	4-3
1.4	Spouses and adult interdependent partners .....	4-3
1.5	Distribution to descendants .....	4-4
1.6	Parentelic distribution.....	4-5
1.7	No heirs.....	4-6
2	Summary of intestacy inheritance provisions.....	4-6

**CHAPTER 5**

**NOTICE**

1	Introduction.....	5-2
2	Notice under the <i>Estate Administration Act</i> and the <i>Surrogate Rules</i> .....	5-2
3	Notice when acting without a grant.....	5-2
	3.1 Who must be given notice? .....	5-3
4	Notice to family members and beneficiaries .....	5-7
	4.1 Who must be given notice? .....	5-7
	4.2 Court discretion regarding compliance with notice requirements.....	5-10
5	How is notice given?.....	5-11
	5.1 Notice when acting without a grant .....	5-11
	5.2 Notice when applying for a grant .....	5-11

**CHAPTER 6**

**GRANT APPLICATIONS**

1	Introduction.....	6-3
2	Preliminary matters .....	6-3
	2.1 Gathering information.....	6-3
	2.2 Reviewing a will .....	6-4
	2.3 Is a grant necessary? .....	6-9
3	Types of grant.....	6-11
	3.1 Deciding on the kind of grant required .....	6-11
	3.2 Supplemental grant .....	6-12
	3.3 Double probate.....	6-12
	3.4 Administration of unadministered property .....	6-12
	3.5 Administration of unadministered property with will annexed.....	6-13
	3.6 Re-sealed probate or administration .....	6-13
	3.7 Ancillary grant.....	6-14
	3.8 Grant of administration limited to specific property .....	6-14
	3.9 Grant of administration of property not included in another grant.....	6-14
	3.10 Other grants.....	6-15
	3.11 Bonds.....	6-15
4	The application .....	6-16
	4.1 NC 1 – Application .....	6-16
	4.2 NC 2 – Affidavit .....	6-18

ALBERTA WILLS AND ESTATES PRACTICE MANUAL

4.3	NC 3 – Schedule 1: Deceased .....	6-22
4.4	NC 4 – Schedule 2: Will .....	6-26
4.5	NC 5 – Schedule 3: Personal representative(s).....	6-27
4.6	NC 6 – Schedule 4: Beneficiaries .....	6-28
4.7	NC 7 – Schedule 5: Inventory of property and debts .....	6-30
4.8	Notices.....	6-32
4.9	Service of NC 24 on a person with mental disability and no attorney or trustee ..	6-35
4.10	Submitting an application.....	6-36
5	Wills made outside Alberta .....	6-38
6	Lost or missing will.....	6-40
7	Priorities for grant applications.....	6-42
8	Renunciations .....	6-44
9	Nominations.....	6-45
10	Failed gifts.....	6-46
10.1	Lapsed gifts .....	6-46
10.2	Adeemed gifts .....	6-46
10.3	Void gifts .....	6-46
10.4	Distribution of void gifts.....	6-47
10.5	Missing beneficiaries .....	6-48
11	“Children” as beneficiaries .....	6-48
12	Property lists .....	6-49
13	Irregular or defective wills.....	6-49
13.1	Validating documents with formal defects and rectification.....	6-49
13.2	Alterations and erasures .....	6-50
13.3	Irregularly placed signature.....	6-51
14	Survivorship .....	6-51
15	Personal representative appointments.....	6-52
15.1	Priorities.....	6-52
15.2	General appointment.....	6-52
15.3	Appointment by description.....	6-52
15.4	Minor as a personal representative.....	6-53
15.5	Reservations.....	6-53
15.6	Personal representative nominations.....	6-53
15.7	Attorneys.....	6-54
15.8	No one applies .....	6-54
15.9	Public Trustee as applicant .....	6-54

## CHAPTER 7

## OTHER APPLICATIONS

1	Contentious applications.....	7-2
2	The difference between rectification and construction of wills .....	7-2
3	Rectification of wills.....	7-3
	3.1 General .....	7-3
	3.2 Deletion of words .....	7-3
	3.3 Addition of words.....	7-3
	3.4 Evidence .....	7-4
4	Construction of wills .....	7-4
	4.1 General .....	7-4
	4.2 When to bring an application .....	7-4
	4.3 Ascertaining a testator's intent.....	7-5
	4.4 Judicial approaches to the construction of a will.....	7-5
	4.5 The court's limited power of rectification as a court of construction .....	7-6
	4.6 Rules of construction .....	7-7
	4.7 Role of a personal representative.....	7-8
5	Termination, revocation, variation, and acceleration of trusts.....	7-8
	5.1 General .....	7-8
	5.2 Legislation .....	7-8
	5.3 Criteria for court approval.....	7-10
6	Powers of a trustee.....	7-10
7	Charitable intent .....	7-11
8	Sale or retention of real property/leases.....	7-11
	8.1 <i>Trustee Act</i> .....	7-11
	8.2 Leases.....	7-13
	8.3 <i>Minors' Property Act</i> .....	7-13

**CHAPTER 8**

**APPLYING FOR FAMILY MAINTENANCE AND SUPPORT**

1	Types of relief under the family maintenance and support provisions .....	8-2
2	Applying for family maintenance and support .....	8-3
2.1	“Adequate” provision for proper maintenance and support .....	8-4
2.2	Limitation periods .....	8-8
2.3	Applicants .....	8-9
2.4	Notices .....	8-9
2.5	Factors for court consideration .....	8-10
2.6	Competing family maintenance and support claims .....	8-14
2.7	Disclosure .....	8-15
3	Court orders and their effect.....	8-16
4	Miscellaneous family maintenance and support provisions.....	8-17

**CHAPTER 9**

**ADMINISTRATION OF THE ESTATE**

1	Introduction.....	9-3
2	Executor’s year.....	9-4
3	Valuation and inventory.....	9-4
3.1	General .....	9-4
3.2	Purpose.....	9-5
3.3	Property and debts.....	9-5
3.4	Form of inventory .....	9-7
3.5	Valuation.....	9-7
3.6	Types of property described in an inventory .....	9-9
4	Property that does not pass to a personal representative.....	9-16
4.1	Joint tenancy .....	9-16
4.2	Life insurance policies and proceeds .....	9-18
4.3	Pensions and retirement plans.....	9-19
4.4	Canada Pension Plan.....	9-22
4.5	Other plans .....	9-22
4.6	Gifts made in contemplation of death.....	9-22
4.7	Bankrupt estate .....	9-23
4.8	Statutory benefits.....	9-23

4.9	Voluntary payments .....	9-23
4.10	Interests in trusts .....	9-23
5	Legislation affecting transmission and transfer of assets .....	9-23
5.1	General .....	9-23
5.2	Family maintenance and support .....	9-24
5.3	<i>Matrimonial Property Act</i> .....	9-24
5.4	<i>Income Tax Act</i> .....	9-25
5.5	<i>Estate Administration Act</i> .....	9-25
5.6	Notice to creditors and claimants.....	9-25
5.7	<i>Wills and Succession Act</i> .....	9-25
5.8	<i>Dower Act</i> .....	9-26
5.9	<i>Surrogate Rules</i> .....	9-26
5.10	<i>Public Trustee Act</i> .....	9-26
6	Transmission and transfer procedures .....	9-27
6.1	Land .....	9-27
6.2	Stocks and bonds .....	9-30
6.3	Life insurance.....	9-33
6.4	Pensions .....	9-34
6.5	Registered retirement savings plans .....	9-35
6.6	Registered retirement income funds .....	9-35
6.7	Life income funds.....	9-35
6.8	Annuities.....	9-35
6.9	Banks and other financial institutions.....	9-35
6.10	Motor vehicles .....	9-37
6.11	Miscellaneous property .....	9-38
6.12	Assets in foreign jurisdictions .....	9-39
6.13	Debts due to the deceased .....	9-40
6.14	Mobile homes.....	9-40
6.15	Aircraft .....	9-40
6.16	Workers' Compensation .....	9-41
6.17	Veterans benefits.....	9-42
6.18	Firearms.....	9-42

## CHAPTER 10

## ESTATE OBLIGATIONS

1	General principles.....	10-2
1.1	Definitions .....	10-2
1.2	Duties and liabilities of a personal representative .....	10-2
1.3	Claims against the estate.....	10-4
2	Debts incurred by the deceased.....	10-4
2.1	Continuing debts .....	10-4
2.2	Contingent debts.....	10-5
2.3	Statute-barred or unenforceable debts.....	10-6
2.4	Personal (or quasi-familial) relationship between creditor and deceased.....	10-6
2.5	Pledges .....	10-9
2.6	Spousal and child support.....	10-9
2.7	Matrimonial property claims.....	10-9
2.8	Creditor as personal representative or beneficiary .....	10-9
2.9	Defences to creditor's claims.....	10-9
3	Debts relating to the death .....	10-10
3.1	Funeral expenses.....	10-10
4	Debts incurred by a personal representative.....	10-11
4.1	Entitlement to incur debts.....	10-11
4.2	Entitlement to indemnification.....	10-11
4.3	Examples of administration expenses.....	10-12
4.4	Claims against personal representatives .....	10-13
5	Administering estate debts .....	10-15
5.1	Instructions.....	10-15
5.2	Searches and Inquiries.....	10-16
5.3	Proof of claims .....	10-18
5.4	Compromise of claims .....	10-18
5.5	Ranking and payment of debts.....	10-18
6	Relief from liability under certain agreements .....	10-23



**CHAPTER 11**

**DISTRIBUTION OF PROPERTY**

1	Distributing estate property .....	11-2
2	A personal representative's liability.....	11-3
3	Rights of claimants.....	11-3

**CHAPTER 12**

**ACCOUNTING AND EXPENSES**

1	The personal representative .....	12-2
1.1	Duty to account .....	12-2
1.2	Bonding.....	12-3
1.3	Duty to invest.....	12-4
1.4	Record-keeping .....	12-5
1.5	Accounting.....	12-6
1.6	Remuneration of a personal representative .....	12-8
1.7	Discharge of a personal representative .....	12-9
1.8	Discharge of a trustee of a represented adult's estate.....	12-10
1.9	Discharge of an attorney under the <i>Powers of Attorney Act</i> .....	12-10
1.10	Guardian compensation .....	12-10
1.11	Personal representative compensation.....	12-11
1.12	Amount of compensation .....	12-12
1.13	Procedure for payment of personal representative.....	12-17
2	Lawyers' charges .....	12-19
2.1	The client .....	12-20
2.2	Retainer agreement.....	12-21
2.3	Remuneration for legal services .....	12-21
2.4	Remuneration for performing functions of a personal representative.....	12-24
2.5	Remuneration where a solicitor is the personal representative.....	12-24
2.6	Liability for payment.....	12-24
2.7	Form of bill.....	12-25
2.8	Review of bill – assessment procedure.....	12-25

## CHAPTER 13

## COSTS

1	Introduction to costs in an estate action.....	13-2
2	General principles on estate costs .....	13-2
3	Applicable <i>Surrogate Rules</i> and <i>Rules of Court</i> .....	13-3
	3.1 Applicable <i>Surrogate Rules</i> .....	13-3
	3.2 Applicable <i>Rules of Court</i> .....	13-5
4	The modern approach and its exceptions.....	13-6
5	Estate payment of costs to an unsuccessful litigant.....	13-7
	5.1 Six factors .....	13-7
	5.2 Causing the litigation .....	13-7
	5.3 Reasonable challenges/conduct .....	13-8
	5.4 Undue influence allegations.....	13-9
	5.5 Different costs for different periods of time in litigation .....	13-9
	5.6 Offers to settle under the <i>Rules of Court</i> .....	13-9
6	Solicitor-client (or full indemnity) costs in estate matters.....	13-10
	6.1 Blameworthy conduct/misconduct in litigation .....	13-12
7	Elevated costs awards.....	13-16
8	Reimbursement of a personal representative's expenses and costs .....	13-17
	8.1 General principles .....	13-17
	8.2 Trustee indemnification for legal costs .....	13-17
	8.3 Costs awards against rogue personal representatives .....	13-20
9	Judicial comment on legal fees generally .....	13-22

**CHAPTER 14**

**TAXATION**

1	Introduction.....	14-2
2	Canadian income tax.....	14-3
	2.1 The terminal year – filing requirements .....	14-3
	2.2 Computation of income .....	14-5
	2.3 Computation of tax.....	14-30
	2.4 Carryback of losses from estate’s first taxation year .....	14-32
	2.5 Shares of corporation: special considerations.....	14-33
	2.6 Testamentary transfers of property to spouse or spousal trusts.....	14-35
	2.7 The estate and the beneficiaries .....	14-40
3	Goods and services tax .....	14-46
	3.1 Reporting periods.....	14-47
	3.2 Responsibilities of the personal representative .....	14-47
	3.3 Implications on death .....	14-47
	3.4 Distribution of trust property .....	14-48
	3.5 Clearance certificate.....	14-49
	3.6 Deemed disposition rule.....	14-49
	3.7 Personal representative fees .....	14-49
4	United States of America estate tax.....	14-50

**CHAPTER 15**

**TECHNICAL AND COURT MATTERS**

1	Contentious matters.....	15-3
	1.1 Bringing an action .....	15-3
	1.2 Parties.....	15-3
	1.3 Service .....	15-3
	1.4 Representation.....	15-3
	1.5 Chambers proceedings.....	15-3
	1.6 Hearings.....	15-3
	1.7 Accepting or refusing probate .....	15-4
	1.8 Production of testamentary documents .....	15-4
	1.9 Security for costs.....	15-4
	1.10 Time for completion .....	15-5

2	Proof of death .....	15-5
	2.1 Permission to swear to the death of a person .....	15-5
	2.2 Court order.....	15-5
3	Claims on an estate.....	15-5
	3.1 Contested claim .....	15-5
	3.2 Application to the court.....	15-5
	3.3 Notice to a personal representative .....	15-6
	3.4 Claim barred .....	15-6
4	Renouncing .....	15-6
5	Formal proof of a will.....	15-7
	5.1 Who may apply? .....	15-7
	5.2 Required documents .....	15-8
	5.3 The court may require formal proof .....	15-8
	5.4 Stay of proceedings .....	15-8
	5.5 Original will lost or destroyed .....	15-8
	5.6 Application by a person interested in an estate.....	15-9
	5.7 Chambers hearings.....	15-9
	5.8 Evidence of a person who took instructions for the will .....	15-9
	5.9 Trial .....	15-10
	5.10 Order of decisions .....	15-10
	5.11 Order of proceedings .....	15-11
	5.12 Powers of the court.....	15-11
6	Survivorship .....	15-11
7	Bond or other security requirement .....	15-12
	7.1 Requirement to obtain a bond .....	15-12
	7.2 Dispensing with a bond .....	15-12
	7.3 Bond applications .....	15-13
8	Caveats.....	15-14
	8.1 Entitlement to file a caveat .....	15-14
	8.2 Filing of caveat .....	15-14
	8.3 Expiry of a caveat .....	15-14
	8.4 Discharge of a caveat .....	15-14
	8.5 Alternate means of discharge .....	15-14
	8.6 Frivolous or vexatious caveats .....	15-15
9	Applications for advice or directions .....	15-15
	9.1 Legislation .....	15-15
	9.2 When is it appropriate to apply? .....	15-15

9.3	Estates with missing beneficiaries.....	15-16
9.4	The effect of a personal representative acting on advice and direction .....	15-17
9.5	Costs .....	15-17

**CHAPTER 16**

**PUBLIC TRUSTEE’S ROLE IN ADMINISTRATION OF ESTATES**

1	Public Trustee as personal representative .....	16-2
1.1	As personal representative.....	16-2
1.2	Interim administration .....	16-2
1.3	Expeditious administration of very small estates .....	16-3
1.4	Public Trustee priority to a grant.....	16-3
1.5	Administration where no one else is willing and able to act .....	16-4
1.6	Election to administer an estate .....	16-5
1.7	Court or government order .....	16-6
1.8	Fees .....	16-6
2	Notice to the Public Trustee of an application for a grant .....	16-7
2.1	Where a vulnerable person is interested in an estate.....	16-7
2.2	Family members.....	16-8
3	Other applications relating to administration of a deceased’s estate .....	16-8
3.1	Public Trustee is trustee for a represented adult .....	16-9
3.2	A minor interested in an estate.....	16-10
3.3	A missing person interested in an estate .....	16-11
4	Other considerations where a minor is interested in an estate .....	16-11
4.1	Expenditures by the Public Trustee for a minor’s benefit .....	16-11
4.2	Dispositions of real property by a personal representative or testamentary trustee.....	16-12
4.3	Distribution of a minor’s share of an estate .....	16-13
4.4	Accounting by the Public Trustee to a minor .....	16-17
4.5	Monitoring of a trustee for the benefit of minor beneficiaries.....	16-17
5	Missing beneficiary.....	16-19
6	Substitute trustee or judicial trustee.....	16-20

CHAPTER 17

RURAL ESTATES

1	Introduction.....	17-2
2	Nature of rural operations.....	17-2
	2.1 Sole proprietorship.....	17-2
	2.2 Partnership.....	17-2
	2.3 Corporation.....	17-3
	2.4 Joint venture.....	17-3
3	Assets of rural operations.....	17-3
	3.1 Real property.....	17-3
	3.2 Mines and minerals.....	17-7
	3.3 Farm machinery and equipment.....	17-9
	3.4 Grazing leases.....	17-10
	3.5 Livestock.....	17-10
	3.6 Grain.....	17-11
4	Miscellaneous matters.....	17-12
	4.1 Farm grant programs.....	17-12
	4.2 Transmission and transfer of property.....	17-12
	4.3 Quotas.....	17-13
	4.4 Co-operatives.....	17-14

CHAPTER 18

ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

1	Introduction.....	18-2
2	What is alternative dispute resolution?.....	18-3
	2.1 Negotiation .....	18-4
	2.2 Third party interventions.....	18-5
	2.3 Collaborative law.....	18-9
	2.4 Summary.....	18-11
3	Which alternative dispute resolution process to choose and why? .....	18-11
4	Alternative dispute resolution processes in the civil justice system .....	18-13
	4.1 Traditional approach.....	18-13
	4.2 Current experience.....	18-14
5	Court-annexed alternative dispute resolution processes .....	18-17
	5.1 Authority for judicial dispute resolution.....	18-18
	5.2 History of judicial dispute resolution.....	18-18
	5.3 Current judicial dispute resolution practice in Alberta .....	18-20

**APPENDIX LIST**

*Adult Interdependent Relationship Act Checklist*

Affidavit of Attestation of an Enduring Power of Attorney (sample)

Affidavit of Attestation of a Personal Directive (sample)

Declaration of Enduring Power of Attorney (sample)

Duties of an Attorney under an Enduring Power of Attorney (sample)

Enduring Power of Attorney (sample)

Enduring Power of Attorney Questionnaire (sample)

Estate Administration Information Gathering Form (sample)

Forms Checklist – Application for Grant

Intestacy Flowchart

Letter to Physician Requesting Capacity Assessment (sample)

Medical Opinion Regarding Legal Mental Capacity (sample)

Notes on the Personal Directive (sample)

Personal Directive (sample)

Personal Directive Questionnaire (sample)

Suggested Fee Guidelines

Surrogate Checklist

Will (sample)

Wills and Estates Questionnaire (sample)



**ALBERTA SURROGATE FORMS**

The following forms are available on the *Alberta Wills and Estates Practice Manual* CD only and are included as Word Templates (.dotx).

*Name*      *Description of Form*

**ADMINISTRATION OF ESTATES OF DECEASED PERSONS**

**Applications for Grants**

NC 1	Application by the personal representative(s) for a grant
NC 2	Affidavit by the personal representative(s) on application for a grant
NC 3	Schedule 1: Deceased
NC 4	Schedule 2: Will
NC 5	Schedule 3: Personal representative(s)
NC 6	Schedule 4: Beneficiaries
NC 6.1	Acknowledgment of Trustee(s)
NC 7	Schedule 5: Inventory of property and debts
NC 8	Affidavit of witness to a will
NC 9	Affidavit of handwriting of deceased
NC 10	Affidavit verifying translation of non-English will
NC 11	Affidavit of witness to signature
NC 12	Renunciation of probate
NC 13	Reservation of right to apply for a grant of probate
NC 14	Renunciation of administration with will annexed
NC 15	Renunciation of administration
NC 16	Nomination and consent to appointment of personal representative
NC 17	Affidavit to dispense with a bond
NC 18	Consent to waive bond
NC 19	Notice to beneficiaries (residuary)
NC 20	Notice to beneficiaries (non-residuary)
NC 20.1	Notice of void gift
NC 21	Notice to beneficiaries (intestacy)
NC 22	Notice to spouse of deceased ( <i>Matrimonial Property Act</i> )
NC 23	Notice to spouse/adult interdependent partner of deceased ( <i>Family Maintenance and Support</i> )
NC 24	Notice to a dependent child or minor grandchild or great-grandchild of the deceased ( <i>Family Maintenance and Support</i> )
NC 24.1	Notice to the Public Trustee ( <i>Administration of Estates Act</i> )
NC 25	Affidavit regarding missing or unknown beneficiaries

NC 26 Court's rejection notice - Informal application for a grant

NC 27 Affidavit of service

**Application by the Attorney for the Personal Representatives(s)**

NC 28 Application by the attorney for the personal representative(s) for a grant

NC 29 Affidavit by the attorney for the personal representative(s) on an application for a grant

**Application for Double Probate**

NC 30 Application by a personal representative for a grant of double probate

NC 31 Affidavit by a personal representative on application for a grant of double probate

**Application for Resealed Probate and Administration or for an Ancillary Grant**

NC 32 Application by the personal representative(s) to reseal original grant of probate or administration or for an ancillary grant

NC 33 Affidavit by the personal representative(s) on application for a grant of resealed probate or administration or for an ancillary grant

**Creditors and Claimants**

NC 34 Notice to creditors and claimants

NC 34.1 Statutory declaration of publication

NC 35 Statutory declaration by creditors and claimants

**Grants**

NC 36 Probate

NC 37 Administration with will annexed

NC 38 Administration

NC 39 Double Probate

NC 40 Ancillary grant of probate

NC 41 Ancillary grant of administration with will annexed

NC 42 Ancillary grant of administration

**ADMINISTRATION OF ESTATES OF MINORS**

**Applications for a Grant**

NC 43 Application for a grant of trusteeship of the estate of a minor child

NC 44 Affidavit on application for a grant of trusteeship of the estate of a minor child

NC 45 Election of a trustee by a minor

NC 46 Notice of intention to apply for a grant of trusteeship

NC 47 Affidavit to dispense with a bond or other security

NC 48 Grant: Trusteeship of the estate of the minor child

**Court Certificates**

NC 49 Certificate of valid grant

**ADMINISTRATION OF ESTATES OF DECEASED PERSONS**

**ADMINISTRATION OF ESTATES OF MINORS**

**Contentious Business**

- C 1 Application for Motion
- C 2 Affidavit in support of (or opposing) application
- C 2.1 Reply to Application
- C 2.2 Demand for notice in respect of application

**Caveat Proceedings**

- C 3 Caveat
- C 3.1 Withdrawal of caveat
- C 3.2 Discharge of Caveat
- C 4 Warning to caveator(s)

**Formal Proof of Will Proceedings**

- C 5 Application by personal representative(s)
- C 6 Affidavit by personal representative(s)
- C 7 Schedule 2.1: Previous wills
- C 8 Notice to persons interested in the estate
- C 9 Notice of objection to informal grant by a person interested in the estate
- C 9.1 Notice of objection to application for Trusteeship of a Minor Child
- C 10 Direction by the court that a will be formally proved

**Deciding Contested Claims**

- C 11 Notice of contestation
- C 12 Notice of claim and Affidavit

**Form of Order**

- C 13 Order
- C 14 Application to authorize minor to make or revoke a will

**ADMINISTRATION OF ESTATES OF DECEASED PERSONS**

**ADMINISTRATION OF ESTATES OF MINORS**

**Application by the Personal Representative(s) to Pass Accounts Formally**

- ACC 1 Application with notice of hearing
- ACC 2 Affidavit

- ACC 3 Notice of objection or consent
- ACC 4 Terms of accountant's engagement
- ACC 5.1 Accountant's engagement report (review or review of terms)
- ACC 5.2 Accountant's engagement report (specified audit of items)

**Application by a Person Interested in the Estate That Accounts be Passed Formally**

- ACC 6 Application with notice of hearing
- ACC 7 Affidavit
- ACC 8 Reply by the personal representative(s)
- ACC 9 Affidavit of the personal representative(s) objecting to passing accounts formally

**Application by the Personal Representative(s) to Dispense With a Formal Passing of Accounts and to Pass Accounts Informally**

- ACC 10 Application with notice of hearing
- ACC 11 Affidavit

**Release**

- ACC 12 Release

**Form of Order**

- ACC 13 Order

**Notices**

- NGA 1 Personal Representative's Notice to Beneficiary
- NGA 2 Personal Representative's Notice to Family Member
- NGA 3 Personal Representative's Notice to Spouse
- NGA 4 Personal Representative's Notice to Attorney, Trustee, Public Trustee or Guardian

**LIST OF FORMS BY DESCRIPTION**

<i>Name</i>	<i>Description of Form</i>
ACC 5.1	Accountant's engagement report (review or review of terms)
ACC 5.2	Accountant's engagement report (specified audit of items)
NC 6.1	Acknowledgment of Trustee(s)
NC 38	Administration
NC 37	Administration with will annexed
ACC 2	Affidavit
ACC 7	Affidavit
ACC 11	Affidavit
NC 31	Affidavit by a personal representative on application for a grant of double probate
C 6	Affidavit by personal representative(s)
NC 29	Affidavit by the attorney for the personal representative(s) on an application for a grant
NC 2	Affidavit by the personal representative(s) on application for a grant
NC 33	Affidavit by the personal representative(s) on application for a grant of resealed probate or administration or for an ancillary grant
C 2	Affidavit in support of (or opposing) application
NC 9	Affidavit of handwriting of deceased
NC 27	Affidavit of service
ACC 9	Affidavit of the personal representative(s) objecting to passing accounts formally
NC 8	Affidavit of witness to a will
NC 11	Affidavit of witness to signature
NC 44	Affidavit on application for a grant of trusteeship of the estate of a minor child
NC 25	Affidavit regarding missing or unknown beneficiaries
NC 17	Affidavit to dispense with a bond
NC 47	Affidavit to dispense with a bond or other security
NC 10	Affidavit verifying translation of non-English will
NC 42	Ancillary grant of administration
NC 41	Ancillary grant of administration with will annexed
NC 40	Ancillary grant of probate
NC 30	Application by a personal representative for a grant of double probate
C 5	Application by personal representative(s)
NC 28	Application by the attorney for the personal representative(s) for a grant
NC 1	Application by the personal representative(s) for a grant
NC 32	Application by the personal representative(s) to reseal original grant of

## ALBERTA WILLS AND ESTATES PRACTICE MANUAL

	probate or administration or for an ancillary grant
NC 43	Application for a grant of trusteeship of the estate of a minor child
C 1	Application for Motion
C 14	Application to authorize minor to make or revoke a will
ACC 1	Application with notice of hearing
ACC 6	Application with notice of hearing
ACC 10	Application with notice of hearing
C 3	Caveat
NC 49	Certificate of valid grant
NC 18	Consent to waive bond
NC 26	Court's rejection notice - Informal application for a grant
C 2.2	Demand for notice in respect of application
C 10	Direction by the court that a will be formally proved
C 3.2	Discharge of Caveat
NC 39	Double Probate
NC 45	Election of a trustee by a minor
NC 48	Grant: Trusteeship of the estate of the minor child
NC 16	Nomination and consent to appointment of personal representative
C 12	Notice of claim and Affidavit
C 11	Notice of contestation
NC 46	Notice of intention to apply for a grant of trusteeship
ACC 3	Notice of objection or consent
C 9.1	Notice of objection to application for Trusteeship of a Minor Child
C 9	Notice of objection to informal grant by a person interested in the estate
NC 20.1	Notice of void gift
NC 24	Notice to a dependent child or minor grandchild or great-grandchild of the deceased ( <i>Family Maintenance and Support</i> )
NC 21	Notice to beneficiaries (intestacy)
NC 20	Notice to beneficiaries (non-residuary)
NC 19	Notice to beneficiaries (residuary)
NC 34	Notice to creditors and claimants
C 8	Notice to persons interested in the estate
NC 22	Notice to spouse of deceased ( <i>Matrimonial Property Act</i> )
NC 23	Notice to spouse/adult interdependent partner of deceased ( <i>Family Maintenance and Support</i> )
NC 24.1	Notice to the Public Trustee ( <i>Administration of Estates Act</i> )
C 13	Order
ACC 13	Order
NGA 1	Personal Representative's Notice to Beneficiary

## ALBERTA WILLS AND ESTATES PRACTICE MANUAL

NGA 2	Personal Representative's Notice to Family Member
NGA 3	Personal Representative's Notice to Spouse
NGA 4	Personal Representative's Notice to Attorney, Trustee, Public Trustee or Guardian
NC 14	Renunciation of administration with will annexed
NC 12	Renunciation of probate
ACC 8	Reply by the personal representative(s)
C 2.1	Reply to Application
NC 13	Reservation of right to apply for a grant of probate
NC 3	Schedule 1: Deceased
C 7	Schedule 2.1: Previous wills
NC 4	Schedule 2: Will
NC 5	Schedule 3: Personal representative(s)
NC 6	Schedule 4: Beneficiaries
NC 7	Schedule 5: Inventory of property and debts
NC 35	Statutory declaration by creditors and claimants
NC 34.1	Statutory declaration of publication
ACC 4	Terms of accountant's engagement
C 4	Warning to caveator(s)
C 3.1	Withdrawal of caveat