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Law Reform Notes

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Law Reform Notes is produced in the Legislative Services Branch of the Office of the Attorney General. It is distributed to the legal profession in New Brunswick and the law reform community elsewhere, and is available on the Office of the Attorney General's website. The Notes provide brief information on some of the law reform projects currently under way within the Branch, and ask for responses to, or information about, items that are still in their formative stages.

We welcome comments from any source. If any of our readers are involved either professionally or otherwise with groups or individuals who may be interested in items discussed in these Notes, we encourage them to let them know what the Branch is considering and to suggest that they offer their comments.

Opinions expressed in the Law Reform Notes merely represent current thinking within the Legislative Services Branch on the various items mentioned. They should not be taken as representing positions that have been taken by either the Office of the Attorney General or the provincial government. Where the Office or the government has taken a position on a particular item, this will be apparent from the text.

*Responses to the items below should be sent to the address above or to lawreform-reformedudroit@gnb.ca. We would like to receive replies no later than **May 15, 2022**, if possible. We welcome suggestions for additional items which should be studied with a view to legislative reform.*

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1. *Construction Remedies Act*

The *Construction Remedies Act* (c. 29, 2020), except for certain provisions relating to holdback trust accounts, came into force on November 1, 2021. The *General Regulation* (NB Reg. 2021-81) under the Act also came into effect on November 1, 2021.

An Act to Amend the Construction Remedies Act (c. 39, 2021) received Royal Assent on December 17, 2021. This Act made minor amendments to clarify when a single holdback trust account is allowed and to provide for the option of posting certificates/declarations of substantial performance and completion electronically.

The remaining provisions of the *Construction Remedies Act* (being section 37, as amended, section 38 and subparagraphs 87(1)(a)(v) and (vi)) will come into force on April 1, 2022.

2. *Intimate Images Unlawful Distribution Act*

The *Intimate Images Unlawful Distribution Act* (Bill 69) was introduced in the Legislature on November 2, 2021, and will come into force on Royal Assent. As mentioned in previous issues, this Act creates statutory civil liability for the distribution, or threatened distribution, of intimate images without the consent of the person depicted in the image and provides judicial remedies for the victims of such activity.

3. *Uniform Access to Digital Assets by Fiduciaries Act*

As discussed in issue #45 of the *Law Reform Notes*, we are considering the *Uniform Access to Digital Assets by Fiduciaries Act* ("UADAFA"), which is designed to facilitate fiduciary access to a person's digital assets after they die or lose capacity.

Since our last update, Prince Edward Island has passed the *Access to Digital Assets Act,* which is based on the UADAFA.

The feedback we have received thus far from practitioners is that they have experienced issues when dealing with digital assets and that legislation modelled on the UADAFA would be useful in New Brunswick. Based on this, we are likely to recommend the adoption of similar legislation. We welcome further comments.

4. *Infirm Persons Act*

As mentioned in previous issues, we are planning to propose new legislation to replace the *Infirm Persons Act*. We have now developed tentative proposals for the new legislation. An outline is set out below. We welcome feedback on the proposals and on any other aspect of this area of law. We would be grateful if comments could be sent to us by May 15, 2022.

The proposals represent a significant reform of this area of law. In short, we are proposing a scheme with three options for the appointment of persons to help those who have difficulty making decisions independently. (For the purposes of this discussion, the three types of appointees are referred to as "assistants", "co-decision-makers" and "representatives", and the person for whom the appointment is made is referred to as "the adult".) In all three options, the appointee would potentially have authority in relation to the adult's financial matters (including property) and personal care matters (including health care).

Underlying these proposals is the idea that everyone should be allowed to make or participate in decisions about their lives. To use the terminology of the United Nations *Convention on the Rights of Persons with Disabilities*, everyone enjoys "legal capacity" and should have the support they require to exercise that capacity. Though the legislation would not deal with all of the types of support and accommodations that would be necessary to fully realize the right to legal capacity, it would help to remove limitations on this right, both by allowing for supported decision-making and by requiring that substitute decision-making be used only when necessary and in a manner that allows the adult to participate in decisions.

The proposals are drawn from a number of sources, including the law reform literature, legislation from other provinces (particularly Alberta's *Adult Guardianship and Trusteeship Act*, Nova Scotia's *Adult Capacity and Decision-Making Act* and Saskatchewan's *The Adult Guardianship and Co-Decision-Making Act*) and countries, and the submissions we have received. The brief submitted by the New Brunswick Association for Community Living has been particularly helpful. It is available on their website.

Readers who are interested in learning more about supported decision-making legislation, both in Canada and elsewhere, may wish to read the report *Guardianship* by the Victorian Law Reform Commission.

Outline of current proposals

Capacity

We are planning to propose that the legislation will use a "functional" conception of capacity. Capacity will be assessed on the basis of a person's ability to make decisions, not on the basis of a diagnosis or mental status or the outcome of a person's decisions. A person will have the capacity to make a decision if the person is able to understand the information that is relevant to the decision and appreciate the reasonably foreseeable consequences of the decision.

A person may have this capacity even if they require help (e.g., an explanation of the options) and even if they lack the capacity to make other decisions or have lacked the capacity to make similar decisions in the past. In other words, capacity will be decision specific. Also, a person will be presumed to have capacity.

First option – assistant

As mentioned, we are planning to propose that the legislation will provide three options. The first is the appointment, by the adult, of an assistant (or assistants). An assistant will be able to obtain information on behalf of the adult and help the adult make decisions – by discussing the options, for example – but will not be able to make decisions on behalf of the adult. An assistant will also be able to communicate, or help the adult to communicate, decisions to third parties (e.g., a bank or medical professional).

The appointment of an assistant will be made through a document – probably a form prescribed by regulation. The document will include a statement from a lawyer confirming that the lawyer has reviewed the document with the adult and is of the opinion that the adult has the capacity to make the document. (An adult will have the capacity to make the document if they have the capacity to make the decisions involved, such as whom to appoint.)

In the document, the adult will set out the matters for which the assistant will have authority to help them. This could be some or all of the adult's financial matters and/or some or all of the adult's personal care matters. The legislation will also set out restrictions regarding an assistant's authority. For example, an assistant will not be able to help with decisions relating to the adult's will, gifts given by the adult, or financial support provided by the adult.

This option is intended for people who have the capacity to make their own decisions (with help if necessary) but encounter obstacles when they or the people helping them are dealing with third parties. It is a formalization of the kinds of informal arrangements that are often used but can become problematic when third parties are concerned about issues like privacy obligations or the helper's authority.

Though there are similarities between this appointment and the appointment of an attorney under an enduring power of attorney, there are important differences. The key one is that the assistant does not make decisions on behalf of the adult, and therefore the adult retains their autonomy.

Second option – co-decision-maker

The second option is the appointment, by the court, of a co-decision-maker (or co-decision-makers). Like an assistant, a co-decision-maker will be able to obtain information on behalf of the adult, help the adult make decisions, and communicate, or help the adult to communicate, decisions to third parties. A co-decision-maker will also be able to take the steps necessary to implement a decision.

Unlike an assistant, a co-decision-maker will be able to make decisions *jointly* with the adult. This will involve discussing the decision with the adult and ensuring that the decision is guided by the wishes and preferences of the adult, including those expressed when the decision is discussed and those otherwise known to the co-decision-maker. A co-decision-maker will not be able to make decisions on behalf of the adult or override the adult's wishes. They will, however, be able to decline to communicate or implement a decision that would harm the adult or another person.

When deciding whether to make an order appointing a co-decision-maker, the court will consider whether the adult will have the capacity to make all of the decisions that are likely to arise regarding their financial and personal care matters. In other words, the question will not be whether the adult is "mentally incompetent", but whether the adult will require help with at least some of the decisions that will arise. The court will also consider whether the adult and a co-decision maker could jointly make those decisions, and whether the proposed co-decision-maker is suitable, given the nature of their relationship with the adult and their ability to fulfill the role. The court will not be able to appoint a co-decision-maker if the adult does not consent to the appointment or if less intrusive measures (such as the appointment of an assistant) are available and would meet the adult's needs.

The court will determine the matters for which the co-decision-maker will have authority. As with the assistant, this could be some or all of the adult's financial matters and/or some or all of the adult's personal care matters. And as with assistants, the legislation will set out restrictions regarding a co-decision-maker's authority.

The court will be able to set a date on which the order will expire and/or require the co-decision-maker to apply for a review of the order by a certain date.

This second option is intended for people who do not have the capacity to make all of their own decisions and who have someone in their life who they know and trust and who is able and willing to take on the role of co-decision-maker.

Third option – representative

The third option is the appointment, by the court, of a representative (or representatives). A representative will be able to make decisions and act on behalf of the adult.

The position of representative will replace the position of committee under the *Infirm Persons Act* (and appointee under paragraph 39(3)(a) of that Act) but will have some differences. Most importantly, a representative will be required to follow a decision-making process that involves the adult. The representative will discuss the decision with the adult (unless this not practicable) and ensure that the decision is guided by the wishes and preferences of the adult. If the representative does not know the wishes and preferences of the adult (or if a decision guided by the adult's wishes and preferences would cause harm to the adult or another person), the representative will make the decision on the basis of what would best promote the adult's well-being.

The considerations for the court when deciding whether to make an order appointing a representative will be similar to those for co-decision-makers. The court will consider whether the adult will have the capacity to make all of the decisions that are likely to arise regarding their financial and personal care matters, and whether the proposed representative is suitable. However, the criteria regarding suitability will reflect the fact that the representative could be someone who does not know the adult (such as the Public Trustee). The court will be required to consider the views of the adult, if ascertainable, but will be able to appoint a representative without the adult's consent. The court will not be able to appoint a representative if less intrusive measures, such as the appointment of a co-decision-maker or an assistant, are available and would meet the adult's needs.

As with a co-decision-making order, the court will be able to limit the representative's authority to certain matters, set a date on which the order will expire, and require a review of the order. The legislation will also set out restrictions regarding a representative's authority.

This third option is intended for situations where there is no suitable co-decision-maker or where, for other reasons, the decisions that are likely to arise cannot be made through joint decision-making.

Duties of appointees

All three types of appointees will have a duty to act in good faith, to exercise reasonable care and not to act for their own benefit. Co-decision-makers and representatives will have additional duties, including a

duty to encourage and facilitate the adult's participation in decision-making, to consult with supportive family and friends, and to inform the adult of their actions.

Records

All three types of appointees will be required to keep records of their decisions and actions. The requirements will be similar to those imposed on attorneys under the *General Regulation – Enduring Powers of Attorney Act*. The court will be able to order a review of the records.

Security

The court will have the discretion to decide whether the co-decision-maker/representative is required to provide security to the court (i.e., a bond).

Eligibility

There will be eligibility requirements for appointees. These will be similar to the eligibility requirements for attorneys in the *Enduring Powers of Attorney Act*.

Remuneration

Assistants and co-decision-makers will not be entitled to remuneration. Representatives will be entitled to remuneration only if the court so orders.

Effect of decisions on third parties

Decisions made by an adult with help from an assistant, decisions made jointly by an adult and a co-decision-maker, and decisions made by a representative on behalf of an adult will all be considered decisions of the adult and will all be binding on the adult vis-à-vis third parties, unless the third party was aware that the appointee was acting improperly.

Capacity assessment

There will be a process by which a capacity assessment is conducted for the purposes of preparing a capacity assessment report. These reports will be filed with the application for an order appointing a co-decision-maker or representative. The capacity assessment will be conducted by a medical professional. This will include doctors and nurse practitioners and perhaps members of other health professions.

Procedure

We are planning to propose that the legislation will deal with the procedure for applications, and that Rule 71 of the Rules of Court will be repealed.

An application for an order appointing a co-decision-maker or representative will be accompanied by an affidavit of the applicant, an affidavit of any other proposed co-decision-maker or representative, a summary of the adult's finances, and a capacity assessment report.

Two groups will be entitled to notice of the application: the persons who would be directly affected by the order (the adult, any proposed co-decision-makers or representatives other than the applicant, etc.) and the adult's family members (siblings, children etc.). Unless consents are provided, the applicant will be required to serve a notice of application (with the supporting documents) on the first group and mail a notice of application (without the supporting documents) to the second group.

The court will have the power to waive the requirement to serve the adult with a notice of application, but we are planning to propose that this power will be narrower than at present (under Rule 71.03). As in other provinces, the court will be able to waive the requirement on the basis that service would cause harm to the adult but not on the basis that the adult lacks the capacity to understand the nature of the proceeding.

The court will have the discretion to decide whether a hearing is necessary except where the adult has requested one, in which case a hearing will be required.

Existing committees

An order appointing a committee under the *Infirm Persons Act* (or a person under paragraph 39(3)(a)) will remain in effect and will be deemed to be an order appointing a representative.

Miscellaneous

Our proposals will also address the following matters:

- conflicting documents (e.g., an enduring power of attorney and a document appointing an assistant);
- the recognition of documents and orders from outside New Brunswick;
- the making, amending or revoking of an adult's will by a representative (with court approval);
- the disposition of property that is the subject of a gift in the adult's will;
- immunity of persons acting under the legislation;
- a right to appeal an order made under the legislation;
- applications to the court for directions.

5. Wills and estates legislation

We continue to consider the modernization of estates law (both testate and intestate). We currently intend to propose a new, comprehensive Act that would consolidate the principles found in the *Wills Act*, Part II of *Devolution of Estates Act*, the *Survivorship Act,* and the *Provision for Dependents Act*. We anticipate that this may also result in complementary amendments to other statutes, such as the *Marital Property Act* (provisions dealing with division of assets on death), the *Probate Court Act* and the *Executors and Trustees Act*, but we are not examining that legislation beyond the scope of what is required for our current project. This approach may change as we develop our proposals in more detail.

In issue #44 of the *Law Reform Notes*, we sought general input about issues our readers are having with the current legislative scheme and any proposals they may have for reform and, in issue #45, we sought feedback on a number of specified topics.

To date, we have received limited feedback but would still like to have your views. In particular, we are seeking input on the following issues.

Testate Issues (*Wills Act*)

Lowering minimum age

Under section 8 of the current Act, a will made by a person under the age of 19 is not valid unless the person is or has been married, is a member of the Canadian Forces (regular force or on active duty), or is a mariner or seaman. We intend to propose that the minimum age for making a will be lowered to 16. This has been done in British Columbia and has been recommended by several law reform agencies. For most minors who die, their inability to devise their property will not be problematic. Most minors do not own significant property and, if they do, the default intestacy scheme (currently under the *Devolution of Estates Act*) operates to give their property to their parents (assuming the minor has no spouse or children). However, in some cases, such as if they inherited assets, received a large award from a personal injury claim or are a movie, television or music star or professional athlete, young people have the ability to accumulate significant wealth. When they do, they should be able to legally protect their assets and have a say in how they are distributed in the event of their death.

Another factor which tends to support lowering the will-making age is the prevalence of digital assets, such as email, social networking, documents, photos, text messages and other forms of digital media. Minors tend to use, create, and possess a significant number of digital assets yet are unable to devise

this property. Giving minors the capacity to make a will would give them the ability to decide whether these assets should be deleted or transferred on their death and who should be given access.

Finally, there are several statutes in New Brunswick which regulate the ability of minors to participate in "adult" activities and which use the age of 16 as the operative threshold. In our view, the most relevant comparator is the ability to consent to medical treatment found in the *Medical Consent of Minors Act*.

Of course, the traditional requirements for making a valid will remain applicable.

Additionally, our view is that as a result of the lowering of the minimum age to 16, the exceptions currently found in section 8 of the Act will no longer be necessary.

Effect of subsequent marriage on will

We are considering not bringing forward sections 15.1 and 16 of the Act which deal with the effect of a subsequent marriage on a will. While these provisions do not provide for the outright revocation of a will, section 15.1 indicates (subject to the exclusions found in section 16) that a testator who makes a will and subsequently marries and dies is deemed to have died intestate if they die (a) while married, or (b) while any issue of the marriage subsequent to the will is still alive. Section 15.1 then allows a person who was a beneficiary under the will but who would take no part in the intestate estate to apply to the court to have a gift in the will be given effect and provides directions to the court on such applications.

A number of other jurisdictions (most recently, Ontario) that had similar legislation have repealed these provisions. The rationale being that the public is likely not aware of the effect of these provisions, which can lead to unintended intestacies and upset careful testamentary planning and that sufficient protections are now in place (for example, in New Brunswick under the *Marital Property Act* and the *Provision for Dependents Act*) to address the welfare of the new spouse without requiring automatic revocation of an existing will or an automatic intestacy.

Additionally, these provisions can be employed in the context of "predatory marriages" wherein vulnerable single seniors are targeted to marry by much younger caregivers or others. The vulnerable senior may have the lower mental capacity to marry but not the higher testamentary capacity needed to restore a prior will, thereby benefitting the predator who would take on intestacy.

We have received some feedback encouraging us to follow these other jurisdictions by repealing these provisions (thereby eliminating the effect a subsequent marriage has on a will). We would like to have your views as to the extent of the problem of "predatory marriages" in New Brunswick and whether the current approach found in section 15.1 sufficiently addresses the issue.

Effect of subsequent divorce

The general rule found in section 17 of the Act is that a will is not invalidated by a change in circumstances. Several other jurisdictions include a specific provision to deal with the effect of a divorce (or termination of a common law relationship) on a will. The default position in those jurisdictions being that after termination of a relationship, a testator no longer has the intention of benefitting the former spouse or partner. Therefore, upon divorce or relationship termination, any gift, appointment or power made to the former spouse or common law partner is revoked, unless the contrary intention is expressed in the will. See *Eccleston Estate, Re*, 1999 CanLII 32897 (NBQB) for a discussion of the topic.

We have received some feedback suggesting that this may be a scenario where it would be best left to the testator to revoke or change their will after divorce if they intend to disinherit a former spouse. We would like your views on this and, in particular, if you have any insight as to what the general expectations or intentions of divorced testators might be.

The question of who would inherit if the gift to the former spouse failed would be answered to a certain extent by the adoption of a single hierarchical scheme to deal with gifts that fail for any reason, similar to those found in section 15 of the ULCC's *Uniform Wills Act* (2015) and section 46 of the BC *Wills, Estates and Succession Act*, as mentioned in issue #45.

Effect of subsequent separation

Similar to the situation where a testator divorces after making a will, we are considering including provisions which indicate that separation (as defined) also revokes a gift or appointment to a spouse. Ontario recently amended section 17 of its *Succession Law Reform Act* to provide that a spouse is considered to be separated from the testator at the time of the testator's death if,

- before the testator's death,
    - they lived separate and apart as a result of the breakdown of their marriage for a period of three years, if the period immediately preceded the death,
    - they entered into an agreement that is a valid separation agreement under Part IV of the *Family Law Act*,
    - a court made an order with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage, or
    - a family arbitration award was made under the *Arbitration Act, 1991* with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage; and
- at the time of the testator's death, they were living separate and apart as a result of the breakdown of their marriage.

We would like your views on the extent to which such a provision would reflect the general expectations or intentions of testators.

Intestate Issues (*Devolution of Estates Act*)

Inclusion of common law partners

As mentioned in issue #45, our view is that intestate succession law needs to be updated to expressly include common law relationships, thereby allowing common law partners to inherit when their partner dies intestate and to be eligible to be appointed to administer an intestate estate. Common law partners are included in the intestacy regimes in British Columbia, Saskatchewan, Alberta, Manitoba, Northwest Territories, Nunavut and Prince Edward Island. To accomplish this, there are several related issues that must be addressed.

Preferential/spousal share

Currently, paragraphs 22(2)(a) and 22(2.1)(a) of the Act set out the share of an intestate estate to which a surviving spouse (referred to as a "widow") is entitled. In addition to the respective residual or distributive share of the intestate estate, the spouse is to receive "any interest of the intestate in property that is marital property of the intestate and the widow." According to subsection 22(1), "marital property" means "marital property as defined in the *Marital Property Act*". The *Marital Property Act* contains a broad definition of what is included as marital property but is contingent on such property being owned by a "spouse" which means a married person. This method of preferring a spouse is unique to New Brunswick.

We are considering continuing this method of preferring a spouse and simply extending it, if possible, to a common law partner; however, it may be difficult to determine the preference to which a common law partner would be entitled by way of reference to "marital property."

Alternatively, we are considering following the regimes set up in most Canadian common law intestacy statutes whereby the surviving spouse is granted a preferential share out of the deceased's net estate, being a fixed amount as opposed to identifying any particular class of assets (although some include the ability of a spouse to make an election between a fixed amount and the home and/or household furnishings). The amount of the preferential share varies from province to province; it now ranges between $50,000 and $350,000. In some cases, it also includes reference to a portion of the estate so that, for example in Saskatchewan, the spousal preferential share is $200,000, or one-half of the estate, whichever is greater. The spouse also receives one-half of the remainder if the intestate had one (non-

common) child, or one-third of the remainder if the intestate had more than one (non-common) child. If a fixed preferential share is adopted, the amount would likely be prescribed in regulation to allow for easier adjustment, when necessary.

Generally speaking, the underlying policy rationale for the existence of the spousal/common law partner preferential share is to distribute the intestate's estate as they (presumably) would have chosen, to ensure the surviving spouse can remain in their home, to help to secure the financial future of the surviving spouse and to allow the distribution of an estate to be fair to all. With this in mind, we would like your thoughts on:

- how the current "marital property" preference scheme in New Brunswick has been working;
- whether the current scheme would be workable in practice when common law partners are included;
- whether a fixed preferential share amount should be adopted and, if so, what should be considered in setting an appropriate amount.

More than one surviving spouse/common law partner

When common law partners are entitled to inherit, it is possible that there may be a spouse and one or more common law partners (or multiple common law partners) eligible to inherit the "spousal share" on intestacy. When this happens, there should be some way to reconcile these claims. At this point, our preference is to adopt a scheme similar to that set out in Manitoba's *Intestate Succession Act* which essentially prioritizes the most recent relationship except that a spouse entitled to a receive a division of matrimonial property (in New Brunswick, under the *Marital Property Act*) receives that entitlement ahead of the division of the intestate estate. A surviving spouse who receives their matrimonial property entitlement cannot also inherit under the intestate succession regime. Other options include: allowing the eligible claimants to agree upon their shares or apply to court (see BC's *Wills, Estates and Succession Act*, s. 22); and providing for an equal sharing (see Alberta's *Wills and Succession Act*, s. 62 and 63).

Effect of separation on the spousal/common law partner share

We are considering adopting provisions similar to those found in some other jurisdictions which provide that a spouse and/or a separated common law partner lose the ability to inherit on intestacy if they were separated (as defined) at the time of the intestate's death. This disentitlement would apply where there is only one spouse or common law partner and where there are more than one, as discussed above. This may be less of an issue under the current "marital property" preference approach as essentially a long-term separation would likely result in less marital property in the estate. That said, we see value in including such a provision, particularly when common law partners are included in the succession scheme.

Ontario recently added section 43.1 to its *Succession Law Reform Act* which adopts the same criteria for determining whether spouses are separated as set out above in the section on the effect of subsequent separation on a gift in a will. Similarly, subsection 3(2) of Manitoba's *Intestate Succession Act* addresses the rights of separated common law partners, essentially (for our purposes) providing that the surviving common law partner is to be treated as if they had predeceased the intestate where, at the time of the intestate's death, the intestate and the common law partner were living separate and apart and either (a) three years had passed from the day on which the common law partners began living separate and apart, or (b) before the intestate's death, the common law partners had divided their property in a manner that was intended by them, or appears to have been intended by them, to separate and finalize their affairs in recognition of the breakdown of their common law relationship. Section 15 of Saskatchewan's *Intestate Succession Act, 2019* contains a similar provision with (among other things) a two-year separation period disentitling the spouse/common law partner.

Parentelic Distribution

We are considering adopting a parentelic method of distribution of an estate rather than continuing the existing consanguinity (next-of-kin) method. The two methods of distribution usually reach the same result; however, they differ as potential inheritors become more remote.

Sections 28 and 29 of the existing Act set out the system for determining inheritance at more remote levels where the intestate leaves no immediate family. After parents, siblings, nieces and nephews, inheritance goes to those who share the highest degree of consanguinity. For example, if the closest relatives were all the fourth degree of kinship, this could include a great niece, a first cousin, a great uncle and a great-great grandparent.

A parentelic system (which has been adopted in the western provinces), rather than focusing on degrees of kinship, looks at each family line and does not consider a new family line until the first (prior) line is extinguished. The parents' lines are considered first and only if there is no one to inherit in those lines are the next lines (such as those of the grandparents) considered. In the example above, if there was a great niece, only the parents' lines would be investigated and other relatives of the fourth degree of kinship that are not in the parents' lines (such as the first cousin, great uncle and great-great grandparent) would not share in the estate.

The benefits of a parentelic system are said to be that it reduces the cost and effort in administering estates where distant relatives are to inherit, it results in descendants of the nearest common ancestor (who are more likely to have had a closer connection with the intestate) inheriting before descendants of a more remote ancestor and it tends to divide the estate more evenly between branches of a deceased's family.

It seems to us that a parentelic scheme would be simpler to deal with, but we would like your views on whether the existing distribution scheme has created inconvenience or hardship for administrators of intestate estates.

For a more detailed description of the parentelic distribution scheme, please see the Law Reform Commission of Saskatchewan's *Reform of The Intestate Succession Act, 1996* (March 2017) at pages 24 – 28.

Other Issues

While we previously asked for input on all potential areas for reform, our work to date has focused primarily on wills and the intestate succession regime. We would like to reiterate that we welcome comments on other areas such as the powers and abilities of executors and administrators to deal with property under their management, for example, those found in Part I of the *Devolution of Estates Act* and in the *Executors and Trustees Act*. Specifically, we are interested in hearing about the current operation of these provisions and whether they remain necessary or useful. See issue #38 (April 2016) of the *Law Reform Notes* for some background commentary on the *Devolution of Estates Act* provisions.

Again, we welcome your comments on these or any other topics dealing with potential wills and estate law reforms by May 15, 2022.