

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist covers matters to be discussed and information to be collected before the commencement of family law proceedings. It focuses on the initial interview with the client, but includes some follow-up from that interview. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.</p> <p>The lawyer should also refer, as appropriate, to the checklists for FAMILY LAW AGREEMENT PROCEDURE (D-2), SEPARATION AGREEMENT DRAFTING (D-3), MARRIAGE AGREEMENT DRAFTING (D-4), FAMILY LAW PROCEEDING (D-5), and GENERAL LITIGATION PROCEDURE (E-2). This checklist is current to September 1, 2018.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Law Society Rules</b> <ul style="list-style-type: none"> <li>• <b>Juricert password.</b> When using the electronic filing system of the Land Title Office, a lawyer must not disclose the lawyer’s password or permit any other person, including an employee, to use the password or affix the lawyer’s e-signature (Law Society Rule 3-96.1).</li> <li>• <b>Temporary articulated student restrictions.</b> Temporary articulated students are restricted from making certain appearances in Supreme Court, but not Provincial Court (Law Society Rule 2-71(2)).</li> <li>• <b>Electronic transfer of trust funds.</b> The Rules were amended in December 2017, effective July 1, 2018, to allow lawyers to electronically transfer trust funds using an online banking platform (Law Society Rules 3-64(4) and (6) to (8); 3-64.1; 3-64.2; 3-65(1), (1.1), and (2); and 3-66(2)). For questions, contact <a href="mailto:trustaccounting@lsbc.org">trustaccounting@lsbc.org</a> or 604.697.5810.</li> <li>• <b>Client identification and verification.</b> The Federation of Law Societies of Canada has proposed amendments to its Model Rule on Client Identification and Verification Requirements. If the Federation’s Council approves the amendments, they will be forwarded to the law societies for adoption. Changes to the Law Society of BC’s rules would require the Benchers’ approval and, if approved, may affect the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist current to September 1, 2018.</li> <li>• The Law Society Rules are published at <a href="http://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules">www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules</a>.</li> </ul> </li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Fraud prevention.</b> Lawyers should maintain an awareness of the myriad scams that target lawyers, including the bad cheque scam and fraudulent changes in payment instructions, and must be vigilant about the client identification and no-cash rules. See the “Fraud Prevention” page, including the “Fraud Alerts” section, on the Law Society website at <a href="http://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention">www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention</a>.</li> <li>• <b>Searches of lawyers’ electronic devices at borders.</b> In 2017, in response to the Law Society’s concerns about the searches of lawyers’ electronic devices by Canada Border Services Agency officers, the Minister of Public Safety advised that officers are instructed not to examine documents if they suspect they may be subject to privilege, if the documents are specifically marked with the assertion they are privileged, or if privilege is claimed by a lawyer with respect</li> </ul>					

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<ul style="list-style-type: none"> <li>• to the documents. View the Minister’s letter and Law Society’s response at <a href="http://www.lawsociety.bc.ca/our-initiatives/rule-of-law/issues-that-affect-the-rule-of-law">www.lawsociety.bc.ca/our-initiatives/rule-of-law/issues-that-affect-the-rule-of-law</a>. Lawyers are reminded to claim privilege where appropriate and to not disclose privileged information or the password to electronic devices containing privileged information without client consent or a court order. See also “Client Confidentiality—Think Twice before Taking Your Laptop or Smart Phone across Borders” in the Spring 2017 <i>Benchers’ Bulletin</i> and “Crossing the border into or out of the United States” in the Spring 2018 <i>Benchers’ Bulletin</i>.</li> <li>• <b>CBA Child Rights Toolkit.</b> On May 11, 2017, the Canadian Bar Association released the online Child Rights Toolkit, an educational and practice resource for judges, lawyers, and advocates who work to adjudicate, support, and defend children’s rights. It is available at <a href="http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit">www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit</a>.</li> <li>• <b>CBA Successfully Parenting Apart Toolkit:</b> On May 3, 2017, the Canadian Bar Association released the online Successfully Parenting Apart: A Toolkit, an educational and practice resource for our clients seeking to successfully co-parent after separation. It is available at <a href="http://www.cba.org/Sections/Family-Law/Resources/Resources/2017/Successfully-Parenting-Apart">www.cba.org/Sections/Family-Law/Resources/Resources/2017/Successfully-Parenting-Apart</a>.</li> <li>• <b>Family Homes on Reserves and Matrimonial Interests or Rights Act.</b> The <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>, S.C. 2013, c. 20, pertains to the ability of First Nations to make rules about family residences on reservation lands and how those homes will be used and occupied upon the breakdown of a spousal relationship. The Act applies to married and common-law spouses living on reserve land where at least one spouse is a First Nations member or an Indian. Sections 13 to 52 apply to First Nations that have not enacted their own matrimonial real property laws.</li> <li>• <b>Incapacity and adult guardianship legislation.</b> Under s. 29 of the <i>Power of Attorney Act</i>, R.S.B.C. 1996, c. 370, and s. 29 of the <i>Representation Agreement Act</i>, R.S.B.C. 1996, c. 405, powers of attorney or representation agreements terminate upon separation of spouses if a spouse is, respectively, an attorney or representative.</li> <li>• <b>Additional resources.</b> For detailed information about family practice, see the <i>British Columbia Family Practice Manual</i>, 4th ed. (CLEBC, 2006); <i>Family Law: The New Supreme Court Rules</i> (CLEBC, 2010); <i>Child Protection Practice</i> (CLEBC, 2010); <i>Pension and Benefits</i> (CLEBC, 2011); <i>Financial Issues in Family Law</i>, 2nd ed. (CLEBC, 2006–); annual editions of <i>Annotated Family Practice</i> (CLEBC); <i>Family Law Sourcebook for British Columbia</i>, 3rd ed. (CLEBC, 2002–); <i>Desk Order Divorce—An Annotated Guide</i> (CLEBC, 1999–); <i>Family Law Agreements—Annotated Precedents</i>, 3rd ed. (CLEBC, 1998–); <i>Family Law Deskbook</i> (CLEBC, 2005–); <i>Children’s Participation in Family Justice Processes—2011</i> (CLEBC, 2011); and <i>Best Practice Guidelines for Lawyers Practising Family Law</i> (Family Law Task Force, Law Society of British Columbia (15 July 2011), available at <a href="http://www.lawsociety.bc.ca">www.lawsociety.bc.ca</a>).</li> </ul>					

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<p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Preliminary Matters</li> <li>2. Advise the Client and Obtain Instructions</li> <li>3. Follow up from the Initial Interview</li> <li>4. Collect Information</li> <li>5. Collect Documents</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <p><b>1. PRELIMINARY MATTERS</b></p> <p>1.1 When arranging the first interview:</p> <ol style="list-style-type: none"> <li>.1 Check for conflicts as described in <i>BC Code</i>, s. 3.4. Do not act for opposing parties. In addressing potential conflicts, consider not only the spouses but also any third parties who may be involved in the case, including former or new partners, as well as relevant corporate entities or relatives who have made financial contributions to the spouses, if relief is sought from them. Even in drafting a marriage agreement or issuing a joint action for divorce, always refer one party for independent legal advice, and document having done so. Note that a lawyer, including one who has acted as a mediator for the spouses, may act for both spouses in a joint action for divorce if both parties have received independent legal advice in relation to the matter and all relief is by consent (Ethics Committee opinion in the March–April 2003 <i>Benchers’ Bulletin</i>). Notwithstanding this, it may be simpler to have only one party file for the divorce.</li> <li>.2 Check for urgency or risk. Assess whether a person or property is at risk. Identify any imminent deadlines and the steps required to meet them. Assess whether existing practice obligations permit you to take the case. Assess what protective steps may need to be taken. If proceedings have commenced, obtain the name of opposing counsel and have the prospective client bring all court documents and relevant agreements to the interview.</li> <li>.3 Require the client to bring identity documents to verify their identity.</li> <li>.4 Ask the client to bring to the meeting a summary of their financial situation and any information in relation to the opposing party’s financial circumstances. Be mindful of privacy issues and a lawyer’s duty in the event of inadvertent disclosure if a client brings documents belonging to an opposing party or third party (<i>BC Code</i> rule 7.2-10). Consider asking the client to bring all relevant financial information. (See items 4 and 5: “Collect Information” and “Collect Documents.”) Consider providing an intake questionnaire to the client to complete before the initial meeting, to make better use of interview time.</li> <li>.5 Consider asking the client to write out and bring to the first meeting a history of the relationship (including any family violence), the parties’ employment histories, and a list of the most pressing concerns, for use during the interview.</li> <li>.6 Advise the client of the limitations on solicitor-client privilege in the event that they wish to have a third party attend at any meetings.</li> </ol>					

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<p>1.2 Confirm compliance with Law Society of British Columbia Rules on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.</p> <p>1.3 Perform duties as required by <i>FLA</i>, s. 8:</p> <ul style="list-style-type: none"> <li>.1 screen for family violence;</li> <li>.2 present out-of-court resolution options; and</li> <li>.3 inform the client that outcomes depend on the best interests of the child.</li> <li>.4 Explain the duty to disclose (<i>FLA</i>, s. 5).</li> </ul> <p>1.4 Determine whether there is a need for urgent action (e.g., to secure a child at risk, protect a person from harm, preserve assets or evidence, ensure financial support, or prevent imminent foreclosure or insolvency). Chapter 10 of the <i>CLEBC Family Law Deskbook</i> reviews measures for protecting assets. <i>Is Your Client Safe? A Lawyer's Guide to Relationship Violence</i> is available at <a href="http://www.lss.bc.ca/publications">www.lss.bc.ca/publications</a>. If family violence is present, provide the client with a list of support resources. Give consideration as to appropriate dispute resolution options where there is family violence. Assess any need to report a child who may need protection (<i>Child, Family and Community Service Act</i>, R.S.B.C. 1996, c. 46, s. 14).</p> <p>1.5 Determine the client's general objectives and questions. Discuss the relief and options available. Canvass out-of-court resolution (<i>FLA</i>, s. 8), such as mediation or collaborative separation and divorce, even if that is outside the scope of your usual practice. Explain the need to make decisions as to custody, guardianship, and contact with children that are in the best interests of the children. In cases of separation or divorce, discuss the possibility of reconciliation (<i>Divorce Act</i>, R.S.C. 1985, c. 3 (2nd Supp.), s. 9) and the availability of resources such as counselling, parenting support, or parenting coordinators. Consider recommending the free "Parenting After Separation" course, which is required in certain circumstances in the Provincial Court process (Rule 21 of the Provincial Court (Family) Rules, B.C. Reg. 417/98 (the "PCFR Rules")).</p> <p>1.6 Third-party interests or claims involved in the case should be considered and may affect the process. For example, cases involving intra-family loans, corporate entities, and trusts will require specific pleadings and often the involvement of independent counsel and other professionals. Note that the <i>FLA</i> promotes out-of-court resolution for all parties in a family law dispute.</p> <p>1.7 Aboriginal clients: consider whether a lawyer with Aboriginal law experience should be consulted. Special considerations may apply, whether or not parties and property are situated on or off reserve. If the property is on a First Nation reserve consider the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>. Note the requirements of <i>FLA</i>, Part 10, Division 3, which provide for standing and notice in cases concerning Nisga'a and "treaty first nations children" and treaty lands.</p> <p>1.8 Provide general legal information and preliminary advice to the client. Consider <i>Best Practice Guidelines for Lawyers Practising Family Law</i> (Family Law Task Force, Law Society of British Columbia (15 July 2011), available at <a href="http://www.lawsociety.bc.ca">www.lawsociety.bc.ca</a>). Recommend steps to take in the short term, and explain what further information and documents you need before you can render a final opinion.</p>					

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<p>1.9 Satisfy yourself that the client is competent to give instructions. Consider factors such as literacy, age, mental competence, and cultural pressures. Assess the client’s emotional state and consider a referral to a professional counsellor or physician.</p> <p>1.10 Advise the client of the rough costs involved in almost every step in the case. Avoid giving firm estimates. The client should be made aware of the factors that may increase the cost of the case, including the choice and urgency of processes undertaken, the degree of conflict, the level of co-operation from the client, the level of co-operation from opposing parties and counsel, and any need for outside expertise. Advise the client how your account is calculated and how and when it should be paid. Use a written retainer agreement and ensure that it is signed and returned before proceeding. See <i>BC Code</i> s. 3.6 for the rules regarding reasonable fees and disbursements, and commentary [1] to rule 3.6-3 regarding the duty of candour owed to clients respecting fees and other charges for which a client is billed.</p> <p>Consider the use of a “limited scope retainer” (a defined term in the <i>BC Code</i>) if you will be delegating certain aspects of the work required to your client or to other professionals. If you will be providing a limited scope of legal services, ensure that the client understands the limits of the retainer and the risks associated with limiting the scope of the services provided, and confirm that understanding in writing. See <i>BC Code</i> rule 3.2-1.1 and commentary.</p> <p>1.11 Consider obtaining retainer funds. Caution: consider Law Society Rule 3-59, which restricts circumstances in which a lawyer can accept an aggregate amount of \$7,500 or more in cash in respect of any one client matter or transaction. Law Society Rule 3-70 contains requirements for recording cash transactions in a cash receipt book of duplicate receipts with signatures and other particulars.</p> <p>1.12 Consider whether a Contingent Fee Agreement (CFA) is suitable. Fee arrangements through a CFA are uncommon in family law matters but there are circumstances when they may be appropriate. Their use is governed by ss. 64 to 68 of the <i>Legal Profession Act</i> and Part 8 of the Law Society Rules. A CFA “for services relating to a child guardianship or custody matter, or a matter respect parenting time of, contact with or access to a child, is void” (s. 67(3) of the <i>Act</i>). A CFA for services relating to a matrimonial dispute is void unless it is approved by the court (s. 67(4) and (5)). For a full discussion of CFAs in Family Law, see the Fall 2018 <i>Benchers’ Bulletin</i>.</p>					
<p><b>2. ADVISE THE CLIENT AND OBTAIN INSTRUCTIONS</b></p>					
<p>2.1 Advise the client about whether an action should be commenced and the available alternatives to court resolution of the case, including negotiation, mediation, arbitration, or collaborative family law processes, as appropriate.</p> <p>.1 Consider applicable limitation periods and requisite time periods: e.g., in regard to a support claim by a person in a marriage-like relationship, <i>FLA</i>, s. 3(1) defines “spouse” to include a person in a marriage-like relationship if the parties lived together for a continuous period of at least two years or had a child together; <i>FLA</i>, s. 147(4) sets a limitation period</p>					

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<p>for bringing a claim against a stepparent for child support of one year from the last contribution the stepparent made to child support; and <i>FLA</i>, s. 198 sets out various time limits within which claims may be brought.</p> <p>2.2 If the client asks to assist in the collection of financial information, consider a limited scope retainer. Note that many financial institutions will not provide information to the lawyer without written authorization from the client, and, in the case of joint accounts, written authorization from both the client and the client’s spouse.</p> <p>2.3 If the client wants a divorce, give a preliminary opinion as to whether grounds exist:</p> <ol style="list-style-type: none"> <li>.1 Separation for not less than one year immediately preceding anticipated determination of divorce proceeding, and separation at commencement of proceeding.</li> <li>.2 Adultery of spouse.</li> <li>.3 Cruelty by spouse.</li> </ol> <p>2.4 Consider the possibility of divorce proceedings against the client, based on existing grounds. Advise regarding future conduct that would constitute grounds. Advise regarding the possibility of an award of costs against a co-defendant. Obtain from the client an original government-issued marriage certificate. Explain that an official translation will be required for court purposes if the marriage certificate is not in English.</p> <p>2.5 If the client wants a divorce, ensure that they understand the meaning and significance of collusion, connivance, and condonation:</p> <ol style="list-style-type: none"> <li>.1 Collusion (any agreement, understanding, or arrangement by a client or anyone else to fabricate, falsify, or suppress evidence in order to get a divorce);</li> <li>.2 Connivance (one spouse encouraging the other to commit adultery); and</li> <li>.3 Condonation (when the innocent spouse has forgiven the other spouse for the adultery, in the sense that they would take the adulterer back, to live together as spouses).</li> </ol> <p>2.6 Advise the client regarding the Spousal Support Advisory Guidelines and the Federal Child Support Guidelines, the determination of income, and the general entitlement or obligation of the client concerning support:</p> <ol style="list-style-type: none"> <li>.1 Consider running the software calculations for applicable support.</li> <li>.2 Explain the obligations regarding payment of child support in the “table amount” in addition to “special and extraordinary expenses”.</li> <li>.3 If applicable, advise the client regarding the determination of support in “shared custody” situations (where the non-primary residency parent has the children in their care more than 40% of the time).</li> <li>.4 If acting for the support recipient, ask if the client has requested financial information from the other parent, and consider seeking instructions to confirm any financial disclosure requests in writing.</li> <li>.5 Advise the client regarding the possibility of retroactive child support.</li> <li>.6 Determine whether the Family Maintenance Enforcement Program (FMEP) is involved.</li> </ol>					

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<p>2.7 Advise that, when making a spousal support order, the court will consider any economic advantages or disadvantages to both spouses arising from the marriage or its breakdown. Discuss the concept of self-sufficiency. Discuss the grounds for entitlement: compensatory; non-compensatory; and contractual.</p> <p>2.8 Discuss any need to retain professional advisors for valuations, tax issues, pensions, or complex financial issues. Discuss the method of choosing experts, payment for services and additional retainer requirements. Confirm instructions on these issues in writing.</p> <p>2.9 Advise regarding the consequences of the separation date and obtain evidence to confirm the separation date. Advise on issues regarding acquisition and disposition of property during the period between separation and settlement.</p> <p>2.10 Advise the client to consider changing beneficiary designations.</p> <p>2.11 Advise on issues related to the management of joint accounts, joint debts, and joint credit cards during the period between separation and settlement.</p> <p>2.12 Advise the client to gather and secure relevant documents. Caution the client against appropriating private documents, mail, and email. Consider <i>BC Code</i> rule 7.2-10 as to a lawyer’s duties regarding inadvertent access to documents of the opposing party. Advise the client to change their email passwords and password and privacy settings on their social media accounts.</p> <p>2.13 Advise the client of the child-focused foundation of the <i>FLA</i>, and review the provisions respecting guardianship and parenting on separation contained in <i>FLA</i>, Part 4. Consider the impact of the <i>FLA</i> on pre-existing agreements and orders concerning children. Advise clients of language differences and differences in terms regarding children under the <i>Divorce Act</i> (guardianship, custody and access) and the <i>FLA</i> (guardianship, parenting time, parental responsibility, and contact) and their distinctions.</p> <p>2.14 Advise the client regarding any potential effect of interim parenting arrangements on the ability to obtain final parenting terms, including custody under the <i>Divorce Act</i>, if applicable. Advise regarding the impact of any custody or parenting arrangement on support issues (e.g., shared custody or parenting). Explain the guardianship provisions of the <i>FLA</i> and the parenting responsibilities that flow from guardianship under <i>FLA</i>, ss. 39 to 43.</p> <p>2.15 Advise the client regarding excluded property (<i>FLA</i>, Part 5) and the potential availability of tracing relief where family property has been acquired with the proceeds of excluded property. Explain the evidentiary burden in tracing claims. Note whether the transition provisions of the <i>FLA</i> require consideration of the previous property regime under the <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128 (the “<i>FRA</i>”). Claims filed before the <i>FLA</i> came into force are decided under the <i>FRA</i>, including property claims by unmarried spouses that involve the principles of resulting trust or the law of remedial constructive trust (see <i>CLEBC’s Family Law Sourcebook for British Columbia</i>, chapter 4). Review <i>FLA</i>, Part 13 for the transitional rules affecting family claims made before the <i>FLA</i> came into force.</p> <p>2.16 If an existing claim is based on the <i>FRA</i>, consider whether amendments to the pleadings may be available to advance claims under the <i>FLA</i>. Consider invoking the law of trusts (e.g., for division of property between spouses if a third party has made contributions to family property, or to obtain priority over creditors where a spouse is heavily indebted).</p>					

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<p>2.17 Determine the tax implications of any proposed support and property division, and consider whether another arrangement might be more beneficial to the client. Consider seeking tax advice, including U.S. tax advice, if applicable.</p> <p>2.18 Note any special issues, such as:</p> <ol style="list-style-type: none"> <li>.1 Where a spouse may go bankrupt and the case has been commenced under the <i>FRA</i>, consider getting an immediate <i>FRA</i>, s. 57 declaratory order of irreconcilability to preserve the client’s right to 50% of the family assets (bearing in mind that 50% of the client’s assets would be available to the trustee). Note that the only triggering event under the <i>FLA</i> is the separation of the parties. If a spouse is entitled to more than 50%, consider seeking an order for unequal division by use of Rule 10-10 or 10-11 of the Supreme Court Family Rules, B.C. Reg. 169/2009 (the “SCFR”).</li> <li>.2 Where an insolvent spouse is transferring property to the other spouse, avoid contravening the provisions of the <i>Bankruptcy and Insolvency Act</i>, R.S.C. 1985, c. B-3; <i>Fraudulent Conveyance Act</i>, R.S.B.C. 1996, c. 163; <i>Fraudulent Preference Act</i>, R.S.B.C. 1996, c. 164; and <i>Criminal Code</i>, R.S.C. 1985, c. C-46. Under Rule 3-109(1) and <i>BC Code</i> rule 3.2-7, a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime, or fraud.</li> <li>.3 Where a client’s spouse is (or may be) dying, and assets are in their name, consider commencing an action immediately to preserve claims. If a proceeding has been commenced under the now-repealed <i>FRA</i>, consider seeking an immediate <i>FRA</i>, s. 57 declaration to ensure that at least 50% of the assets do not fall into the estate of the deceased spouse. Advise the client regarding consequent loss of any right to survivorship.</li> <li>.4 If the client is dying and assets are in their name, seek instructions as to the client’s wishes on death. Inquire as to whether the client has a will; consider referral to a lawyer practising wills and estates law.</li> <li>.5 If the client is a recent immigrant, or has language issues, consider whether advice should be sought from a lawyer who has appropriate experience and knowledge, or who speaks the client’s first language.</li> <li>.6 If the client or opposing party is Aboriginal, consider whether a lawyer with Aboriginal law experience should be consulted. Special considerations may apply, whether or not parties or property (or both) are situated on or off reserve. For example:               <ol style="list-style-type: none"> <li>(a) Property may belong to an Indian band, or otherwise be subject to the <i>Indian Act</i>, R.S.C. 1985, c. I-5, or other legislation (e.g., the <i>Nisga’a Final Agreement Act</i>, S.B.C. 1999, c. 2, for Nisga’a citizens). The <i>FLA</i> does not apply to the division of on-reserve matrimonial property, nor did the <i>FRA</i>. The law is not settled with respect to valuing on-reserve property for the purposes of including compensation to a spouse instead of an order for the division of such property. Note the requirements of <i>FLA</i>, s. 210 which provides for standing and notice in cases concerning treaty first nations lands.</li> </ol> </li> </ol>					



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<p>After December 16, 2014, the federal <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> applies to First Nations who have not enacted their own matrimonial real property laws. The Act applies to married and common-law spouses living on reserve land where at least one spouse is a First Nations member or an Indian. It provides separate regimes for matrimonial property division for member and non-member spouses on reserve and is very different from the provincial legislation.</p> <p>(b) A child’s Aboriginal heritage is a factor that is considered in determining what parenting arrangement will be in the child’s best interests. Note the requirements of <i>FLA</i>, ss. 208 and 209, which provide for standing and notice in cases concerning Nisga’a and treaty first nations children.</p> <p>(c) In calculating child support under the Child Support Guidelines, s. 19, or in calculating spousal support, amounts to be awarded must be adjusted if any party is exempt from federal and provincial income taxes.</p> <p>(d) In enforcing support payments, if the debtor is an “Indian” (as defined in the <i>Indian Act</i>) who lives on a reserve, the debtor’s income and assets may be exempt from many enforcement proceedings (see <i>Indian Act</i>, s. 89). Generally, a non-Indian cannot seize moveable assets situated on-reserve from an Indian.</p> <p>(e) For further information, see the articles published on the “Aboriginal Law” page in the “Practice Points” area of the CLEBC website at <a href="http://www.cle.bc.ca">www.cle.bc.ca</a>.</p> <p>.7 If the client or the spouse is a U.S. citizen, a dual citizen of the U.S., has ever held a green card, has been a “U.S. Resident” for U.S. income tax purposes, or has ever owned any assets in the U.S., consider whether advice should be sought from a lawyer who has appropriate experience and knowledge of U.S. tax law. There may be significant U.S. tax liabilities, which must be considered in any property settlement. Note that under the <i>FLA</i>, all debt incurred by either spouse over the relationship is “family debt,” including post-separation debt incurred to maintain family property, and is shared (<i>FLA</i>, s. 86).</p> <p>.8 Note the expanded definition of “family violence” in <i>FLA</i>, s. 1(1), and screen for the presence of family violence (<i>FLA</i>, s. 38). Consider what additional assistance may be required by the client and any children. If there is relationship violence, formulate a safety plan with the client and ask for instructions should they disappear. Consider <i>BC Code</i> rule 3.3-3, which allows for disclosure of confidential information if there is imminent risk of death or serious bodily harm. See also <i>Is Your Client Safe? A Lawyer’s Guide to Relationship Violence</i>, available at <a href="http://www.lss.bc.ca/publications">www.lss.bc.ca/publications</a>.</p> <p>2.19 Discuss the effect on an existing will of a separation (see <i>Wills, Estates and Succession Act</i>, S.B.C. 2009, c. 13, s. 56, concerning nullity). Advise the client to review their will. If the client has no will, consider recommending the client make one.</p> <p>2.20 Discuss the potential effect of a divorce on the spouse’s entitlement to participate in the other spouse’s medical and dental benefits plan (if any).</p>					

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<p>2.21 Inquire about any pension entitlements of either spouse. Consider delivering notice of the client’s interest in a pension asset to the relevant pension plan administrator (see item 4.11.6(m)). Advise the client regarding the default division of earned credits in the Canada Pension Plan. Consider obtaining an opinion from CPP on the effect of equalization of benefits (send authorizations by both parties to the Income Security Program Branch). Consider an application to divide the parties’ CPP credits. Consider obtaining an opinion as to the value of any pension to be divided, if the client wants to exchange a pension interest for other property.</p> <p>2.22 Discuss and consider obtaining instructions to do any of the following that apply:</p> <ol style="list-style-type: none"> <li>.1 Write a letter to the opposing party advising of your engagement as counsel, requesting financial disclosure, and requesting the name of opposing counsel.</li> <li>.2 If the opposing party is represented, contact opposing counsel. Discuss consensual dispute resolution methods.</li> <li>.3 If the opposing party is unrepresented, <i>BC Code</i> rule 7.2-9 states that the lawyer must urge the unrepresented person to obtain independent legal representation, take care to see the unrepresented person is not proceeding under the impression that their interests will be protected by the lawyer, and make it clear to the unrepresented person that the lawyer is acting exclusively in the interest of the client. Also see rule 5.1-1, commentary [6], regarding the enhanced duty of candour without notice or uncontested matters.</li> <li>.4 Consider engaging a specialist to provide a parenting assessment under <i>FLA</i>, s. 211 or a “views of the child” or “voice of the child” report. Note the requirement of <i>FLA</i>, s. 37(2)(b) to consider the child’s views unless it would be inappropriate to do so.</li> <li>.5 Consider engaging an appraiser, accountant, business valuator, investigator, tax or pension specialist. Note the requirements of SCFR Rule 13-3 concerning the appointment of joint experts.</li> <li>.6 Draft a marriage or cohabitation agreement (see the MARRIAGE AGREEMENT DRAFTING (D-4) checklist).</li> <li>.7 Draft a separation agreement (see the SEPARATION AGREEMENT DRAFTING (D-3) checklist).</li> <li>.8 Commence proceedings, involving corollary relief such as custody and support under the <i>Divorce Act</i> (see the FAMILY LAW PROCEEDING (D-5) checklist) or corollary relief including support, parenting arrangements and/or property division under the <i>FLA</i> (see the FAMILY LAW PROCEEDING (D-5) checklist). Carefully consider which legislation to bring the claim under giving consideration to the doctrine of paramountcy. Note <i>M. (B.D.) v. M. (A.E.)</i>, 2014 BCSC 453, with respect to the interrelationship between the <i>FLA</i> and the <i>Divorce Act</i> regarding parenting issues. Note <i>FLA</i>, s. 108, with respect to choice of law rules.</li> <li>.9 Bring an application for interim relief, if required (see the FAMILY LAW PROCEEDING (D-5) checklist), taking into consideration the requirement of a judicial case conference prior to any court application, unless urgency can be established (SCFR, Rule 7-1).</li> </ol>					

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<p>.10 Bring a variation proceeding, if required (see the FAMILY LAW PROCEEDING (D-5) checklist).</p> <p>.11 Consider claims based in trust law in addition to statutory property relief if there are unfairness issues under the <i>FLA</i> property regime or there are third parties who hold property to which your client may have a claim.</p> <p>.12 Apply for partition and sale of real property under the <i>Partition of Property Act</i>, R.S.B.C. 1996, c. 347.</p> <p>.13 Apply for an entry on title under the <i>Land (Spouse Protection) Act</i>, R.S.B.C. 1996, c. 246, or a caveat under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250, Part 19 if no action has been commenced.</p> <p>.14 If action has been commenced, file a certificate of pending litigation in the Land Title Office.</p> <p>.15 Apply for appointment of a receiver, if required.</p> <p>.16 Include a claim for a change of name in Schedule 5 of the notice of family claim or counterclaim. This claim is not required if the client is reverting to a birth name or a name used immediately prior to marriage.</p> <p>.17 Consider a declaration of parentage under <i>FLA</i>, Part 3. Carefully review the parentage rules.</p> <p>.18 Represent the client in proceedings under the <i>Child, Family and Community Service Act</i>, R.S.B.C. 1996, c. 46 (see the CHILD, FAMILY AND COMMUNITY SERVICE ACT PROCEDURE (D-6) checklist).</p> <p>2.22 Consider advising the client to keep a diary noting contacts with the spouse and children, as well as financial information such as expenses related to the marriage breakdown, ongoing expenses, payments made by one spouse to the other, etc.</p> <p>2.23 Consider getting a full retainer in advance and advise of any requirements to top up the retainer. Include adequate amounts for disbursements, including any third-party experts or service providers required. Consider requiring the client to engage and pay third parties directly. Consider clear terms as to the circumstances in which failure to pay accounts as due can result in termination of your engagement and/or relieve you of the obligation to attend court appearances. See rule 3.6-1 of the <i>BC Code</i> regarding fair and reasonable fees and disbursements that are not disclosed in a timely fashion. Be mindful of the <i>BC Code</i> requirements under s. 3.7 with respect to withdrawal from representation.</p>					
<p><b>3. FOLLOW UP FROM THE INITIAL INTERVIEW</b></p>					
<p>3.1 Open the file: place the checklist in the file and make entries in diary and bring forward (“BF”) systems, noting relevant limitation periods, such as:</p> <p>.1 <i>FLA</i>, s. 147(4), deals with a stepparent’s liability to pay child support where the stepparent contributed to support and maintenance of child for one year and where proceedings are commenced within one year after the date that stepparent last contributed. But note the <i>FLA</i> criteria for parentage, including that a male person may be a “parent” if they lived in a marriage-like relationship with the birth mother within 300 days before, or on the day of, the child’s birth (<i>FLA</i>, s. 26(2)(d)).</p>					

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<p>.2 <i>FLA</i>, s. 3, definition of “spouse”: carefully note the requirements to qualify as spouses.</p> <p>.3 <i>FLA</i>, s. 198 sets out the applicable limitation periods for bringing claims under Parts 5, 6, and 7. Note that the two-year limitation period does not apply to spousal support reviews under <i>FLA</i>, ss. 168 and 169 and that s. 198(5) suspends the running of the time limits during any period in which the parties are engaged in family dispute resolution with a family dispute resolution professional.</p> <p>.4 <i>Land (Spouse Protection) Act</i>, ss. 1 and 2: one spouse may only apply for an entry under this Act where the dwelling was occupied by the spouses as their residence within a period of one year immediately preceding the application. (Under s. 6, the Act ceases to apply when the spouses have separated and resolved ownership under the <i>FLA</i>.)</p> <p>.5 <i>Divorce Act</i>, s. 21(3), and <i>Court of Appeal Act</i>, R.S.B.C. 1996, c. 77, s. 14(1)(a): 30-day limitation period for appeals.</p> <p>.6 <i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8, ss. 55, 55.1, 55.2, 55.3: division of pension assets applies to a “common-law partnership” between two persons who cohabit in a conjugal relationship for at least one year.</p> <p>.7 <i>Land Title Act</i>, s. 293(1): a caveat expires after two months.</p> <p>.8 <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.), s. 56.1(3): tax relief is available only for spousal maintenance paid in the year in which an agreement is signed or a court order is made, and the preceding year (the Act applies as well to a “common-law partnership” between two persons who cohabit in a conjugal relationship for at least one year).</p> <p>.9 <i>Limitation Act</i>, S.B.C. 2012, c. 13: changed many limitation periods that may be applicable to family law proceedings, such as claims regarding contracts and debt collection (e.g., loans from family members). The basic limitation period changed to two years (instead of six in the case of contracts), and the ultimate limitation changed to 15 years from 30. Division 2 of the Act sets out rules regarding the discovery of claims. Review of this legislation is recommended.</p> <p>3.2 Send a letter to the client confirming the retainer and instructions, setting out the manner in which you will determine your fee for services, stating the conditions upon which you have agreed to act, and summarizing the points discussed, including follow-up to be carried out by the client.</p> <p>3.3 Obtain any urgent relief required, e.g., declaratory order under <i>FRA</i>, s. 57 (if the case was commenced before March 18, 2013), injunction preventing disposition under <i>FRA</i>, s. 67 or <i>FLA</i>, s. 91, or personal protective orders under <i>FLA</i>, Part 9. Consider an application for an interim distribution of property to fund the proceeding (<i>FLA</i>, s. 89).</p> <p>3.4 Gather the necessary information.</p> <p>3.5 Implement initial instructions and continue preparation of case by consulting relevant legislation and checklists: FAMILY LAW AGREEMENT PROCEDURE (D-2), SEPARATION AGREEMENT DRAFTING (D-3), MARRIAGE AGREEMENT DRAFTING (D-4), FAMILY LAW PROCEEDING (D-5), or GENERAL LITIGATION PROCEDURE (E-2).</p>					

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<p><b>4. COLLECT INFORMATION</b></p> <p>4.1 Confirm compliance with Law Society of British Columbia Rules on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.</p> <p>4.2 Client:</p> <p>.1 Full name, occupation, home and business addresses and telephone numbers, email addresses, and social insurance number.</p> <p>.2 Birthdate and place of birth.</p> <p>.3 Employer/school, address, telephone, position, salary.</p> <p>.4 (If applicable) marital status prior to marriage.</p> <p>.5 Previous surnames.</p> <p>.6 Addresses for last 12 months.</p> <p>.7 Any mental, emotional, or physical problems or other vulnerabilities relevant to any of the issues in the proceedings. Any medications the client is using or has been prescribed.</p> <p>4.3 Client’s spouse (including unmarried spouse):</p> <p>.1 Name, address, telephone numbers, and social insurance number.</p> <p>.2 Birthdate and place of birth.</p> <p>.3 Employer/school, address, telephone, position, salary.</p> <p>.4 (If applicable) marital status prior to marriage.</p> <p>.5 Previous surnames.</p> <p>.6 Addresses for last 12 months.</p> <p>.7 Any mental, emotional, or physical problems or other vulnerabilities relevant to any of the issues in the proceedings. Any medications the spouse is using or has been prescribed.</p> <p>4.4 Marriage or marriage-like relationship:</p> <p>.1 Marriage:</p> <p>(a) Place and date.</p> <p>(b) Whether it was a valid marriage.</p> <p>(c) Whether the parties lived together prior to marriage, and, if so, when they commenced cohabitation.</p> <p>.2 Marriage-like relationship: duration and other particulars of the relationship (see <i>Neufeld v. Dafoe</i>, 2015 BCSC 1898, affirmed 2016 BCCA 295 for indicia of cohabitation or “consortium”). These particulars determine if the parties qualify as “spouses” under the <i>FLA</i>—see item 3.1.2—which generally requires a marriage-like relationship for at least two years, except if the parties have a child together, in which case Parts 5 and 6 do not apply to the spouses. These particulars also determine whether they meet relevant definitions in other B.C. statutes and they are “common-law partners” under the <i>Income Tax Act</i>—which generally requires cohabitation in a conjugal relationship for at least one year—and other federal statutes.</p>					

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<p>4.5 Whether there is any kind of written or verbal separation agreement, or any marriage or cohabitation agreement.</p> <p>4.6 Previous proceedings (e.g., details of when, where, terms, result), such as:</p> <ul style="list-style-type: none"> <li>.1 Divorce.</li> <li>.2 Custody, guardianship, or parenting order.</li> <li>.3 Support order.</li> <li>.4 Marriage, cohabitation, or separation agreement.</li> <li>.5 Orders regarding property division.</li> </ul> <p>4.7 Children:</p> <ul style="list-style-type: none"> <li>.1 Names, sexes, birthdates, birthplaces.</li> <li>.2 School or employment details.</li> <li>.3 Past, present, and proposed future arrangements for parenting, support, etc.</li> <li>.4 Physical, emotional, and educational needs, including special problems.</li> <li>.5 Where guardianship or custody is an issue: <ul style="list-style-type: none"> <li>(a) Schools: grades, issues with attendance (if any), location (near home?).</li> <li>(b) Who has been involved in day-to-day care of children (e.g., feeding, childrearing, assistance with school work, discipline).</li> <li>(c) Hours of work of each spouse.</li> <li>(d) Regular time of each spouse away from home and children (e.g., evening recreation).</li> <li>(e) Involvement of each spouse in extracurricular activities of children (e.g., driving children to activities, attendance at games or recitals, participation in games).</li> <li>(f) Any unusual behaviour of either spouse toward children, and the negative impact it has (e.g., swearing, abuse of alcohol or drugs, sexual practices, derogatory remarks, physical abuse).</li> <li>(g) Involvement with family (e.g., grandparents, aunts, and uncles), friends, community activities, church, etc. in area of home.</li> <li>(h) Relationship of each child to each other child (including step-siblings and half-siblings) and to each spouse.</li> <li>(i) Whether there are medical or educational records relevant to issue of custody.</li> <li>(j) For an Aboriginal child, particulars of the child's involvement with an Aboriginal community.</li> <li>(k) If the child has special needs, details of any medical practitioners and special educators involved with the child and any existing reports.</li> </ul> </li> <li>.6 Where the client wants an order prohibiting the spouse (or another person) from interfering with children: <ul style="list-style-type: none"> <li>(a) Incidents causing mental or physical harm to children.</li> </ul> </li> </ul>					

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<p>(b) Mental or physical problems the children are experiencing, including, if possible, any written corroborating reports from teachers or doctors.</p> <p>(c) Effect of behaviour on children (e.g., school work, sleep, play with other children, relationship with the client).</p> <p>(d) History of psychiatric problems, temper situations, or past physical or mental abuse.</p> <p>(e) Criminal record.</p> <p>.7 Where guardianship is sought by a non-parent, note the evidentiary requirements of <i>FLA</i>, s. 51, as well as SCFR Rule 15-2.1 or Provincial Court (Family) Rule 18.1, as required. Complete the forms for the required background checks and consents: Form 5 under the Family Law Act Regulation, B.C. Reg. 347/2012, s. 26.1 and SCFR Form F101 or PCFR Form 34.</p> <p>.8 Whether there are concerns that the children may be removed from the jurisdiction, or either spouse wishes to move out of the jurisdiction with the children, and the reasons for such a move (e.g., to enable the spouse to obtain better employment or be closer to family elsewhere). Note <i>FLA</i>, Part 4, Division 6 (Relocation) and advise a relocating client of the obligation of good faith (<i>FLA</i>, s. 69(4)(a)(i) and (6)).</p> <p>4.8 Separation:</p> <p>.1 Place and date.</p> <p>.2 Particulars, including events leading up to it. If the <i>Divorce Act</i> applies, find out whether there has been any adultery by either spouse, or whether either spouse might allege any physical or mental cruelty.</p> <p>(a) If adultery is alleged, determine whether the alleged acts took place before or after separation, details that are known (identity of third person, places, and times), and whether the client or spouse is willing to admit.</p> <p>(b) If cruelty is alleged, collect details of behaviour and specific acts of cruelty and any physical manifestations, medical reports, police reports.</p> <p>.3 Whether there have been attempts to reconcile.</p> <p>.4 Whether the client or spouse has received counselling.</p> <p>.5 Whether the spouses have lived together since separation and, if so, the dates and details.</p> <p>.6 Advise the client that spousal misconduct will generally not be taken into account by the court in making a spousal support order (<i>Divorce Act</i>, s. 15.2(5)), unless injuries sustained interfere with the victim's ability to become self-sufficient (<i>Leskun v. Leskun</i>, 2006 SCC 25); under <i>FLA</i>, s. 166, misconduct that "arbitrarily or unreasonably ... causes, prolongs or aggravates the need for spousal support" or "affects the ability to provide spousal support" may be considered.</p> <p>4.9 New relationship:</p> <p>.1 Details of cohabitation (date, whose residence, discussions of marriage).</p>					

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<p>.2 If not cohabiting, details of any plans to live together (timing, whose residence, discussions of marriage).</p> <p>.3 Details of children’s relationship with new partner.</p> <p>4.10 Obtain contact information and details regarding any witnesses.</p> <p>4.11 Obtain financial details. Consider having the client fill out a financial statement in Form F8 after the interview.</p> <p>.1 Income:</p> <p>(a) Client:</p> <p>(i) Amount and sources of income.</p> <p>(ii) Jobs held and income earned throughout relationship.</p> <p>(iii) Periods of unemployment and reasons.</p> <p>(iv) Any foreseeable change in job or income.</p> <p>(v) Whether the client worked as a homemaker and, if so, whether this was by agreement with spouse.</p> <p>(vi) Ability to earn income, including education, skills, qualifications, health.</p> <p>(vii) Future intentions regarding employment and retirement.</p> <p>(viii) If currently in school or training, what this will cost, and employment goals and probable earnings.</p> <p>(ix) Special needs of children (e.g., age, disability) that affect the client’s ability to work outside the home.</p> <p>(x) General lifestyle and spending habits of the client before and after separation: characteristics of residence, number of cars, recreational activities, social activities, restaurants attended, clothing, holidays, and the functions performed by the client during cohabitation.</p> <p>(b) Client’s spouse:</p> <p>(i) Amount and sources of income.</p> <p>(ii) Jobs held and income earned throughout relationship.</p> <p>(iii) Periods of unemployment and reasons.</p> <p>(iv) Any foreseeable change in job or income.</p> <p>(v) Whether client’s spouse worked as a homemaker and, if so, whether this was by agreement with the client.</p> <p>(vi) Ability to earn income, including education, skills, qualifications, health.</p> <p>(vii) Future intentions regarding employment and retirement.</p> <p>(viii) If currently in school or training, what this will cost, and employment goals and probable earnings.</p> <p>(ix) Special needs of children (e.g., age, disability) that affect the client’s spouse’s ability to work outside the home.</p> <p>(x) General lifestyle and spending habits of the client’s spouse before and after separation: characteristics of residence, number of cars, recreational activities, social activities, restaurants attended, clothing, holidays, and the functions performed by client’s spouse during cohabitation.</p>					



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<p>.2 Where child support is an issue: expenses, including any special or extraordinary expenses (e.g., health, education, extra-curricular activities).</p> <p>.3 Where spousal support is an issue: projected expenses needed to provide for self and to provide supervision of children. Collect information regarding employment and education history of the spouse requiring support.</p> <p>.4 Real property owned by either spouse at or since beginning of relationship:</p> <ul style="list-style-type: none"> <li>(a) Address and legal description.</li> <li>(b) Registered owner.</li> <li>(c) Acquisition: date, purchase price, source of original funds, mortgage amount, mortgage lender.</li> <li>(d) Any contribution by a third party? Obtain full details and documentary evidence, if any. Consider whether tracing might be available under <i>FLA</i>, s. 85(1)(g).</li> <li>(e) If acquired before the relationship began: market value at date the relationship began, whether an appraisal is available, mortgage owing when the relationship began.</li> <li>(f) If the mortgage was paid off during relationship: when, what funds were used, whether both spouses contributed, amount paid.</li> <li>(g) If sold during the relationship: when, selling price, net sale proceeds, use of proceeds.</li> <li>(h) If re-mortgaged during the relationship: when, with whom, who signed the mortgage, terms of the mortgage, what funds have been used to make payments, what was done with the mortgage proceeds.</li> <li>(i) Current state of the mortgage, if it was not paid off during relationship, or, if the property was re-mortgaged: balance owing, defaults, late payments.</li> <li>(j) If still owned: present fair market value, whether appraisal or real estate evaluation available, current details of possession and use.</li> <li>(k) Contributions of each spouse to maintenance and improvement of the property during relationship.</li> <li>(l) If owned by the other spouse: what the property was being used for at beginning of the relationship; whether the client contributed to property before the relationship (e.g., cash, co-signing loan or mortgage, business acumen, physical labour, homemaker); whether the client contributed to the property after the relationship; whether the property was used during the relationship for benefit of the family; whether the spouses considered it to be for benefit of the family; what contribution the spouse expected of the client regarding the property.</li> <li>(m) If title was transferred during the relationship (e.g., from sole ownership to joint title).</li> </ul> <p>.5 Mobile home(s) owned by either spouse at or since the beginning of their relationship. Collect the same information as required for real property.</p>					

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<p>.6 Personal property owned by either spouse at or since the beginning of their relationship. Collect information on all types: cash, bank accounts, term deposits, bonds, stocks, options, commodities, debentures, mortgages/agreements for sale, motor vehicles, recreational vehicles, farm or other machinery/equipment, boats, aircraft, art objects, furnishings and household goods, jewellery, club memberships, bullion, coins, RRSPs, RRIFs, RESPs, pensions, life insurance, medical, dental, and disability insurance, promissory notes, judgments. Obtain the information that is relevant for each item, such as:</p> <ul style="list-style-type: none"> <li>(a) Description.</li> <li>(b) Owner.</li> <li>(c) Location of property. Consider <i>FLA</i>, s. 109 re any extraprovincial property.</li> <li>(d) Acquisition: date, price/value, who acquired the property, source of funds (gift or inheritance), financing. Consider whether property is excluded under <i>FLA</i>, s. 85.</li> <li>(e) Any contribution(s) by a third party? Obtain full details and documentary evidence if any. Consider whether tracing might be available under <i>FLA</i>, s. 85(1)(g).</li> <li>(f) History of ownership: in whose name, who has made payments, amount of payments, amount owing, use, details of any sale, use of sale proceeds.</li> <li>(g) Value at date of separation and current value, any appraisals, maturity dates and values, whether RRSPs, insurance policies, etc. can be cashed in at present time.</li> <li>(h) For bank or credit union accounts: all financial institutions used by client or spouse; account locations, types, numbers, and balances. Determine whether accounts are joint or sole.</li> <li>(i) For stocks: number of shares, options, class of stock, encumbrances, restrictions on transfer.</li> <li>(j) For insurance policies: beneficiary, whether policy has been borrowed against and details of this, cash surrender value, if any.</li> <li>(k) For promissory notes: from whom, amount owing, interest rate, payments, due date.</li> <li>(l) For outstanding judgments: against whom, date, amount, whether collectable.</li> <li>(m) For pensions: beneficiary, plan name, contributions, owner, details of plan. Have the client execute a Form P1 under the Division of Pensions Regulation, B.C. Reg. 348/2012 under the <i>FLA</i> (or Form 1 in B.C. Reg. 77/95 under the <i>FRA</i>, if applicable) to allow you to communicate with the pension plan administrator and to notify the plan of the client's interest in the pension.</li> </ul> <p>.7 Businesses, partnerships, and joint ventures owned by either spouse at or since the beginning of the relationship:</p> <ul style="list-style-type: none"> <li>(a) Whether incorporated or unincorporated.</li> <li>(b) Name and address of the business and of principals or participants.</li> <li>(c) If incorporated: registered and records offices, directors, shareholders.</li> <li>(d) Type of business.</li> </ul>					

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<p>(e) Nature of interest: number and ownership of shares.</p> <p>(f) Acquisition: date, price/value, who acquired the property, source of funds, financing, how much capital introduced into the business.</p> <p>(g) Value: estimated market value and book value at the date of acquisition, date of beginning of marriage/marriage-like relationship, date of separation, and current date; whether anyone has tried to purchase the business in the past year, and on what terms.</p> <p>(h) If sold: when sold, selling price, net proceeds, use of proceeds.</p> <p>(i) If still owned: liabilities each spouse is responsible for, including co-signed loans and guarantees.</p> <p>.8 Livestock and related equipment.</p> <p>.9 Pets.</p> <p>.10 Licences and quotas of significant value issued or granted by any government agency, government department, or regulatory body.</p> <p>.11 Real or personal property sold or given away by the client or spouse in the past two years:</p> <p>(a) Name and address of the trustee, if applicable.</p> <p>(b) Date of disposal.</p> <p>(c) Price: whether an appraisal was done first, fair market value, proceeds, whether transfer was for market value and, if not, why not.</p> <p>(d) Whether the spouse approved of transfer.</p> <p>(e) Use of proceeds.</p> <p>.12 Debts and liabilities of the client and spouse at beginning of their relationship, date of separation, and current date:</p> <p>(a) Description (e.g., mortgages, agreements for sale, credit cards, bank loans, personal loans, business loans, tax liabilities (including contingent tax liabilities)).</p> <p>(b) When incurred.</p> <p>(c) Why incurred.</p> <p>(d) Whether the spouse approved of the transfer.</p> <p>(e) What security was given.</p> <p>(f) Amount: original amount, interest rate, payment history, present status (including amount outstanding, defaults, and demand for payment).</p> <p>.13 Personal guarantees given by the client or spouse.</p> <p>.14 With respect to any asset in question, review reasons why assets should be considered family or excluded property (if the <i>FLA</i> applies) or family assets (if the <i>FRA</i> applies):</p> <p>(a) Property in question (consider tracing from prior property).</p> <p>(b) Owner.</p> <p>(c) Physical or monetary contribution made to acquisition, preservation, or maintenance.</p> <p>(d) Housekeeping and child-rearing roles.</p> <p>(e) Opportunities for employment or advancement given up to assist in acquisition.</p>					

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<p>(f) consider whether the <i>FLA</i> property regime is significantly unfair to the client, requiring unequal division or trust claim.</p> <p>.15 Determine whether the client or spouse received or is about to receive:</p> <p>(a) An inheritance: who received it, when, how much, what was done with it.</p> <p>(b) A windfall (e.g., lottery winnings, prizes, gift from family): who received it, when, how much, what was done with it.</p> <p>(c) An award for personal injuries, including workers' compensation benefits: who received it, when, how much, what was done with it.</p> <p>(d) Proceeds of an insurance policy (and if so, whether it was in respect of property or related to some other matter): who received it, when, how much, what was done with it.</p> <p>(e) A gift from their spouse: who received it, when, market value, what was done with it.</p> <p>(f) A bonus relating to past services (e.g., severance pay).</p> <p>.16 Determine whether there is any reason to suspect that client's spouse intends to dispose of any assets or remove them from British Columbia.</p> <p>.17 Determine whether the client or spouse wants specific items of property.</p> <p>4.12 Where the client wants exclusive occupancy of the family residence or an order restraining the spouse (including unmarried spouse) from entering the family residence, gather the following information:</p> <p>.1 Description of the dwelling.</p> <p>.2 Location with respect to schools.</p> <p>.3 Reasons for wanting the spouse removed:</p> <p>(a) Violence.</p> <p>(b) Abuse of alcohol, drugs.</p> <p>(c) Effect of behaviour on the mental or physical health of the client or the children, including, if possible, medical reports.</p> <p>(d) Any criminal charges previously laid against the spouse.</p> <p>(e) Alternate accommodation available to the spouse.</p> <p>(f) Financial impact of moving/selling.</p> <p>(g) Reasons why it is impossible to continue cohabitation.</p> <p>(h) Proposed parenting plan if exclusive occupancy allowed.</p> <p>4.13 Where the client wants exclusive use of chattels, gather the following information:</p> <p>.1 Clear description of the chattels.</p> <p>.2 Who used them prior to separation.</p> <p>.3 Reason that client needs them now (e.g., need car for work or to drive the children to school or to recreational activities).</p> <p>.4 Similar chattels available to the spouse.</p>					

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<p>4.14 Where the client wants an order restraining disposition of assets, gather the following information:</p> <ul style="list-style-type: none"> <li>.1 Clear description of the assets, including the exact name(s) in which they are held.</li> <li>.2 Present location of the assets.</li> <li>.3 Ownership of the assets.</li> <li>.4 Previous use of the assets.</li> <li>.5 Actions or statements of the spouse that indicate they might dispose of the assets.</li> <li>.6 Reasons why the assets are to be considered family property (see item 4.11.14).</li> </ul> <p>4.15 Clarify citizenship and immigration issues:</p> <ul style="list-style-type: none"> <li>.1 Citizenship of the client and the spouse.</li> <li>.2 Status of any outstanding immigration matters.</li> <li>.3 Is the client or spouse a U.S. citizen or dual U.S. citizen.</li> <li>.4 Was the client or spouse ever a U.S. resident for U.S. tax purposes or ever issued a U.S. green card.</li> <li>.5 Did the client or spouse ever own any property in the U.S., including U.S. bank account(s).</li> <li>.6 Does any child of the parties have U.S. or dual U.S. citizenship, or is such child working or attending school in the U.S.</li> </ul>					
<p><b>5. COLLECT DOCUMENTS</b></p> <p>5.1 Request copies of all relevant documentation. If relying on the client’s information regarding income and assets and debts, consider limiting the scope of your retainer. Relevant documents will include at least the following:</p> <ul style="list-style-type: none"> <li>.1 Original marriage certificate (long form) or certificate of registration of marriage.</li> <li>.2 Photograph of the spouse (for service purposes) if a divorce is sought.</li> <li>.3 Income tax returns (including attachments) and notices of assessment of the client and spouse for past three years (both personal returns and corporate returns if any incorporated businesses are involved), as well as the financial statements for any businesses operated by either party.</li> <li>.4 Financial records: bank or credit union statements, investment accounts, paystubs, credit card statements, etc.</li> <li>.5 Records relating to family property: land title searches, mortgage statements, loan agreements, loan applications, and sale or disposition documents.</li> <li>.6 Records relating to the value of family property, including appraisals and British Columbia property assessment statements, purchase and sale agreements, and statements of adjustment.</li> <li>.7 Records relating to pension plans, insurance policies, RRSPs, RRIFs, RESPs.</li> </ul>					

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<ul style="list-style-type: none"> <li>.8 Marriage, separation, or property distribution agreements between the spouses and between each spouse and any prior spouses.</li> <li>.9 Related court documents, including court orders between the spouses and between each spouse and any prior spouses.</li> <li>.10 Certified copy of divorce order, if one spouse was previously divorced.</li> <li>.11 Medical and legal reports.</li> <li>.12 Child and parenting assessments.</li> <li>.13 Conduct any relevant searches (e.g., in the land title office, corporate registry, vehicle records department at ICBC, or personal property registry).</li> <li>.14 Copies of any agreements made between the parties themselves, and between them and any relevant third parties.</li> <li>.15 Statements relating to stocks, bonds, and securities.</li> <li>.16 Appraisals of jewellery, furniture, china, art, and valuable items.</li> <li>.17 If the client is a beneficiary or a trustee, the trust settlement documents.</li> </ul>					