

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 is designed for use with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. It is primarily designed for use by counsel for the plaintiff. It deals with divorce and all other relief in a family law proceeding under the <i>Divorce Act</i>, R.S.C. 1985, c. 3 (2nd Supp.) and the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (the “FLA”) (or, in some cases where the <i>FLA</i> does not apply, the <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128 (the “FRA”). It should be used in conjunction with other relevant practice checklists.</p> <p>The first step in a proceeding under the <i>Divorce Act</i> and the <i>FLA</i> (or the <i>FRA</i>) should be the completion of the FAMILY PRACTICE INTERVIEW (D-1) checklist. Also, practitioners should consider the option of mediation or collaborative separation and divorce (<i>FLA</i>, s. 8(2)). This checklist is current to August 31, 2016.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Supreme Court Family Rules amendments.</b> Effective July 1, 2016, the Supreme Court Family Rules, B.C. Reg.169/2009 (the “SCFR Rules”) were amended to add Rule 2-2.1 with respect to divorces under the <i>Civil Marriage Act</i>, S.C. 2005, c. 33, add Forms 1.1 and 1.2 in regard to Rule 2-2.1, and to replace Forms F3, F4, and F5 in regard to claims under the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (the “FLA”).</li> <li>• <b>Provincial Court Rules amendments.</b> Amendments to the Provincial Court (Family) Rules, B.C. Reg. 417/98 (the “PCFR”), came into effect November 26, 2015 (B.C. Reg. 219/2015), adding Rules 9(10)(b.1), 18(2.1), and (6.1) and Form 5.1 with respect to protection orders and amending Rules 6(15)(a) and 9(2).</li> <li>• <b>Practice Directions.</b> Note the following new Practice Directions: <ul style="list-style-type: none"> <li>• FPD-13, effective December 15, 2015, with respect to applications made by requisition under SCFR Rules 7-1(4), 14-3(4), and 22-6(4);</li> <li>• PD-50, effective May 15, 2016, with respect to masters’ jurisdiction;</li> <li>• PD-48, effective November 17, 2015, addressing the procedure for authorization to video record or broadcast court proceedings or portions thereof; and</li> <li>• PD-47, effective August 1, 2015, which prescribes the use of model forms of orders, including preservation of assets and receiverships.</li> </ul> </li> <li>• <b>New pension legislation in force.</b> The <i>Pension Benefits Standards Act</i>, S.B.C. 2012, c. 30 (and amendments under the <i>Pension Benefits Standards Amendment Act, 2014</i>, S.B.C. 2014, c. 22) came into force on September 30, 2015, under B.C. Reg. 71/2015, as did the new Pension Benefits Standards Regulation. New spousal waiver and consent forms (Forms 1, 2, 3, and 4 in Schedule 3) were prescribed effective January 29, 2016, under B.C. Reg. 9/2016. The <i>Pooled Registered Pension Plans Act</i>, S.B.C. 2014, c. 17, came into force May 4, 2016, under B.C. Reg. 101/2016. Several provisions of the <i>FLA</i> and the <i>Family Maintenance Enforcement Act</i>, R.S.B.C. 1996, c. 127 have been amended as a result of the new pension legislation (see B.C. Reg. 101/2016).</li> <li>• <b>Law Society Rules.</b> On July 1, 2015, revised and consolidated Law Society Rules came into effect. See <a href="http://www.lawsociety.bc.ca/page.cfm?cid=4089&amp;t=Law-Society-Rules-2015">www.lawsociety.bc.ca/page.cfm?cid=4089&amp;t=Law-Society-Rules-2015</a>.</li> </ul>					

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<ul style="list-style-type: none"> <li>• <b>Code of Professional Conduct for British Columbia (the “BC Code”).</b> Effective December 2015, designated paralegals may represent clients at family law mediations with the supervising lawyer’s permission (see rule 6.1-3.3 and commentary). In July 2015, rule 3.7-9 was amended to require that a lawyer promptly notify the client, other counsel, and the court or tribunal of the lawyer’s withdrawal from a file. In June 2015, rule 3.6-3, commentary [1] regarding the duty of candour owed to clients respecting fees and other charges for which a client is billed was amended. The confidentiality restrictions in Appendix B, paragraph 4(c.1) were amended in April 2015 and allow parenting coordinators some discretion to disclose information.</li> <li>• <b>Articled students permitted to act as commissioners for taking affidavits.</b> Effective September 1, 2015, articled students and temporary articled students are prescribed as persons who are commissioners for taking affidavits in British Columbia (B.C. Reg. 142/2015, made pursuant to s. 60(1) of the <i>Evidence Act</i>, R.S.B.C. 1996, c. 124). Principals remain responsible for students’ actions and will need to ensure students understand the effect of acting as commissioner.</li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Family Law Act.</b> The <i>FLA</i> came into force on March 18, 2013, along with accompanying amendments to the PCFR Rules and the SCFR Rules. The <i>FLA</i> repealed the <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128 (the “<i>FRA</i>”) and effected fundamental changes to family law in British Columbia, particularly regarding children and the division of property after the breakdown of a relationship. The <i>FRA</i> continues to affect orders and agreements made under it, as well as cases commenced under the <i>FRA</i> but not concluded by the time the <i>FLA</i> came into force. Consider the transition provisions of the <i>FLA</i> when advising clients regarding family law proceedings that were under way when the <i>FLA</i> came into force. For educational material about the <i>FLA</i>, including a concordance between the <i>FRA</i> and the <i>FLA</i>, see <a href="http://www.justicebc.ca">www.justicebc.ca</a>. The <i>Family Law Act Transition Guide</i> and <i>The Family Law Act: Everything You Always Wanted to Know</i> are available from the Continuing Legal Education Society of British Columbia.</li> <li>• <b>Supreme Court Family Rules.</b> The SCFR Rules are a complete code governing family law proceedings in the Supreme Court of British Columbia. The current SCFR Rules have been incorporated into the <i>British Columbia Family Practice Manual</i>, 4th ed., looseleaf and online (CLEBC, 2006) and other Continuing Legal Education Society of British Columbia resources and can be accessed through the Supreme Court website at <a href="http://www.courts.gov.bc.ca">www.courts.gov.bc.ca</a>.</li> <li>• <b>Mediation.</b> The Notice to Mediate (Family) Regulation, B.C. Reg. 296/2007 under the <i>Law and Equity Act</i>, R.S.B.C. 1996, c. 253, applies to family law proceedings throughout British Columbia (see B.C. Reg. 66/2012 and B.C. Reg. 373/2012). If parties mediated before commencing their family law case, they should have the mediator execute a Form F100 and file the form with the notice of family claim or counterclaim, in order to have filing fees waived. See <i>BC Code</i> rule 5.7 (Role of mediator) and Appendix B (Family Law Mediation).</li> <li>• <b>Guardianship applications.</b> The prescribed forms for the guardianship affidavit and the consent to the requisite background checks (<i>FLA</i>, Part 4, Division 3) are: Form F101 under the SCFR Rules, Form 34 under the PCFR Rules, and Form 5 under the Family Law Act Regulation, B.C. Reg. 347/2012, s. 26.1.</li> </ul>					

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<ul style="list-style-type: none"> <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 who have not enacted their own matrimonial real property laws.</li> <li>• <b>Incapacity and adult guardianship legislation.</b> Amendments to the <i>Power of Attorney Act</i>, R.S.B.C. 1996, c. 370 and the <i>Representation Agreement Act</i>, R.S.B.C. 1996, c. 405, in effect March 25, 2015 (<i>Justice Statutes Amendment Act, 2015</i>, S.B.C. 2015, c. 6) provide for termination of powers of attorney or representation agreements upon separation of spouses if a spouse is, respectively, an attorney or representative.</li> <li>• <b>Limitation Act.</b> The <i>Limitation Act</i>, S.B.C. 2012, c. 13, in force on June 1, 2013 (B.C. Reg. 290/2012), changed many limitation periods that may be applicable to family law proceedings (e.g., claims regarding contracts and debt collection). 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. Review of this legislation is recommended. Also note the limitation periods set out in <i>FLA</i>, s. 198.</li> <li>• <b>Additional resources.</b> For more detailed information about divorce and other family practice matters, refer to the <i>British Columbia Family Practice Manual</i>, 4th ed., looseleaf and online (CLEBC, 2006); the <i>Family Law Sourcebook for British Columbia</i>, 3rd ed., looseleaf and online (CLEBC, 2002); <i>Desk Order Divorce—An Annotated Guide</i>, looseleaf and online (CLEBC, 1999); and <i>Family Law Deskbook</i>, looseleaf and online (CLEBC, 2005). See also <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>					
<b>CONTENTS</b>					
<ol style="list-style-type: none"> <li>1. Preliminary Matters</li> <li>2. Commencement of Family Law Case—Supreme Court</li> <li>3. Response to Family Claim and Counterclaim</li> <li>4. Discovery Procedures</li> <li>5. Judicial Case Conference</li> <li>6. Interim Relief and Other Pre-trial Proceedings</li> <li>7. Application for Desk-Order Divorce</li> <li>8. Trial</li> <li>9. After Judgment</li> <li>10. Variation Proceeding</li> <li>11. Proceedings in Provincial Court</li> <li>12. Closing the File</li> </ol>					

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<b>CHECKLIST</b>					
<b>1. PRELIMINARY MATTERS</b>					
1.1 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.					
1.2 Comply with <i>FLA</i> , s. 8 duties: screen for family violence; discuss out-of-court resolution options; and inform the client that some agreements or orders must serve the best interests of the child. Also explain the <i>FLA</i> , s. 5 duty of disclosure.					
1.3 If the opposing party is unrepresented, consider rule 7.2-9 of the <i>BC Code</i> , which states that the lawyer must urge the unrepresented person to obtain independent legal representation, take care to see that the unrepresented person is not proceeding under the impression that his or her 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 consider <i>BC Code</i> rule 5.1-1, commentary [6] regarding without notice or uncontested matters.					
1.4 Consider choice of law provisions in <i>FLA</i> , s. 108.					
1.5 If seeking a divorce:					
.1 Consider whether British Columbia Supreme Court has jurisdiction to grant a divorce ( <i>Divorce Act</i> , s. 3).					
.2 Comply with the <i>Divorce Act</i> regarding reconciliation and counselling (s. 9(1)) and negotiation and mediation (s. 9(2)).					
.3 Determine whether the divorce is likely to be contested.					
.4 Obtain the original government-issued marriage certificate. If the original is not in English, obtain an official translation.					
.5 Consider obtaining a photograph of the defendant(s) for purposes of service (see item 2.6 below).					
.6 Consider whether any third parties should be included in the proceedings (e.g., relevant corporations, related parties against whom relief is or should be sought). Note that the discovery rights of parties and non-parties vary.					
1.6 Determine types of corollary or other relief to be sought.					
.1 Consider whether relief should be sought under the <i>Divorce Act</i> or the <i>FLA</i> , or both, where permissible and appropriate (see <i>Divorce Act</i> , ss. 3 and 4, and <i>FLA</i> , s. 192). Review <i>M. (B.D.) v. M. (A.E.)</i> , 2014 BCSC 453 concerning paramountcy.					
(a) Support for children ( <i>Divorce Act</i> , s. 15.1, <i>FLA</i> , Part 7, Division 2, and the Family Law Act Regulation, Part 4 (Child Support Guidelines) that adopt and modify the Federal Child Support Guidelines, SOR/97-175, under the <i>Divorce Act</i> ).					
(b) Support for spouse ( <i>Divorce Act</i> , s. 15.2, and <i>FLA</i> , Part 7, Division 4).					

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<p>(c) Parenting of children (<i>Divorce Act</i>, s. 16 (custody and access), and <i>FLA</i>, Part 4 (Care of and Time with Children), which significantly alters the parenting regime that existed under the <i>FRA</i>).</p> <p>(d) Guardianship of children (<i>FLA</i>, Part 4, Division 3 regarding guardianship, and <i>FLA</i>, Part 8 regarding children’s property). To prepare a guardianship affidavit and a consent to the requisite background checks, use SCFR Form F101 or PCFR Form 34, and Form 5 under the Family Law Act Regulation, s. 26.1.</p> <p>(e) Determination of family property and debts, ownership, possession, or division of property (<i>FLA</i>, Parts 5 and 6).</p> <p>(i) Enforcement of a spouse’s interest in property, under any prior agreement or any claim to set aside a prior agreement.</p> <p>(ii) Order reappportioning property division on the basis of significant unfairness (<i>FLA</i>, s. 95).</p> <p>(iii) Declaration of ownership (<i>FLA</i>, s. 97(2)(a)).</p> <p>(iv) Declaration of right of possession (<i>FLA</i>, s. 97(2)(a)).</p> <p>(v) Order that, upon division of property, title be transferred to, held in trust for, or vested in a spouse absolutely, for life, or for a term of years (<i>FLA</i>, s. 97(2)(b)).</p> <p>(vi) Order that one spouse pay compensation to the other where property has been disposed of, or for the purpose of adjusting the division (<i>FLA</i>, s. 97(2)(c)).</p> <p>(vii) Order for partition or sale of property and payment out of the proceeds to one or both spouses in specified proportions or amounts (<i>FLA</i>, s. 97(2)(d)).</p> <p>(viii) Order that property forming all or part of the share of either or both spouses be transferred to, or held in trust for, or vested in, a child (<i>FLA</i>, s. 97(2)(e)).</p> <p>(ix) Order that a spouse give security for the performance of an obligation (<i>FLA</i>, s. 97(2)(f)).</p> <p>(x) Waiver or release by a spouse in writing of any right, benefit or protection given by the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359, s. 58 or 67 and related legislation (<i>FLA</i>, s. 97(2)(g)).</p> <p>(xi) Declaration that one spouse is responsible for payment of a family debt and indemnification of the other spouse (<i>FLA</i>, s. 97(2)(h)), subject to the rights of third parties (<i>FLA</i>, s. 97(3)).</p> <p>(xii) Sale of property for the purposes of paying family debt (<i>FLA</i>, s. 97(2)(i)).</p> <p>(xiii) Transfer of property to a spouse (<i>FLA</i>, s. 97(2)(j)).</p> <p>(f) Temporary orders respecting the family residence, including exclusive occupancy, and specified personal property (<i>FLA</i>, s. 90).</p> <p>(g) Protection orders (<i>FLA</i>, s. 183).</p> <p>.2 Relief under other statutes and against other persons where the claim is related to or connected with any relief sought in the family law proceeding (SCFR, Rules 3-1(5) and 21-3(1)).</p>					

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<p>.3 Variation or rescission (note the two-year limitation period in <i>FLA</i>, s. 198(3) and the suspension of the running of time under <i>FLA</i>, s. 198(5) while the spouses are pursuing “family dispute resolution” with a “family dispute resolution professional” as defined in <i>FLA</i>, s. 1):</p> <p>(a) Of a support order or custody order under the <i>Divorce Act</i>, s. 17 or under <i>FLA</i>, s. 47, 152, or 167. See also SCFR, Rule 10-5.</p> <p>(b) Of a provision of a written agreement filed under <i>FRA</i>, s. 121(4), or <i>FLA</i>, ss. 44(3) and 148(2).</p> <p>(c) Of the division of property covered by an agreement (see <i>FLA</i>, s. 93).</p> <p>.4 Name change (<i>Name Act</i>, R.S.B.C. 1996, c. 328, s. 5).</p> <p>1.7 Assess any need to obtain urgent interim relief to protect a person or property. Consider obtaining a protection order under <i>FLA</i>, s. 183, or filing a certificate of pending litigation (“CPL”), caveat, or a charge under the <i>Land (Spouse Protection) Act</i>, R.S.B.C. 1996, c. 246, in the land title office.</p> <p>1.8 Aboriginal clients: consider whether a lawyer with Aboriginal law experience should be consulted. Special considerations may apply, whether the parties or property (or both) are situated on or off reserve. For example:</p> <p>.1 The child’s Aboriginal heritage is a factor in determining a custody arrangement 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 when applying for guardianship.</p> <p>.2 In calculating child support under Federal Child Support Guidelines, s. 19(b), or in calculating spousal support, prospective awards must be adjusted if any party is exempt from federal and provincial income taxes.</p> <p>.3 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. The law is not settled with respect to valuing on-reserve property for the purposes of including compensation to a spouse instead of making 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. Review the new federal <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>, S.C. 2013, c. 20 which came into full effect on December 16, 2014. Under the new legislation, certain First Nations, not on the schedule to the <i>First Nations Land Management Act</i>, had one year (during a transition period from December 16, 2013 to December 15, 2014) to implement their own matrimonial property laws. Since December 16, 2014, the new federal law has applied to First Nations who have not enacted their own matrimonial property laws. First Nations were not limited to the transition period to take steps to ratify their own laws and may enact their community-specific laws at any time. 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>					

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<p>.4 In enforcing support payments, if the debtor is an Indian who lives on a reserve, the debtor’s assets or income may be exempt from many enforcement proceedings (see <i>Indian Act</i>, s. 89). Generally, a non-Indian cannot seize from an Indian moveable assets located on-reserve.</p> <p>.5 Further information on Aboriginal law issues is available on the “Aboriginal Practice Points” page of the CLEBC website (www.cle.bc.ca) and in chapter 22 of the <i>British Columbia Family Practice Manual</i>.</p> <p>1.9 Determine the ages of all parties and, if one party is an infant, consider matters of capacity:</p> <p>.1 If any party is under 16 years, ensure that the action or defence is conducted with a litigation guardian.</p> <p>.2 If an infant over 16 years is not conducting the action or defence with a litigation guardian, decide whether to apply for the appointment of a litigation guardian (SCFR, Rule 20-2(2)). See also <i>FLA</i>, s. 201.</p> <p>.3 If the client is an infant who wants to appoint a litigation guardian, file the litigation guardian’s consent (SCFR, Rule 20-3(7)), and a certificate of fitness with required particulars (SCFR, Rule 20-3(8)).</p> <p>1.10 Consider and advise client on:</p> <p>.1 Bank account changes, including changes to lines of credit.</p> <p>.2 Any outstanding personal guarantees.</p> <p>.3 Credit card changes.</p> <p>.4 Joint credit facilities.</p> <p>.5 Obtaining his or her own medical insurance.</p> <p>.6 Client’s will and the effect of the <i>Wills, Estates and Succession Act</i>, S.B.C. 2009, c. 13 (the “<i>WESA</i>”), noting s. 56(2) and the effect of separation. Refer the client to a wills and estates lawyer to draft a new will, or if you are a wills and estates lawyer, draft a new will, if instructed.</p> <p>.7 Power of attorney and representation agreement. (See <i>Power of Attorney Act</i>, R.S.B.C. 1996, c. 370, s. 29; <i>Representation Agreement Act</i>, R.S.B.C. 1996, c. 405, s. 29. Note amendments regarding termination, in force on March 25, 2015.)</p> <p>.8 Change of beneficiary on insurance policies.</p> <p>.9 Change of beneficiary on RRSPs and pensions, if not restricted from doing so.</p> <p>.10 Filing of forms in relation to a claim against the other spouse’s pension.</p> <p>.11 Safeguarding of documents and valuables. Caution the client against appropriating private documents, mail and email. Consider <i>BC Code</i> rule 7.2-10 regarding a lawyer’s duties when inadvertently obtaining documents of the opposing party.</p> <p>.12 Other agreements or documents and their effect (e.g., shareholders’ agreements, marriage agreement, trusts).</p> <p>.13 Any corporate/commercial issues raised by or against a spouse who operates a business.</p> <p>.14 Change email passwords and password and privacy settings on social media accounts.</p>					

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<p><b>2. COMMENCEMENT OF FAMILY LAW CASE—SUPREME COURT</b></p> <p>2.1 Prepare a notice of family claim in Form F3 (SCFR, Rule 4-1(1); note the new forms F3, F4, and F5 in force July 1, 2016 (B.C. Reg. 4/2016)), with all parties and children being properly named with correct birthdates. Include all known aliases and alternative spellings of the parties’ names so that orders will match any variation of a party’s name on various assets. Note: some SCFR Forms have been amended with the coming into force of the <i>FLA</i>. Current forms are available at: <a href="http://www.ag.gov.bc.ca/courts">www.ag.gov.bc.ca/courts</a>.</p> <p>2.2 Consider a joint family law case where the parties seek a divorce and consent to all other relief (SCFR, Rule 2-2(1) and (2), and Form F1). The Law Society’s Ethics Committee reviewed its advice that members should not act for both spouses in bringing a joint action. The Ethics Committee advised that the prohibition does not apply to a lawyer, including one who acted as a mediator for the spouses, where all relief sought is by consent, and both parties received independent legal advice (see <i>Benchers’ Bulletin</i>, March-April 2003).</p> <p>2.3 If seeking a divorce:</p> <ol style="list-style-type: none"> <li>.1 Ensure that you have an original marriage certificate (translated officially into English as necessary) or certified copy of registration of marriage. If unable to obtain it, see SCFR, Rule 4-5(2).</li> <li>.2 Consider the grounds for divorce (one year separate and apart, adultery, or cruelty) and ensure that you have supporting evidence (<i>Divorce Act</i>, s. 8(2)). Consider pleading one year separate and apart as alternate grounds in a claim based on adultery or cruelty.</li> <li>.3 Ensure there are no bars to the divorce (<i>Divorce Act</i>, s. 11).</li> <li>.4 Name as the respondent(s) the spouse and any other person against whom a claim for relief is made (e.g., name a corporation owned by a spouse if relief is sought against the company; name a person who holds assets or debts for a spouse; name a third-party parent from whom contribution to child support is sought, etc.). Where adultery is alleged, the person alleged to have committed adultery with a spouse is not to be set out in the pleading unless that person is made a party to the proceeding (SCFR, Rule 4-5(1)).</li> <li>.5 Ensure that particulars of marriage in the notice of family claim conform to particulars shown in the marriage certificate.</li> <li>.6 Set out all claims for relief (see item 1.6).</li> <li>.7 Review the notice of family claim with the client. Either the client or the lawyer may sign it.</li> <li>.8 Sign the lawyer’s certificates, required under <i>FLA</i>, ss. 8(2) and 197(1) and <i>Divorce Act</i>, s. 9(3), at the bottom of the appropriate SCFR form (F1, F3, F4, or F5). Have the client acknowledge in writing that there is no possibility of reconciliation.</li> <li>.9 If spouses are separately represented in a joint family law case, ensure that the other spouse’s lawyer also signs the lawyer’s certificates.</li> </ol> <p>2.4 If seeking to protect an interest in real property (registered in the name of the client, spouse, or another party):</p> <ol style="list-style-type: none"> <li>.1 Include in the notice of family claim a claim for a CPL.</li> </ol>					



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<p>.2 Prepare and register the CPL with (or immediately after filing) the notice of family claim. The claim can be filed without filing an original marriage certificate where a divorce is sought in an urgent situation, although the marriage certificate must be filed before seeking an order for divorce (SCFR, Rule 4-5(2)). Note the CPL must be filed in the Supreme Court and in the land title office.</p> <p>2.5 File the original notice of family claim (with copies) in the registry along with payment of the filing fee, if any. (Note SCFR, Appendix C, Schedule 1, s. 2(2). Complete Form F100 to waive fees if the parties attended mediation prior to filing.) File the Government of Canada “Registration of Divorce Proceeding” form (the schedule in the Central Registry of Divorce Proceedings Regulations, SOR/86-600 under the <i>Divorce Act</i>) and the marriage certificate or certified copy of registration of marriage (if unable to obtain either of the latter items, see SCFR, Rule 4-5(2)).</p> <p>2.6 Serve notice of family claim (if not a joint family law case):</p> <p>.1 Serve every respondent personally by leaving a filed copy of the notice of family claim, as issued, with him or her (SCFR, Rules 4-1(2) and 6-3(2)); this applies where the party is a minor of 16 or over who is acting without a litigation guardian (SCFR, Rule 20-2(1)). For infants under 16, see SCFR, Rule 6-3(2)(f). For mentally incompetent persons, see SCFR, Rule 6-3(2)(g).</p> <p>.2 The claimant must not serve the notice of family claim (SCFR, Rule 6-3(2)(a)).</p> <p>.3 Ensure that an affidavit of personal service is completed (SCFR, Rule 6-6(1) and Form F15) and shows the means by which the affiant identified the person served (note that service is deemed if the respondent files a response to family claim; see SCFR, Rule 6-6(1)(a)(ii)). If the affidavit of personal service does not have a photograph as an exhibit, it is insufficient for the server to affirm that the person admitted to being the proper person. There must be something further, such as production of a driver’s licence, although personal knowledge can be sufficient. If relying on a photograph, a second affidavit may be required providing evidence of personal knowledge of the identity of the individual in the photograph.</p> <p>.4 Where personal service cannot be effected, seek an order for alternative service under SCFR, Rule 6-4. Note that service must be completed within one year, or an extension must be sought (SCFR, Rule 4-2).</p> <p>.5 Diarize limitation period for response: 30 days after service of the notice of family claim (SCFR, Rule 4-3(1)).</p> <p>.6 Diarize date for providing financial statement in Form F8, if applicable (30 days from service of Form F3; see SCFR, Rule 5-1(11)).</p> <p>.7 Diarize date for providing list of documents in Form F20 (35 days after service of Form F4; see SCFR, Rule 9-1(1)).</p> <p>2.7 Notice of an agreement between spouses that relates to land (or a notice cancelling or postponing it) may be filed in the land title office under <i>FLA</i>, s. 99:</p>					

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<p>.1 Prepare a notice in the prescribed form and set out the full name and last known address of each spouse who is a party to the agreement, a description of the land to which the agreement relates, and the provisions of the agreement that relate to the land. File the notice in the land title office for the district in which the land described in the notice is located.</p> <p>.2 If seeking to cancel or postpone a notice, and the spouse or former spouse cannot be found after a reasonable search, unreasonably refuses to sign or file a cancellation notice, or is mentally incompetent, apply to the court (<i>FLA</i>, s. 101).</p> <p>2.8 A financing statement may be registered in the personal property registry (or registration may be discharged, or postponed) where a provision in an agreement between spouses relates to a manufactured home (<i>FLA</i>, s. 100):</p> <p>.1 Prepare a financing statement (or, if seeking to discharge or postpone a previous registration, prepare a financing change statement) in the prescribed form under the <i>Personal Property Security Act</i> (<i>FLA</i>, s. 100(3)), and submit it for registration at the personal property registry with the prescribed fees (<i>Personal Property Security Act</i>, s. 43).</p> <p>.2 If seeking to change a registration, and the spouse or former spouse cannot be found after a reasonable search, unreasonably refuses to register a change statement, or is mentally incompetent, apply to the court (<i>FLA</i>, s. 101).</p> <p>2.9 If applying to enforce custody, access, or parenting arrangements, set out in a written agreement pursuant to <i>FLA</i>, s. 44(3) or 148(2), file with the court signed copies of the written agreement and, if required, consents, before making the application to enforce.</p> <p>2.10 Consider whether expert evidence will be required (see item 6.15). Review the requirements of SCFR, Part 13.</p>					
<p><b>3. RESPONSE TO FAMILY CLAIM AND COUNTERCLAIM</b></p>					
<p>3.1 Consider response to family claim and counterclaim.</p> <p>.1 If opposing the notice of family claim, file a response to family claim in Form F4 and serve a copy on the claimant or claimant’s lawyer within 30 days (SCFR, Rule 4-3(1)). Service may be by ordinary service pursuant to SCFR, Rule 6-2(1).</p> <p>.2 If the respondent is seeking an order that the Supreme Court of B.C. does not have jurisdiction over the respondent or matters set out in the notice of family claim, the respondent may file a jurisdictional response in Form F78 and proceed in accordance with SCFR, Rule 18-2.</p> <p>.3 If seeking relief other than dismissal of the proceeding and costs, file a response to family claim and a counterclaim in Forms F4 and F5 and serve copies on the claimant or the claimant’s lawyer within the time period set out in SCFR, Rules 4-3(1) and 4-4(2). Note that the respondent may seek relief under the <i>FLA</i> or the <i>Divorce Act</i> in a counterclaim, even if the claimant did not seek the same relief.</p>					

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<p>.4 If seeking relief against the claimant and a person (corporation or other party) who is not already a party to the action, join that person as a respondent to counterclaim (SCFR, Rule 4-4(3)). The respondent by counterclaim must be served with a copy of the counterclaim and with a copy of the notice of family claim in accordance with SCFR, Rule 4-4(4).</p> <p>3.2 If opposing a counterclaim, the claimant (respondent by counterclaim) must file a response to counterclaim in Form F6, within 30 days after being served with the counterclaim (SCFR, Rule 4-4(5)).</p> <p>3.3 If the notice of family claim needs to be amended, ensure compliance with SCFR, Rule 8-1 regarding leave, service, and response.</p> <p>3.4 Diarize the limitation period for receiving a response to counterclaim from the claimant and any other party named as a respondent to the counterclaim; it must be filed and served within 30 days after service of counterclaim (SCFR, Rule 4-4(5)).</p> <p>3.5 Diarize the date for providing a financial statement in Form F8: for most proceedings, within 30 days of service of notice of family claim (see SCFR, Rule 5-1(11)).</p> <p>3.6 Diarize the date for providing a list of documents: within 35 days of service of the applicable response under SCFR, Rule 9-1(1).</p>					
<p><b>4. DISCOVERY PROCEDURES</b></p>					
<p>4.1 Prepare, file, and serve a financial statement in Form F8, if required (SCFR, Rule 5-1(2) to (7) and (10)), and obtain applicable income documents from the client (SCFR, Rule 5-1(9)). The claimant must file and serve a Form F8 and any applicable income documents within 30 days of serving the claim (SCFR, Rule 5-1(11)(a)). Alternatively, if the parties are in agreement, prepare and file an agreement on income in Form F9 (SCFR, Rule 5-1(8)). Review it carefully with the client before service.</p> <p>.1 Note that if a judicial case conference (“JCC”) is set, the parties must comply with the time limits specified in SCFR, Rule 7-1(8) to (11); see item 5.4 below.</p> <p>4.2 If the other party’s financial statement in Form F8 is not served, refer to SCFR, Rule 5-1(28) for options for relief.</p> <p>4.3 Consider demanding particulars of a Form F8 (SCFR, Rule 5-1(13)).</p> <p>4.4 Consider applying for an order to have the financial statement sealed (SCFR, Rule 5-1(30)). Consider the requirement to maintain confidentiality even without an order (SCFR, Rule 5-1(29)).</p> <p>4.5 Consider conducting a pre-trial examination of a witness under SCFR, Rule 9-4 or an examination for discovery of a party under SCFR, Rule 9-2(1).</p> <p>4.6 Serve a list of documents using Form F20 within 35 days of receiving a response to notice of family claim (SCFR, Rule 9-1(1)).</p> <p>.1 A respondent must provide a list of documents as well, 35 days from service of the response (SCFR, Rule 9-1(1)).</p> <p>.2 Consider demands for additional documents from the other party (SCFR, Rule 9-1(7) and (8)), and non-parties (SCFR, Rule 9-1(15)).</p>					

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<p>.3 If the other party’s list of documents appears incomplete or omits documents, consider demanding an amended list or, failing that, seeking a court order (see SCFR, Rule 9-1(7), (8), and (10)).</p> <p>4.7 Consider examinations for discovery.</p> <p>.1 Obtain instructions for setting dates.</p> <p>.2 Serve appointment in Form F21 at least seven days before the date for examinations for discovery and pay witness fees (see Appendix C, Schedule 3).</p> <p>.3 Note the restriction of discoveries to five hours except by consent or court order (SCFR, Rule 9-2(2)).</p> <p>.4 Follow SCFR, Rule 9-2(10) regarding the location of the examinations for discovery.</p> <p>.5 Ensure all relevant documents have been listed and that the lists are served prior to the examinations for discovery. See also SCFR, Rule 9-2(15) regarding production.</p> <p>4.8 Consider interrogatories (SCFR, Rule 9-3 and Form F22). Note interrogatories are now available only by consent or court order.</p>					
<p><b>5. JUDICIAL CASE CONFERENCE</b></p>					
<p>5.1 Consider whether to bring an application for interim relief. If so, file a notice of judicial case conference in Form F19 requesting a JCC (SCFR, Rule 7-1(1) and (7)).</p>					
<p>5.2 Consider whether application can be brought without a JCC (SCFR, Rule 7-1(3)) if it:</p> <p>.1 Seeks interim relief for protection of property (<i>FLA</i>, s. 91);</p> <p>.2 Is by consent;</p> <p>.3 Is brought without notice (i.e., for matters of urgency);</p> <p>.4 Is an application to change a final order or an agreement; or</p> <p>.5 Is an application to change determination of a parenting co-ordinator.</p>					
<p>5.3 Consider whether to bring an application to seek interim relief without having a JCC (SCFR, Rule 7-1(4) and (5)). The application is made by filing a requisition in Form F17 and a letter (SCFR, Rule 7-1(5)).</p>					
<p>5.4 If a party has requested a JCC, the requesting party must give at least 30 days’ notice of the JCC to the other parties, together with the Form F8 financial statement and any other applicable income documents (SCFR, Rule 7-1(8)).</p>					
<p>5.5 A party who has been served notice of a JCC must file and serve Form F8 at least seven days before the JCC (SCFR, Rule 7-1(10) and (11)).</p>					
<p>5.6 Consider seeking consent orders or procedural directions at the JCC. Consider preparing a draft court order containing the relief sought. Explain to the client what can and cannot be done at a JCC (see SCFR, Rule 7-1(15)).</p> <p>.1 Be prepared to set a trial management conference date, trial date, and other dates, if necessary.</p>					

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<p>.2 Obtain orders for further disclosure by a specified date.</p>					
<p><b>6. INTERIM RELIEF AND OTHER PRE-TRIAL PROCEEDINGS</b></p>					
<p>6.1 Consider an interim application for the following non-final orders and declarations:</p>					
<p>.1 Granting exclusive occupancy of the family residence (<i>FLA</i>, s. 90(2)(a)) or changing an order granting exclusive occupancy (<i>FLA</i>, s. 90(4)(b));</p>					
<p>.2 Granting exclusive use of all or part of the personal property at the family residence (<i>FLA</i>, s. 90(2)(b));</p>					
<p>.3 Postponing the rights of a spouse to apply for partition and sale, or to sell or otherwise dispose of or encumber property that is subject to a right of exclusive occupancy granted under s. 90(2) (<i>FLA</i>, s. 90(4)(a));</p>					
<p>.4 Preserving or delivering family assets or other property at issue (<i>FLA</i>, s. 91). Note the low threshold for obtaining such an order;</p>					
<p>.5 Preventing a spouse from entering premises while they are occupied by the other spouse or a child in the custody of that other spouse, where there is a risk of violence (<i>FLA</i>, s. 183(2) and (3)(a)(ii), and SCFR, Rule 15-1(1)(d.1) and (2)). Note that under SCFR, Rule 15-1(16.1), a protection order under <i>FLA</i>, s. 183 or a change of a protection order under s. 187 must be drawn up by the registrar unless the court otherwise orders;</p>					
<p>.6 Limiting or prohibiting communication between spouses (<i>FLA</i>, s. 183(3)(b), and SCFR, Rule 15-1(1)(d.1) and (2)). Note that under SCFR, Rule 15-1(16.1) such orders must be drawn up by the registrar unless the court otherwise orders;</p>					
<p>.7 Specifying parenting arrangements or restrictions (<i>FLA</i>, s. 45, 216, or 217, or <i>Divorce Act</i>, s. 16(2));</p>					
<p>.8 Providing child or spousal support (<i>FLA</i>, s. 149, 165, 216, or 217, or <i>Divorce Act</i>, s. 15.1(2));</p>					
<p>.9 Preventing removal of the child from a geographical area (<i>FLA</i>, s. 64(1)), or from B.C. when there is concern that the other spouse might leave with the child (<i>FLA</i>, s. 64(2));</p>					
<p>.10 Investigating a matter of concern (e.g., <i>FLA</i>, s. 211) (assessment of the needs of a child, views of a child, or ability and willingness of a party to satisfy the needs of a child; recommendations for guardianship and parenting arrangements; or, if claiming under the <i>Divorce Act</i>, a report on custody and access);</p>					
<p>.11 Interim distribution of property to fund family dispute resolution, proceedings under the <i>FLA</i>, or obtaining of evidence (including expert reports) (<i>FLA</i>, s. 89); or</p>					
<p>.12 Selling property (SCFR, Rule 15-8, and <i>FLA</i>, s. 97(2)(d)).</p>					
<p>6.2 Prepare the notice of application and affidavit evidence (see SCFR, Rules 10-4 and 10-5). Under SCFR, Rule 10-6(3), the notice of application must:</p>					
<p>.1 Not exceed 10 pages in length (not including any draft order attached to it);</p>					

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<p>.2 Set out the orders sought (or attach the draft);</p> <p>.3 Briefly summarize the factual basis of the application;</p> <p>.4 Set out authority and argument in support of the orders sought;</p> <p>.5 List the affidavits and other documents to be relied upon;</p> <p>.6 Provide the applicant’s time estimate (if more than two hours, the date and time is fixed by the registrar (SCFR, Rule 10-6(5)));</p> <p>.7 Set out the date and time of the hearing;</p> <p>.8 Set out the place for hearing; and</p> <p>.9 Provide the data required in the appendix to the form.</p> <p>6.3 Serve each of the parties and persons who may be affected (SCFR, Rule 10-6(6)):</p> <p>.1 Serve a copy of the filed notice of application.</p> <p>.2 Serve a copy of the filed version of each of the affidavits and documents referred to in the notice of application that have not already been served.</p> <p>.3 In a summary trial under SCFR, Rule 11-3, serve any notice required under SCFR, Rule 11-3(9) (SCFR, Rule 10-6(6)(c)).</p> <p>6.4 Comply with the timelines in SCFR, Rule 10-6 and prepare an application record in accordance with SCFR, Rule 10-6(14).</p> <p>6.5 A desk order may be sought as an alternative if notice of the application is not required, or if the parties are seeking a consent order. Prepare a requisition, a draft order, and affidavit evidence in support of the application (see SCFR, Rules 10-7 and 10-8).</p> <p>6.6 If making an application for interim support, ensure that a financial statement (Form F8) and attachments have been filed and served.</p> <p>6.7 For an urgent matter, consider whether to seek short leave to have the application heard pursuant to SCFR, Rule 10-9, using Form F17. Include an application under SCFR 7-1(4) to be relieved of JCC requirement, if applicable. For an urgent matter or where there is good reason not to serve the other party in advance, consider making an application without notice (see SCFR, Rule 10-9(6) to (8) and Form F75). Consider <i>BC Code</i> rule 5.1-1, commentary [6].</p> <p>6.8 If the court directs an inquiry to the registrar under SCFR, Rule 18-1(1):</p> <p>.1 Take out an appointment with the registrar (Form F55), first checking that the proposed date is available to all parties, counsel, and the registrar. If a date can be agreed to by all parties, get the appointment stamped and serve it on all parties (SCFR, Rule 18-1(6)). Diarize the date.</p> <p>.2 Arrange for a court reporter, if desired.</p> <p>.3 Prepare financial documentation.</p> <p>.4 Consider use of and subpoenas for witnesses.</p>					

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<p>.5 Apply to court for confirmation or variation of the report and its recommendations (SCFR, Rule 18-1(4)).</p> <p>.6 If the court directed that the result of an inquiry be certified, request a certificate and file it, making the result binding on the parties (SCFR, Rule 18-1(2), (8), and (9)).</p> <p>6.9 If the client needs immediate financial assistance pending the registrar’s hearing and confirmation of the registrar’s recommendations, consider bringing an application for “interim-interim” support by notice of application with an affidavit in support and a Form F8 financial statement, giving complete financial information about the applicant and any information respecting the financial circumstances of the opposing party.</p> <p>6.10 Consider whether to appeal the order.</p> <p>.1 Note the 14-day limitation period for filing notice of appeal in Form F98 from orders of a master, registrar, or special referee (SCFR, Rules 18-3 and 22-7(8) to (11)), and the 30-day limitation period for appealing an order of a judge under <i>Divorce Act</i>, s. 21(3) or the <i>FLA</i> (see s. 14(1)(a) of the <i>Court of Appeal Act</i>, R.S.B.C. 1996, c. 77, and Court of Appeal Rules, B.C. Reg. 297/2001). An appeal from a Provincial Court order must be made within 40 days (<i>FLA</i>, s. 233).</p> <p>.2 Note that there is no stay pending appeal of custody, guardianship, time with children, or support orders under SCFR, Rule 22-1(7), and orders generally under <i>FLA</i>, s. 234.</p> <p>.3 Leave to appeal will be required if the order is a limited appeal order, which includes interim orders and orders under <i>FLA</i>, s. 211 (<i>Court of Appeal Act</i>, s. 7, and Court of Appeal Rules, s. 2.1).</p> <p>6.11 Unless a court otherwise orders, you must set a trial management conference to take place at least 28 days before the trial date, at a date and time fixed by a registrar. Masters may conduct trial management conferences (SCFR, Rule 14-3(2)). Prepare and file a trial brief in Form F45 at least seven days prior to the trial management conference, unless the court otherwise orders. Serve the trial brief on other parties. Attendance by parties and counsel is mandatory, subject to SCFR, Rule 14-3(6). See also item 8.3.2.</p> <p>6.12 Consider seeking a judicial settlement conference, where appropriate (SCFR, Rule 7-2).</p> <p>6.13 Make or respond to any offer(s) to settle (SCFR, Rule 11-1):</p> <p>.1 Serve offer (see SCFR, Rule 11-1(1)) before trial to trigger the application of SCFR, Rule 11-1(4) and (5) to costs.</p> <p>.2 Consider whether to withdraw the offer before acceptance.</p> <p>.3 If in receipt of an offer, consider whether to accept.</p> <p>.4 Consider SCFR, Rule 11-1(4), (5), and (6) regarding costs on acceptance of offer.</p> <p>.5 Where accepted, consider whether the court should be asked to incorporate an accepted offer into an order or to take it into account in determining costs (see SCFR, Rule 11-1(6) for factors the court considers).</p>					

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<p>.6 Where the offer is not accepted, do not disclose the offer to the court until judgment (SCFR, Rule 11-1(2)); then consider whether the court should be asked to take it into account in determining costs (SCFR, Rule 11-1(4), (5), and (6)).</p> <p>6.14 Apply for a consent order, where appropriate, with the written consent of the person against whom the order is made (<i>FLA</i>, s. 219) with appropriate evidence in support (see SCFR, Rules 15-1(11) and 10-7(2)).</p> <p>6.15 If relying on expert evidence at trial, comply with SCFR, Rules 13-6 and 13-7.</p> <p>.1 Consider whether expert evidence is required, well in advance of the trial and possibly at the outset of a family action, as orders may be made at a JCC, a trial management conference, or an interim application.</p> <p>.2 An expert report that is to be introduced at trial must be served on all parties at least 84 days before the trial date, along with a written notice that it is served pursuant to SCFR, Rule 13-6. An expert report must include the certification required by SCFR, Rule 13-2(2) and set out the information required in SCFR, Rule 13-6(1).</p> <p>.3 A responding (i.e., rebuttal) report, if any, must be served at least 42 days before trial (SCFR, Rule 13-6(4)) with a written notice that it is served under SCFR, Rule 13-6. A responding report must include the certification required by SCFR, Rule 13-2(2) and set out the information required in SCFR, Rule 13-6(1).</p> <p>.4 Consider objecting to the other party’s expert report. An objection must be made at least 21 days before trial or the date of the trial management conference, whichever is earlier (SCFR, Rule 13-6(10)).</p> <p>.5 An expert may attend and give evidence at trial if a demand to cross-examine the expert was made (SCFR, Rule 13-7(3)). SCFR, Rule 13-7(5) sets out further restrictions on expert testimony and SCFR Rule 13-7(6) sets out the court’s jurisdiction to dispense with the requirements of the Rule.</p> <p>.6 If an expert’s opinion changes in a material way, a supplementary report of an expert may be prepared as soon as practicable and served on other parties pursuant to SCFR, Rule 13-6(5) and (6).</p> <p>.7 A person who is appointed by the court to prepare a parenting assessment under <i>FLA</i>, s. 211 must file a copy with the court and serve a filed copy on all parties at least 42 days before trial (SCFR, Rule 13-1(1)). That person does not attend at trial unless a party serves a notice to cross-examine in Form F43 on that person and all parties at least 28 days before the trial date (SCFR, Rule 13-1(2)).</p> <p>.8 SCFR, Rules 13-3 and 13-4 address jointly appointed experts and what parties must agree upon for the retainer of a joint expert. A joint expert report is mandatory if a party wishes to introduce certain expert evidence: (1) on any matter arising out of <i>FLA</i>, Parts 5 or 6; (2) on a claim for an interest in property based on unjust enrichment or trust claims; or (3) on a claim for compensation based on unjust enrichment (SCFR, Rule 13-3(1)). For other non-financial issues, parties have a choice of retaining an expert solely or jointly (SCFR, Rule 13-3(3)).</p>					



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<p>.9 The parties must have a written joint retainer agreement with an expert who is jointly retained (see SCFR, Rule 13-4(1) and (2)).</p> <p>.10 If the parties cannot agree as to the terms of the joint retainer in SCFR, Rule 13-4(1), either party may apply to court for an order (SCFR, Rules 10-5 and 13-4(3)). It appears that this option is available at a JCC as well (SCFR, Rule 7-1(15)(n), referring to SCFR, Rule 14-3(9)). SCFR, Rule 13-5 addresses the court's ability to appoint an expert itself, if appropriate in light of considerations in SCFR, Rule 13-5(5).</p> <p>.11 If a party wishes to introduce expert evidence on a financial issue as defined in SCFR, Rule 13-3(1), and does not wish to rely on a joint expert, the party may apply to court for leave (see SCFR, Rule 13-4(6) to (8)).</p> <p>.12 Advise the client to cooperate fully and make full and timely disclosure of all relevant information to the joint expert (SCFR, Rule 13-4(9)).</p> <p>6.16 Consider the need for either (or both) a report on parenting or the views of the child, and apply for an order if the parties do not consent (<i>FLA</i>, ss. 37(2)(b) and 211).</p> <p>6.17 Keep financial information, including the financial statement, up to date (SCFR, Rule 5-1(15) to (18)), and make ongoing production of documents (SCFR, Rule 9-1).</p> <p>6.18 Deliver a notice to produce at least two days before trial (SCFR, Rule 14-7(8)).</p> <p>6.19 Set the matter down for trial, filing the notice of trial, trial record, trial certificate, etc. Diarize relevant dates, including those set at a JCC.</p> <p>6.20 Consider delivery of notice to mediate, 90 days after the filing of the first response to family claim. Review Notice to Mediate (Family) Regulation, B.C. Reg. 296/2007. The notice may be used up to 90 days before the trial date, unless otherwise ordered by the court.</p>					
<p><b>7. APPLICATION FOR DESK-ORDER DIVORCE</b></p>					
<p>7.1 If bringing a joint family law case, or if the family claim is undefended, prepare documents for application for judgment (SCFR, Rules 1-1(1) and 10-10(1) to (5)) and file the following:</p> <p>.1 Requisition setting out the nature of the relief sought (SCFR, Rule 10-10(2)(a), Form F35).</p> <p>.2 Draft of the proposed order (SCFR, Rule 10-10(2)(b); Form F52).</p> <p>.3 Proof of service of notice of family claim or counterclaim (not necessary if SCFR, Rule 10-10(3) applies) (SCFR, Rule 10-10(2)(e)).</p> <p>.4 Proof that the action is undefended (SCFR, Rule 10-10(2)(c)).</p> <p>.5 Registrar's certificate that pleadings and proceedings are in order (SCFR, Rule 10-10(2)(d); Form F36).</p> <p>.6 Affidavit in Form F38 (SCFR, Rule 10-10(2)(g)), including:</p> <p>(a) Proof that will enable the court to comply with the <i>Divorce Act</i>, ss. 10 and 11 (SCFR, Rule 10-10(4)):</p> <p>(i) A statement that there is no prospect of reconciliation; and</p>					

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<p>(ii) A statement that there is no child of the marriage (or, if there is a child of the marriage, proof that reasonable arrangements have been made for support of the child and that those arrangements comply with the Federal Child Support Guidelines).</p> <p>(b) Proof of the ground for divorce. Where the proceeding is based on adultery, questions on interrogatories or discovery should include:</p> <p>(i) Whether the allegations of fact set out in the notice of family claim (and repeated to the respondent during discovery or in the interrogatories) are correct.</p> <p>(ii) Whether the respondent understands that adultery means sexual intercourse with another person who is not his or her spouse.</p> <p>(c) Whether, to the respondent’s knowledge, there has been collusion, connivance, or condonation (explained in plain language; see item 2.5 in the FAMILY PRACTICE INTERVIEW (D-1) checklist) in the presentation of the action.</p> <p>.7 Where an affidavit of a witness is relied on in corroboration or proof of an allegation of adultery or cruelty, it must be sworn on direct knowledge. Indicate the relationship of the deponent to the claimant, and describe the facts in the same detail as would be expected in viva voce evidence.</p> <p>.8 Child support affidavit, if appropriate, in Form F37 (SCFR, Rule 10-10(2)(f)). If guardianship is being sought an affidavit in Form F101.</p> <p>7.2 Advise the client that the court may direct him or her to appear before the court, or direct that oral or further evidence be presented before making an order for divorce (SCFR, Rule 10-10(5)).</p> <p>7.3 On obtaining the signed order, if being signed by opposing party or their counsel, submit it promptly for entry.</p> <p>7.4 Serve a copy of the entered order on the other party at the address for delivery or, if no address for delivery, mail a copy to the party’s last known address as soon as possible (SCFR, Rule 15-2(4)).</p> <p>7.5 Send the client a copy of the order.</p> <p>7.6 Send the client Canada Pension Plan division information (see the Service Canada website at <a href="http://www.servicecanada.gc.ca">www.servicecanada.gc.ca</a>), unless there will be no division by agreement. Note that if there is to be no division of CPP credits, there is very specific wording required pursuant to the <i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8, s. 55.2(3).</p> <p>7.7 Advise the client that he or she cannot marry until the effective date of the divorce as set out in the <i>Divorce Act</i>, s. 12 (where no appeal, 31 days after judgment).</p> <p>7.8 Advise the client of the effect of dissolution of a spousal relationship on a will (<i>WESA</i>, s. 56(2)).</p> <p>7.9 Diarize and advise client of the 30-day limitation period for appeal (<i>Divorce Act</i>, s. 21(3), <i>Court of Appeal Act</i>, s. 14(1)).</p>					

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<p>7.10 Determine if an appeal is desirable, and advise the client of possible outcomes. If so instructed, bring the appeal within 30 days of the order (<i>Divorce Act</i>, s. 21(3)). Refer to <i>Court of Appeal Act</i> and Court of Appeal Rules (<i>Divorce Act</i>, s. 21(6)).</p> <p>7.11 Prepare certificate of divorce in Form F56 (<i>Divorce Act</i>, s. 12(7); SCFR, Rule 15-2(3)). Submit it for entry, and obtain the original certificate of divorce for the client.</p>					
<p><b>8. TRIAL</b></p>					
<p>8.1 Consider whether a summary trial (SCFR, Rule 11-3) is appropriate. A summary trial application must be heard at least 42 days before the scheduled trial date. Comply with the requirements for evidence, notice of evidence, and service in SCFR, Rule 11-3.</p>					
<p>8.2 Review pleadings to ensure no amendments are required. Parties have the right to one amendment without consent from the opposing party or the court prior to a trial date being set.</p>					
<p>8.3 Set the family law case for trial:</p>					
<p>.1 Obtain trial date from registry, first checking that the proposed date is available for all parties and counsel (SCFR, Rule 14-2(2) and (3)). The trial date may also be set at the judicial case conference.</p>					
<p>.2 Attend a trial management conference at least 28 days before the trial date (SCFR, Rule 14-3). A trial management conference is mandatory unless otherwise ordered (SCFR, Rule 14-3(1)). Trial briefs must be filed at least seven days in advance of the conference (SCFR, Rule 14-3(3)). Masters may conduct trial conferences (SCFR, Rule 14-3(2)). Consider seeking orders under SCFR, Rule 14-3(9).</p>					
<p>.3 Prepare and file the notice of trial in Form F44, the trial record (not more than 28 days and not less than 14 days before trial date), and the certificate (formerly registrar’s certificate of pleadings) in Form F36, if required (SCFR, Rules 14-2(3) and 14-4(1), (3), and (5)).</p>					
<p>.4 Prepare any notice to admit and deliver to other parties of record (see Form F24 and SCFR, Rule 9-6).</p>					
<p>.5 Serve copies of the notice of trial promptly after filing (SCFR, Rule 14-2(5)) on all other parties of record. A party must object within 21 days if the party wishes the trial to be rescheduled (SCFR, Rule 14-2(6)).</p>					
<p>.6 The party who files a notice of trial must prepare and file the trial record in accordance with SCFR, Rule 14-4(1) at least 14 days but not more than 28 days before trial (SCFR, Rule 14-4(3)) and serve it promptly on other parties of record.</p>					
<p>.7 Each party should prepare a trial certificate in Form F46 (SCFR, Rule 14-5(1)) and file it at least 14 days but not more than 28 days before the scheduled trial date (SCFR, Rule 14-5(1) and (2)). Serve the trial certificate promptly on the other parties of record (SCFR, Rule 14-5(4)).</p>					
<p>.8 Update and serve the client’s financial statement (Form F8) between 28 and 63 days before trial and request an updated Form F8 from the other party (SCFR, Rule 5-1(18)).</p>					

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<p>8.4 Prepare the client for trial by discussing:</p> <ul style="list-style-type: none"> <li>.1 Who will attend and what will happen.</li> <li>.2 The judge’s obligation to inquire into the prospect of reconciliation (<i>Divorce Act</i>, s. 10) if a divorce is being sought.</li> <li>.3 Your examination of your client (including an explanation of terms such as collusion, connivance, and condonation, if a divorce is being sought), and questions on issues of corollary relief and all areas at issue in the proceedings.</li> <li>.4 Possible areas of cross-examination, with sample questions.</li> <li>.5 Discuss costs and obtain a retainer for preparation and trial. Confirm in writing that the engagement does not cover any appeal.</li> </ul> <p>8.5 Prepare other witnesses for trial. Consider obtaining signed witness statements.</p> <p>8.6 Trial.</p> <ul style="list-style-type: none"> <li>.1 For a divorce:           <ul style="list-style-type: none"> <li>(a) Ensure that the judge’s obligation to inquire into the prospect of reconciliation (<i>Divorce Act</i>, s. 10) has been met through testimony.</li> <li>(b) Produce a photograph of the respondent (attached to the affidavit of personal service), have the claimant identify it, and have it entered as an exhibit. If the matter was contested or a response to family claim or counterclaim was filed, this should not be required.</li> <li>(c) Conduct examination in chief, going through the notice of family claim and being sure to cover the grounds for divorce. For a divorce, be aware of the court’s duties under <i>Divorce Act</i>, s. 11, and SCFR, Rule 15-2(1) to satisfy itself of certain things and to refuse an order in certain circumstances.</li> <li>(d) In appropriate circumstances, request that the divorce take effect before the expiry of the 31-day period (<i>Divorce Act</i>, s. 12(2)):               <ul style="list-style-type: none"> <li>(i) Show that it is in the public interest (e.g., pregnancy).</li> <li>(ii) Get an undertaking that there will be no appeal.</li> </ul> </li> <li>(e) Have the client confirm the accuracy of the particulars of marriage set out in the marriage certificate.</li> </ul> </li> <li>.2 For all other relief:           <ul style="list-style-type: none"> <li>(a) Lead evidence through witnesses and documents to support all claims.</li> <li>(b) Tender expert report where appropriate (custody issues, valuation).</li> </ul> </li> </ul>					
<p><b>9. AFTER JUDGMENT</b></p> <p>The following is subject to the terms of any order or agreement:</p> <ul style="list-style-type: none"> <li>9.1 Prepare draft order for entry.</li> <li>9.2 Arrange for discharge of any mortgages and removal of any liens.</li> <li>9.3 Have the client sign a listing agreement for real property, if appropriate, and diarize its expiry date.</li> </ul>					

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<p>9.4 If not already done, either handle or advise client regarding:</p> <ul style="list-style-type: none"> <li>.1 Transfer of real property/timing of release of CPL.</li> <li>.2 Transfer of automobile.</li> <li>.3 Stock transfers/RRSP transfers/pension division or waiver forms and administration fees.</li> <li>.4 Bank account changes.</li> <li>.5 Credit card changes.</li> <li>.6 Insurance, RRSP, or pension beneficiary changes.</li> <li>.7 Assignment of interest in limited partnership or other company, corporate resolutions, etc.</li> <li>.8 Obtaining client's own medical insurance.</li> <li>.9 Share transfers with resignations as an officer or director, as appropriate.</li> <li>.10 Name change (pursuant to the <i>Name Act</i>, s. 5) (unless it was already sought as part of the divorce order).</li> <li>.11 Implementation of parenting arrangements, including appointment of parenting coordinator, if applicable.</li> <li>.12 Implementation of arrangements for paying support (e.g., Family Maintenance Enforcement Program).</li> </ul> <p>9.5 Make necessary arrangement for payments through court registry, if so instructed.</p> <p>9.6 Advise regarding the client's will, particularly the effect of <i>WESA</i>, s. 56(2). Also consider powers of attorney and representation agreements. Refer the client to a wills and estates lawyer to draft a new will, or if you are a wills and estates lawyer, draft a new will, if instructed.</p> <p>9.7 Consider enforcement. Note that the <i>FLA</i> significantly changes the methods of enforcement. The <i>Offence Act</i>, ss. 4 and 5 is inapplicable to the <i>FLA</i> (see <i>FLA</i>, s. 232). Some orders have specified enforcement mechanisms. If no specific enforcement mechanisms are provided, the general mechanism in <i>FLA</i>, s. 230 applies. Extraordinary remedies under <i>FLA</i>, s. 231 are available for all orders except protection orders, the remedies for which are under the <i>Criminal Code</i> (<i>FLA</i>, ss. 188 and 189).</p> <ul style="list-style-type: none"> <li>.1 General enforcement under the <i>FLA</i> is available where no other provision of the <i>FLA</i> is applicable to enforce an order (<i>FLA</i>, s. 230(1)): <ul style="list-style-type: none"> <li>(a) Security may be required, in any form (<i>FLA</i>, s. 230(2)(a));</li> <li>(b) A party may be ordered to pay the other party's expenses that were reasonably incurred from the party's non-compliance (<i>FLA</i>, s. 230(2)(b)(i)); or</li> <li>(c) A party may be ordered to pay up to \$5,000 to another party, spouse, or child affected by the party's non-compliance (<i>FLA</i>, s. 230(2)(b)(ii)).</li> </ul> </li> <li>.2 Extraordinary enforcement under the <i>FLA</i> includes imprisonment for up to 30 days (<i>FLA</i>, s. 231((2)), but: <ul style="list-style-type: none"> <li>(a) the court must be satisfied that no other remedy will secure compliance (<i>FLA</i>, s. 231(1)(b));</li> </ul> </li> </ul>					

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<p>(b) the party must be given an opportunity to explain his or her non-compliance (<i>FLA</i>, s. 231(3)(a)); and</p> <p>(c) imprisonment does not discharge an obligation existing under the breached order (<i>FLA</i>, s. 231(3)(c)).</p> <p>.3 Advise the client regarding methods of enforcement, such as:</p> <p>(a) Enforcement of a maintenance order through the <i>Family Maintenance Enforcement Act</i>, R.S.B.C. 1996, c. 127 (“<i>FMEA</i>”), which may include the use of a payment conference (<i>FMEA</i>, s. 12.1), a notice of attachment (<i>FMEA</i>, s. 15), garnishment (<i>FMEA</i>, s. 18), a default hearing (<i>FMEA</i>, s. 21), committal hearing (<i>FMEA</i>, s. 23), registration in the land title office (<i>FMEA</i>, s. 26), a lien registered against the debtor’s personal property (<i>FMEA</i>, s. 26.1), a warrant of execution (<i>FMEA</i>, s. 27), a notice to ICBC to not issue or renew the debtor’s driver’s licence (<i>FMEA</i>, s. 29.1), a restraining order (<i>FMEA</i>, s. 30), an order requiring security (<i>FMEA</i>, s. 30.1), or arrest of the absconding debtor (<i>FMEA</i>, s. 31).</p> <p>(b) Enforcement of parenting orders in reciprocating jurisdictions.</p> <p>(c) Enforcement of custody or access orders through Provincial Court (<i>FLA</i>, s. 195; PCFR, Rule 16(3)).</p> <p>(d) Enforcement of an order where parenting time or contact has been wrongfully denied through apprehension of the child (<i>FLA</i>, s. 231(4) and (5)).</p> <p>(e) Enforcement of parenting orders pursuant to the Convention on the Civil Aspects of International Child Abduction (<i>FLA</i>, s. 80).</p>					
<p><b>10. VARIATION PROCEEDING</b></p>					
<p>10.1 Ensure that the B.C. Supreme Court has jurisdiction (<i>Divorce Act</i>, s. 5, <i>FLA</i>, ss. 60, 192, and 215). With respect to support, see the <i>Interjurisdictional Support Orders Act</i>, S.B.C. 2002, c. 29.</p>					
<p>10.2 Determine the types of variation to be sought:</p>					
<p>.1 Support for a former spouse or children of the marriage (<i>Divorce Act</i>, s. 17(1)(a); <i>FLA</i>, ss. 152 and 167).</p>					
<p>.2 Custody of or access to children (<i>Divorce Act</i>, s. 17(1)(b)); parenting arrangements and contact (<i>FLA</i>, ss. 47 and 60).</p>					
<p>10.3 Where variation of a custody order made under the <i>Divorce Act</i> is sought by a person other than a former spouse, obtain leave to bring application (<i>Divorce Act</i>, s. 17(2); see SCFR, Rule 3-1(2.2) and (3) for procedure).</p>					
<p>10.4 Ensure there are grounds for variation (<i>Divorce Act</i>, s. 17(4), (4.1), (5) and (10); <i>FLA</i>, ss. 47, 60, 152, and 167; Federal Child Support Guidelines, s. 14, as adopted and amended by the Family Law Act Regulation, Part 4).</p>					
<p>10.5 Draft documents:</p>					
<p>.1 If there is no existing family law case in B.C. Supreme Court, consider procedural options: filing an agreement (<i>FLA</i>, ss. 44(3) and 148(2)); filing a charge (<i>FLA</i>, s. 99 and 100); starting a proceeding (SCFR, Rules 3-1(1) to (4), and 4-1(1)); petition under SCFR, Rule 17-1(2); <i>Interjurisdictional Support Orders Act</i>.</p>					

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<p>.2 Where an order was made by the British Columbia Supreme Court, prepare a notice of application in that proceeding (SCFR, Rule 3-1(4)).</p> <p>.3 Prepare the applicant’s affidavit and other affidavits in support, taking account of factors the court must consider under the <i>Divorce Act</i>, s. 17(4) to (10); <i>FLA</i>, ss. 47, 60, 152 and 167; and the Child Support Guidelines, s. 14).</p> <p>.4 Review affidavits with affiants, and have them sworn or affirmed.</p> <p>.5 Have client complete the financial statement (Form F8).</p> <p>.6 Comply with the requirements of SCFR, Rules 10-5 and 10-6 (i.e., serve notice of application in Form F31, application record, affidavits in support, etc.).</p> <p>10.6 File documents in court, along with filing fee, if required.</p> <p>10.7 Serve a copy of the notice of application or petition, together with copies of affidavits in support. The court may make a provisional variation order in respect of a support order without notice to, and in the absence of, a respondent who is ordinarily resident in another province (<i>Divorce Act</i>, s. 18(2); SCFR, Rule 15-3(1)); see the <i>Interjurisdictional Support Orders Act</i> for registration of support orders made under provincial jurisdiction.</p> <p>10.8 Attend the hearing and advise the client of the outcome. Have the client attend the hearing, if possible. If the court directs an inquiry to the registrar under SCFR, Rule 18-1, see item 6.8.</p> <p>10.9 Draft and enter the order (SCFR, Rule 15-1).</p> <p>10.10 Send the client a copy of the entered order and serve it on other parties.</p> <p>10.11 If a provisional order has been remitted back to British Columbia for further evidence, prepare and submit such further evidence (<i>Divorce Act</i>, s. 18(5) and (6)).</p>					
<p><b>11. PROCEEDINGS IN PROVINCIAL COURT</b></p>					
<p>11.1 Consider the jurisdiction of the Provincial Court under <i>FLA</i>, ss. 193, 194, and 195.</p>					
<p>11.2 Prepare application (PCFR, Rule 2(1) or (2); Form 1 or 2). Ensure that all claims for relief are set out, and review the application with the client.</p>					
<p>11.3 Prepare a financial statement in Form 4 and supporting material, if required (PCFR, Rule 4).</p>					
<p>11.4 Serve the application on the respondent personally. Service must be by an adult person other than the applicant (PCFR, Rule 2(3)). Include a blank reply in Form 3 (PCFR, Rule 2(4)), a blank financial statement in Form 4 if applying for support (PCFR, Rule 2(4)), and the applicant’s financial statement, if applicable (PCFR, Rule 4). Apply for an order for substituted service (PCFR, Rule 9(7)) if necessary.</p>					
<p>11.5 The respondent must file a reply in Form 3 (PCFR, Rule 3), which can also include a cross-application, a financial statement in Form 4, and supporting material, if applicable (PCFR, Rule 4).</p>					

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<p>11.6 If in a family justice registry (defined in PCFR, Rule 1(2), as Kelowna, Nanaimo, Surrey, or Vancouver (Robson Square)), obtain referral to a family justice counsellor before setting a date for a first appearance before a judge. Consider whether to seek an exemption from the referral in urgent and special circumstances (PCFR, Rule 5(8)). After meeting with a family justice counsellor, ask to appear before a judge (PCFR, Rule 5(5)) and complete a referral request in Form 6.</p> <p>11.7 If in the Abbotsford, Campbell River, Chilliwack, Courtney, Kamloops, Kelowna, Nanaimo, New Westminster, North Vancouver, Penticton, Port Coquitlam, Prince George, Richmond, Surrey, Vancouver (Robson Square), Vernon, or Victoria registry, file a certificate of attendance at the Parenting After Separation Program before the first court appearance. Consider whether the parties qualify for an exemption from attendance under PCFR, Rule 21(4), (5), (6), or (7).</p> <p>11.8 If a financial statement in Form 4 has not been received from the other party, and it is required, seek a court order (PCFR, Rule 12).</p> <p>11.9 Where appropriate, apply to have the proceedings joined, or to have the application stood down until other proceedings are determined (<i>FLA</i>, s. 194).</p> <p>11.10 Apply for an order that a non-party be given notice of the proceeding, or that notice be dispensed with (PCFR, Rule 20(5)).</p> <p>11.11 Apply for interim relief (<i>FLA</i>, s. 216; PCFR, Rule 12). If evidence is to be given by affidavit, seek the permission of a judge (PCFR, Rule 13(3), unless the interim order is for guardianship (PCFR, Rule 18.1), in which case the affidavit form and procedures are prescribed by the Rule).</p> <p>11.12 If parenting arrangements or guardianship are contested, a family case conference may be ordered (PCFR, Rule 7). In any matter, if trial is necessary, the court may order a trial preparation conference (PCFR, Rule 8).</p> <p>11.13 Apply for the direction of the court before or during trial, on a matter of practice or procedure, where appropriate (PCFR, Rules 12 and 20(8)).</p> <p>11.14 Apply for a consent order, where appropriate (PCFR, Rule 14).</p> <p>11.15 If the respondent fails to appear in court as directed by a judge or in response to a summons or notice (PCFR, Rule 6(10)), ask the court to do one of the following:</p> <ol style="list-style-type: none"> <li>.1 Issue a summons.</li> <li>.2 Issue a warrant.</li> <li>.3 Make an interim order under <i>FLA</i>, s. 216 or 217.</li> <li>.4 Make a final order.</li> <li>.5 Impute income or hear submissions for support purposes.</li> <li>.6 Draw an inference that the respondent consents to orders sought.</li> </ol>					
<p><b>12. CLOSING THE FILE</b></p>					
<p>12.1 Send a final reporting letter to the client with a final account. Advise the client of any relevant limitation periods, such as for division of credits under the Canada Pension Plan. File notice of intention to act in person (SCFR, Rule 21-4(1); Form F88), if appropriate in the circumstances.</p>					



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<p>12.2 Close the file, and return original documents to the client, if required. Ask for acknowledgement of receipt. Advise the client to keep the originals safe (e.g., in a safety deposit box).</p> <p>12.3 For guidance, see <i>Closed Files—Retention and Disposition</i>, July 2015, Appendix B: suggested minimum retention and disposition schedule for specific documents and files (e.g., six years after pension payments begin; otherwise, 10 years after agreement, except where minors are involved).</p>					