

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;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. It is designed for counsel representing the creditor. In many instances, the checklist will also assist counsel representing a debtor. See items 6.6 and 8.14 for special considerations when representing a debtor. The checklist refers to proceedings in Supreme Court. The basic procedures are similar in the Small Claims Division of the Provincial Court, but you should refer to the <i>Small Claims Act</i>, R.S.B.C. 1996, c. 430, and Small Claims Rules, B.C. 261/93, and to the <i>Provincial Court Small Claims Handbook</i> (CLEBC, 1997–) for details of the requirements. This checklist is current to September 1, 2018.</p> <p>Foreign judgments. This checklist includes reference to the registration and enforcement of foreign judgments, notably under the <i>Court Order Enforcement Act</i>, R.S.B.C. 1996, c. 78 (the “COEA”). Counsel representing the holder of a foreign judgment should refer to items marked FJ, and in particular to item 7 of this checklist.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Change in when limitation period begins to run. In <i>Leatherman v. 0969708 BC Ltd.</i>, 2018 BCCA 33, the Court of Appeal found that, where a security is enforceable on default, the limitation period under which a lender can realize on its security begins on the date of the first default. Lenders and their counsel must ensure that defaults are cured or proceedings are commenced within two years of the first default in order to preserve the right to enforce their security. • Increase in monetary limit of Small Claims Court. The monetary limit for civil cases heard in Provincial Court is now \$35,000 (Small Claims Court Monetary Limit Regulation, B.C. Reg. 179/2005, amended by B.C. Reg. 120/2017, Sch. 1). Under the Small Claims Rules, B.C. Reg. 261/93, amended pursuant to B.C. Reg. 120/2017, claims filed in Provincial Court before June 1, 2017, may be amended to increase the amount of the claim or counterclaim (Rules 8(2), (7), (8), and (9)). Claims filed in B.C. Supreme Court before June 1, 2017, for amounts between \$25,000 and \$35,000 will proceed in Supreme Court unless one of the parties applies to have the matter transferred to Provincial Court. • Civil Resolution Tribunal (the “CRT”). The <i>Civil Resolution Tribunal Act</i>, S.B.C. 2012, c. 25 (the “CRT Act”), Civil Resolution Tribunal Small Claims Regulation, B.C. Reg. 111/2017, and Civil Resolution Tribunal Rules govern the CRT process. The CRT will resolve certain small claims disputes up to \$5,000 and strata property disputes of any amount. Section 3.1 of the <i>CRT Act</i> enumerates the types of claims the CRT does and does not have jurisdiction to hear. • CRT’s effect on Small Claims Court. The Provincial Court will hear cases within the CRT’s monetary jurisdiction where: (1) the CRT refuses to resolve the claim (<i>CRT Act</i>, s. 11); (2) a judge orders that the CRT not adjudicate the matter (<i>CRT Act</i>, ss. 12.1 and 12.3); (3) a party files a notice of objection to a CRT decision (<i>CRT Act</i>, ss. 56.1 to 56.4); or (4) a party asks to have a CRT order enforced in Provincial Court (<i>CRT Act</i>, s. 58). Claims for less than \$5,000 filed in Provincial Court prior to June 1, 2017, will continue to be heard in Provincial Court. 					

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<ul style="list-style-type: none"> • Solicitor-client privilege. Two Court of Appeal decisions from recent years have addressed solicitor-client privilege, which is a substantive right; there must be “clearly defined circumstances” to dispel the near absolute protection of solicitor-client privilege: <i>British Columbia (Attorney General) v. Lee</i>, 2017 BCCA 219 (leave to appeal dismissed with costs, 2017 CanLII 84240 (SCC)), and <i>Soprema Inc. v. Wolrige Mahon LLP</i>, 2016 BCCA 471. • Discretion to reopen a matter not “unfettered”. In <i>Hansra v. Hansra</i>, 2017 BCCA 199, the Court of Appeal held it is time to jettison the word “unfettered” when describing the discretion of a trial judge to reopen a matter before entry of the order. The discretion to reopen is, in fact, fettered, in the sense that it must be exercised “ ‘judicially’, in a principled and consistent way”. • Practice Directions <ul style="list-style-type: none"> • Court of Appeal—Commencing an appeal when uncertain leave to appeal is required. Effective May 8, 2017, the Court of Appeal no longer considers applications for directions as to whether leave to appeal is required. If uncertain, the party should file a notice of application for leave to appeal and seek leave. If leave is not required, the presiding justice may order that the application for leave stand as the notice of appeal along with any necessary extension of time. • Supreme Court—Restoration of dissolved societies and companies. PD-52 and PD-53 describe the process for applying to court for the restoration of dissolved societies and companies. • Supreme Court—Standard directions for appeals from decisions of masters, registrars, or special referees. PD-54 sets out standard directions governing the conduct of appeals from decisions of masters, registrars, or special referees pursuant to Rule 23-6(8) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 (the “SCCR Rules”). • Supreme Court—Cover page requirements. Pursuant to AN-14, external page covers for application records, petition records, case plan proposals, notices of judicial case conferences, and other written submissions must set out: the style of proceedings; court file number and registry; a brief description of the nature of the material; contact information for counsel or the parties; and other prescribed information. • Provincial Court—Affidavits. Practice Direction GEN 03 requires that in all affidavits filed in Provincial Court, the jurat or certification must contain the typed, stamped, or legibly printed name of the counsel or commissioner before whom the affidavit was sworn. • Law Society Rules <ul style="list-style-type: none"> • Juricert password. 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). • Temporary articulated student restrictions. Temporary articulated students are restricted from making certain appearances in Supreme Court, but not Provincial Court (Law Society Rule 2-71(2)). • Electronic transfer of trust funds. 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 trustaccounting@lsbc.org or 604.697.5810. 					

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<ul style="list-style-type: none"> • Client identification and verification. 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. • The Law Society Rules are published at www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules. • Supreme Court practice <ul style="list-style-type: none"> • Model Orders. PD-47 prescribes the use of model forms of orders, including preservation of assets and receiverships. See www.courts.gov.bc.ca/supreme_court/practice_and_procedure/model_orders.aspx. • Masters’ jurisdiction. PD-50 sets out the matters in respect of which a master is not to exercise jurisdiction and provides guidelines for the assistance of the profession and the public. <p>Of note:</p> <ul style="list-style-type: none"> • Fraud prevention. 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 www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention. • Searches of lawyers’ electronic devices at borders. 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 to the documents. View the Minister’s letter and Law Society’s response at www.lawsociety.bc.ca/our-initiatives/rule-of-law/issues-that-affect-the-rule-of-law. 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>. • Aboriginal law. Real or personal property of a “band” or “Indian” (as defined by the <i>Indian Act</i>, R.S.C. 1985, c. I-5) is protected under <i>Indian Act</i>, ss. 89 and 90, if situated on reserve lands. Typically, such property is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress, or execution in favour of any person other than an Indian or a band. If the creditor is an Indian or band, the <i>Indian Act</i> protections do not apply. Note that a leasehold interest in designated land is not protected, nor is personal property sold under conditional sales agreements: see s. 89(1.1) and (2). In addition to <i>Indian Act</i> considerations, some Indian bands or First Nation entities have entered into treaties or have special land-tenure agreements in place that may affect collection efforts against personal and real property. Also, there may be special agreements in place for individual Indians to opt out of treaties or reserve tenures (for example, in the Treaty 8 area). 					

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<p>If collection efforts are to be made against band or Indian assets on reserve lands (including funds in a financial institution), reserve lands, or lands subject to a treaty, consider seeking advice from a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page in the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.</p> <ul style="list-style-type: none"> • Additional resources. For further information about collections procedures, see <i>British Columbia Creditors’ Remedies—An Annotated Guide</i> (CLEBC, 2001–); <i>Creditors’ Remedies—2014</i>, course materials (CLEBC, 2014); <i>Bankruptcy and Insolvency—2014</i>, course materials (CLEBC, 2014); <i>British Columbia Personal Property Security Act Practice Manual</i> (CLEBC, 1995–); <i>Practice Before the Registrar</i> (CLEBC, 1992–); <i>Provincial Court Small Claims Handbook</i> (CLEBC, 1997–); and <i>Supreme Court Chambers Orders—Annotated</i>, 2nd ed. (CLEBC, 1995–). <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Consult with Client and Obtain Instructions 3. Follow-up from Initial Interview 4. Commence Proceedings 5. Pre-judgment Garnishment 6. Proceed to Judgment 7. Registration of a Foreign Judgment 8. Enforcement of Judgment 9. Close File <p style="text-align: center;">CHECKLIST</p> <ol style="list-style-type: none"> 1. INITIAL CONTACT <ol style="list-style-type: none"> 1.1 Consider Law Society Rules 3-98 to 3-109 on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. If you have not done work for the client before, you should arrange an initial interview to meet the client in person. Be aware of Law Society “Fraud Alerts” concerning debt collection scams (available at www.lawsociety.bc.ca). Determine to your satisfaction the legal capacity of the client. Be aware of mortgage company requirements for ID (two pieces of ID required; one must be picture ID). 1.2 Ask the client to bring originals of all documents that evidence the debt, including: invoices, statements of account, promissory notes, guarantees, or other contracts. Also obtain copies of all correspondence between your client and the debtor: demands for payment, settlement letters, and copies of any cheques given by the debtor in payment. Ask for internal memoranda and notes to file, if any. 1.3 Find out when the cause of action arose. Consult the <i>Limitation Act</i>, s. 30 (transition rules) to determine whether the former <i>Limitation Act</i> or the current Act applies to the claim. The former Act applies to a claim based on an act or omission that took place before June 1, 2013. 					

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<p>1.4 Diarize relevant dates, such as:</p> <p>.1 Limitation period:</p> <p>(a) If the current <i>Limitation Act</i> applies, basic two-year limitation period (s. 6), starting from the time that the claim is “discovered” (as set out in s. 8). For “demand” obligations, under s. 14, the claim is “discovered” on the first day that there is a failure to perform the obligation after a demand for performance has been made. Consider whether or not the obligation is a “demand” obligation by reviewing the terms of the credit agreement.</p> <p>(b) If the former <i>Limitation Act</i> applies, general six-year limitation period (see s. 3(5) and (6) for actions in debt; for exceptions, see s. 3(4)).</p> <p>.2 Ten-year limitation period for action on a judgment for payment of money (<i>Limitation Act</i>, ss. 7 and 11; former <i>Limitation Act</i>, s. 3(3)).</p> <p>FJ .3 Ten-year limitation period for registration of a foreign judgment (<i>COEA</i>, s. 29(1)). Ten-year limitation period for registration of extraprovincial Canadian judgments (<i>Enforcement of Canadian Judgments and Decrees Act</i>, S.B.C. 2003, c. 29, s. 5(1)).</p> <p>1.5 If legal assistants will carry out any steps in the collections process, consider the limits imposed by the <i>Code of Professional Conduct for British Columbia</i> (the “<i>BC Code</i>”), Chapter 6 and Appendix E (Supervision of Paralegals).</p>					
<p>2. CONSULT WITH CLIENT AND OBTAIN INSTRUCTIONS</p> <p>2.1 Ensure that there is no conflict of interest or potential conflict of interest (e.g., that no conflict exists among multiple clients; the firm does not act for, or has not acted for, potential opposing parties (or if such a party is a corporation, for its directors, shareholders, or related corporations); and that regular clients of the firm are not likely to be brought into the action through third-party proceedings, or otherwise). See also <i>BC Code</i>, s. 3.4 (Conflicts); also see the model conflicts of interest checklist at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-conflicts.pdf.</p> <p>2.2 Advise the client regarding how your account is calculated, how and when payment should be made, and the conditions on which you undertake to act. Explain generally the procedure in obtaining judgment. Explain the potential difficulties faced by an unsecured creditor when enforcing a judgment.</p> <p>2.3 Determine the client’s objectives.</p> <p>2.4 Collect information from the client (consider using a standard form instruction sheet for regular clients):</p> <p>.1 Client name (including actual name of legal entity), address, telephone numbers, occupation, age, and contact person.</p> <p>.2 For each debtor:</p> <p>(a) Name, address, telephone numbers, and name of lawyer, if any. If the debtor has moved recently or shows a post-office box for an address, obtain as much information as possible to assist in locating the debtor or arranging substituted service.</p>					

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<p>(b) Age, marital status, spouse’s name, and whether there has been a separation triggering s. 81 of the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (“<i>FLA</i>”), which provides for equal division of family property and equal assumption of responsibility for family debt. Unless the spouses otherwise agree, the provisions of the now-repealed <i>Family Relations Act</i> (the “<i>FRA</i>”) apply in regard to proceedings concerning a property division agreement made before the <i>FLA</i> came into force or to proceedings for property division commenced under the <i>Family Relations Act</i>.</p> <p>(c) Occupation, employer, pay dates (if known).</p> <p>(d) Bank.</p> <p>(e) Land owned (mortgages, duplicate certificate of title).</p> <p>(f) Car.</p> <p>(g) Other assets.</p> <p>(h) For corporate debtors, do a company search for the business name.</p> <p>(i) Consider obtaining a credit report from a credit reporting agency, but note that consent of the debtor must be obtained (see <i>Business Practices and Consumer Protection Act</i>, S.B.C. 2004, c. 2, s. 107).</p> <p>(j) Consider the practical issues of enforcement of a judgment. Specifically, are there assets available to satisfy any judgment that may be obtained, or is the debtor insolvent for the purpose of the <i>Bankruptcy and Insolvency Act</i>, R.S.C. 1985, c. B-3? Refer to the course materials <i>Creditors’ Remedies—2012</i> (CLEBC, 2012), for options.</p> <p>3 Details of the transaction or events that gave rise to the debt or claim including:</p> <p>(a) Nature of the transaction (e.g., promissory note, cheque, credit card, contract, goods sold and delivered, work, and materials).</p> <p>(b) All parties involved (e.g., guarantors).</p> <p>(c) Where and when the events occurred.</p> <p>(d) Details regarding the default, including when the debt was due.</p> <p>(e) Amount of the debt presently outstanding, including principal and interest (simple or compounding—if compounding, on what date).</p> <p>(f) Whether there was an agreement to pay interest and, if so, whether it was in writing and the rate was agreed upon. If possible, obtain an account history.</p> <p>(g) Whether a demand has been made, if so, when, and in what manner. Whether there was any response to the demand.</p> <p>(h) Any agreements to postpone payment, not enforce security, or not pursue guarantees. Verify the exact date the debt became due.</p> <p>(i) Security for the debt (e.g., guarantee, security agreement, general security agreement). Review for seize-or-sue complications. Confirm perfection or request particulars of registration and/or notices of same, as may be applicable.</p>					

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<p>FJ</p> <p>.4 For the enforcement of a foreign judgment, determine if the judgment is from (a) another Canadian province or territory or (b) a reciprocating state.</p> <p>(a) If the judgment is from another Canadian province or territory, obtain a certified copy of the judgment from the originating court and have it recognized in British Columbia by filing the certified copy with a requisition for that purpose under the <i>Enforcement of Canadian Judgments and Decrees Act</i>, s. 3. The judgment will then be assigned a B.C. Supreme Court action number for enforcement purposes.</p> <p>(b) If it is a judgment from a reciprocating state, determine if there are any reasons why it might be denied registration, such as service issues. Review Rule 19-3 and the <i>COEA</i>, Part 2. Then obtain a certificate of judgment from the court of originating jurisdiction and details of the foreign judgment, including style of cause, date, court, place, and substance of the judgment. Ensure the judgment is final and conclusive. Obtain details of the method of service in the foreign jurisdiction and whether the defendant entered an appearance to the foreign action. Obtain all other information required under Rule 19-3(3) for the affidavit in support of the application for registration of a reciprocally enforceable judgment.</p> <p>.5 Obtain as much other information as possible to assist in execution should the judgment be granted.</p> <p>2.5 Review documents, checking facts and checking for details such as:</p> <p>.1 The proper description of the debtor and the appropriate designation of corporate debtors (e.g., “Ltd.”, “Inc.”, “Corp.”, etc.).</p> <p>.2 If a contract was signed by an infant, whether the contract is enforceable or whether there is a guarantor (<i>Infants Act</i>, R.S.B.C. 1996, c. 223, ss. 19 to 21).</p> <p>.3 Compliance of interest rates with rate and disclosure laws (<i>Interest Act</i>, R.S.C. 1985, c. I-15; <i>Court Order Interest Act</i>, R.S.B.C. 1996, c. 79; <i>Criminal Code</i>, R.S.C. 1985, c. C-46; <i>Business Practices and Consumer Protection Act</i>).</p> <p>.4 Whether an executed contract meets the requirements of the <i>Business Practices and Consumer Protection Act</i>.</p> <p>.5 The possible applicability of the law of another jurisdiction.</p> <p>2.6 Consider and discuss possible defences, including:</p> <p>.1 Provisions of the <i>Fraudulent Preference Act</i>, R.S.B.C. 1996, c. 164; or <i>Fraudulent Conveyance Act</i>, R.S.B.C. 1996, c. 163.</p> <p>.2 Common-law defences, such as: no consideration, <i>non est factum</i>, unconscionability, penalty clause, mistake.</p> <p>.3 Acceptance of part performance in satisfaction of the obligation (<i>Law and Equity Act</i>, R.S.B.C. 1996, c. 253, s. 43).</p>					

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FJ	<p>4 For enforcement of a foreign judgment, whether conflict of laws rules and principles, and any common law or statutory defences, might apply (e.g., defences to an action on a foreign judgment and to registration of a foreign judgment). Consider whether the judgment is registrable (<i>COEA</i>, and see item 2.4.4). A recognition can be made of a monetary award, or a declaratory or mandatory/injunctive order.</p> <p>(a) Where the judgment provides for payment of money and also for other matters, advise the client that it can only be registered under <i>COEA</i>, s. 29(8) for payment of money.</p> <p>2.7 Consider the relevant facts and law, and give the client a preliminary opinion as to whether there is a cause of action.</p> <p>2.8 Where appropriate, discuss the collection process and the steps you will be taking, the expected time and cost, and any alternatives. Discuss settlement and the risks of litigation. <i>BC Code</i> rule 3.2-4 requires lawyers to encourage compromise or settlement on a reasonable basis where possible. Discuss the provisions of Part 7 of the <i>Business Practices and Consumer Protection Act</i> regarding unreasonable collection practices.</p> <p>2.9 Where there is a security agreement over consumer goods, discuss the seizure-or-sue provisions of the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359 or any corresponding legislation in the relevant jurisdiction.</p> <p>2.10 Consider whether to issue a notice of intention to enforce security under the <i>Bankruptcy and Insolvency Act</i>, s. 244(1).</p> <p>.1 Consider whether to appoint an interim receiver under the <i>Bankruptcy and Insolvency Act</i>, s. 47, to preserve and protect assets pending the expiry of the 10-day notice period under s. 244(2). An order under s. 47 is “interim” only and expires upon appointment of a receiver under s. 243, or expiry of 30 days (s. 47(1)(c)). It is only intended to preserve and protect assets, and not for the operation of any business undertakings.</p>					
FJ	<p>2.11 For enforcement of a foreign judgment, consider the client’s options:</p> <p>.1 Suing on the original cause of action.</p> <p>.2 Bringing an action on the foreign judgment.</p> <p>.3 Applying for registration of the judgment in British Columbia, then having it enforced as a domestic judgment.</p>					
FJ	<p>2.12 For a client who is being sued in a foreign jurisdiction, consider carefully the impact of <i>Morguard Investments v. De Savoye</i>, [1990] 3 S.C.R. 1077 and <i>Beals v. Saldanha</i>, 2003 SCC 72 on registration of a foreign judgment. Consider also the <i>Enforcement of Canadian Judgments and Decrees Act</i>.</p> <p>2.13 Obtain a retainer and instructions defining the extent of your authority. In the case of a new corporate client, consider obtaining a directors’ resolution confirming the conditions of the retainer and setting out who will give instructions and to whom you will report. If you will act under a “limited scope retainer” (a defined term in the <i>BC Code</i>), ensure that the client understands the nature, extent, and scope of the services that will be provided and the limits and risks associated with the limited services provided. Confirm the understanding, where reasonably possible, in writing.</p> <p>2.14 Ask the client to provide you with any other documentary evidence that is relevant, and diarize to ensure receipt.</p>					

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<p>3. FOLLOW-UP FROM INITIAL INTERVIEW</p> <p>3.1 Send a letter to the client confirming the retainer, 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. See <i>Legal Profession Act</i>, S.B.C. 1998, c. 9, Part 8 (Lawyers’ Fees); Law Society Rules, Part 8 (Lawyers’ Fees); and <i>BC Code</i>, s. 3.6 (Fees and Disbursements). Note there are requirements in the <i>Legal Profession Act</i> (ss. 64 to 68), the Law Society Rules (8-1 to 8-4), and the <i>BC Code</i> (rule 3.6-2) specifically concerning contingency fee agreements. See commentary [1] to <i>BC Code</i> 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>3.2 Open file: note relevant dates, including any limitation dates, and place this checklist in the file. Confirm compliance with the Law Society Rules on client identification and verification (as in item 1.1).</p> <p>3.3 Conduct searches and obtain copies of documents, as required for both the debtor’s name—and if there has been a separation under the <i>Family Law Act</i>, or a triggering event under s. 56 of the now-repealed <i>Family Relations Act</i> in respect of proceedings concerning a property division agreement made before the <i>Family Law Act</i> came into force (March 18, 2013) or proceedings for property division commenced under the <i>FRA</i>—the debtor’s spouse’s name.</p> <p>.1 Company searches for all corporate parties, checking back to the time when the events giving rise to the action occurred:</p> <ul style="list-style-type: none"> (a) Name. (b) Registered and records offices. (c) Identity and addresses of directors and officers. (d) Good standing. <p>.2 Land title search on the debtor’s addresses (PIDs for land title office (“LTO”) searches can be obtained by doing an address search on the BC Assessment website) and any other property the debtor may have an interest in. Search by the debtor’s name to see if there are any other real property holdings.</p> <ul style="list-style-type: none"> (a) Some jurisdictions, such as Alberta, do not allow searches by owner name. If the debtor might have property in another jurisdiction, consider retaining a local agent to conduct searches and, pending those results, consider commencing action where exigible assets are located. <p>.3 Credit Bureau or court registry searches for other actions. Credit Bureau searches of individuals may only be done pre-judgment if consent is given.</p> <p>.4 Office of the Superintendent of Bankruptcy (“OSB”) (an agency of Industry Canada). If proceedings have been commenced, an automatic stay will apply to all other actions, subject to leave of the court. OSB searches also now disclose proceedings under the <i>Companies’ Creditors Arrangement Act</i>, R.S.C. 1985, c. C-36. If an “initial order” has been pronounced in such proceedings, review the order as to any stay of proceedings.</p>					

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<p>(a) If an assignment or a notice of intention to file a proposal has been filed, contact the trustee and obtain a creditor's package, then file proof of claim. (Consider whether to seek leave to bring or continue an action, such as if insurance proceeds are available, or whether you should be claiming as an unsecured creditor in the estate.)</p> <p>(b) If there is a potential trust claim, special rules apply to claim a right in property, with specific timing requirements. You may wish to consult a lawyer who is familiar with insolvency.</p> <p>.5 Personal property registry. Ensure all security is properly perfected before demanding or taking any steps to enforce.</p> <p>.6 Bank search, if the client has account particulars. You must have an arrangement with a bank to conduct such inquiries.</p> <p>.7 Note that you can no longer conduct a name search at the Vehicle Records Department of ICBC before obtaining judgment.</p> <p>FJ .8 With respect to enforcement of a foreign judgment, obtain a certified copy of the foreign judgment under the seal of the foreign court (see item 7.1.3). If you will be applying without notice for registration, unless it is a Canadian judgment being registered under the <i>Enforcement of Canadian Judgments and Decrees Act</i>, you must also obtain a Schedule 2 certificate (see item 7.1.4).</p> <p>3.4 Collect and verify facts.</p> <p>3.5 Determine whether there are any conditions precedent to action, such as: contractual conditions precedent, need for consent to sue, assignment of cause of action, giving of notice, demand being made in writing, notice under the <i>Farm Debt Mediation Act</i>, S.C. 1997, c. 21, if applicable. Ensure that these conditions are met.</p> <p>3.6 Send demand letters to the debtor, if the client did not and has instructed you to do so. Consider time to be given to meet demand and reasonableness of that, including requirement of at least 10 days if also giving notice of intention to enforce security, and such other notice that may be required including under the <i>Farm Debt Mediation Act</i>. If the debtor is unrepresented, consider the requirements of <i>BC Code</i> rule 7.2-9. Note particular addresses for delivery/notice in the debt instruments, which may differ from the business/residential addresses, or in the case of a corporation, the registered and records office. In such cases, the prudent course is to deliver demands to both addresses. Diarize the expiry date. Include notice that all necessary credit bureau and other searches will be conducted. Consider taking immediate legal action, without a demand letter, if circumstances warrant. If making a demand, consider the limits imposed by <i>BC Code</i> rule 7.2-4 (which prohibits communication in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer); rules 7.2-6, 7.2-6.1, and 7.2-8 (which prohibit approaching a represented person without the opposing counsel's consent); and rule 3.2-5 (which prohibits threatening criminal or disciplinary proceedings for the collateral purpose of obtaining a benefit for the client).</p> <p>3.7 If necessary, discuss the desirability of hiring a skip tracer with your client.</p>					

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<p>3.8 Discuss settlement with the debtor. Confirm instructions in writing before agreeing to a settlement. Consider any settlement on forbearance terms, and implications of the <i>Bankruptcy and Insolvency Act</i> to ensure that full indebtedness can be claimed in a bankruptcy should settlement terms not be met.</p> <p>3.9 Take steps to realize on any security. Consider seize or sue difficulties. Review the terms of the security agreement and consider any relevant provincial or federal legislation (e.g., <i>Personal Property Security Act</i>) before seizing collateral. Consider notice requirements under the <i>Bankruptcy and Insolvency Act</i>, s. 244.</p> <p>3.10 If filing a builders lien, refer to the BUILDERS LIEN PROCEDURE (E-6) checklist.</p> <p>3.11 Where the debtor is already subject to judgment enforcement under a writ of execution, consider making a claim under the <i>Creditor Assistance Act</i>, R.S.B.C. 1996, c. 83, s. 6.</p> <p>3.12 Conduct historical land title searches of any property addresses that have been affiliated with the debtor to determine if there have been any potential fraudulent conveyances of properties.</p>					
<p>4. COMMENCE PROCEEDINGS</p>					
<p>(See also the GENERAL LITIGATION PROCEDURE (E-2) checklist; for the enforcement of foreign judgments, see item 7 in this (E-4) checklist.)</p>					
<p>4.1 Determine all possible causes of action; consider whether evidence will be available to support them. Determine who will be the defendants and identify them clearly. Include all those jointly or jointly and severally liable. Consider <i>Law and Equity Act</i>, s. 53.</p>					
<p>4.2 Decide in which court to bring action, considering monetary and geographic limitations—consider Small Claims Division of Provincial Court, the monetary limit of which is now \$35,000 (B.C. Reg. 120/2017). Consider the effect of Rules 9-1(7) and 14-1(10) of the SCCR Rules. If the action is to be commenced in Supreme Court, consider whether to proceed by way of Rule 15-1 (Fast Track Litigation).</p>					
<p>4.3 Consider possible actions under the <i>Fraudulent Conveyance Act</i> or the <i>Fraudulent Preference Act</i>, and tracing remedies.</p>					
<p>4.4 Consider possible interim measures, including:</p> <ul style="list-style-type: none"> .1 pre-judgment garnishment (see item 5); .2 a claim for recovery of goods pending the outcome of the action (<i>Law and Equity Act</i>, s. 57); .3 enforcement of security under the <i>Personal Property Security Act</i>; .4 appointment of a receiver either under security, or the <i>Bankruptcy and Insolvency Act</i>, or the <i>Law & Equity Act</i> (note Practice Direction PD-47 provides model forms of orders including preservation of assets and receiverships); .5 a Mareva or other injunction (Rule 10-4); or .6 where client is a mortgagee or debenture holder, an order for sale pursuant to Rule 13-5(2) (to be considered in conjunction with foreclosure remedies under Rule 21-7, and required process for recovery under a mortgage, including venue rules in s. 21 of the <i>Law & Equity Act</i>). 					

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<p>4.5 Draft and file notice of civil claim in Form 1. If the debt action is for less than \$100,000, under Rule 15-1 any party may file a notice of fast track litigation in Form 61, in which case all subsequent pleadings must contain the words “Subject to Rule 15-1” below the parties’ names. Where service outside British Columbia is required, consider whether it can be effected without leave of the court and, if so, include an endorsement in Form 11 (Rule 4-5(1) and (2)). Consider the provisions of the <i>Currency Act</i>, R.S.C. 1985, c. C-52, but see also the <i>Foreign Money Claims Act</i>, R.S.B.C. 1996, c. 155, if the debt is not in Canadian currency.</p> <p>4.6 When drafting the notice of civil claim, review any land title searches to ensure the names of the defendants match the names on any property, using “aka” names if necessary. This will ensure that if judgment is obtained, there will be no issue at the LTO registering the judgment against the property under the <i>COEA</i>. Also, consider pre-judgment garnishing rules (set out at item 5); express liquidated damage claims as specified and ascertainable, to ensure that available remedies include default judgment for damages claimed, and pre-judgment garnishment.</p> <p>4.7 Note the expiry date of the notice of civil claim in diary and “BF” systems for renewal of civil claim, if required.</p> <p>4.8 Serve documents:</p> <ol style="list-style-type: none"> .1 Comply with requirements of service (in general, see Rules 4-1 to 4-6). Consider special service requirements such as for corporations (Rule 4-3(2)(b) and <i>Business Corporations Act</i>, S.B.C. 2002, c. 57, s. 9), unincorporated associations (Rule 4-3(2)(c)), and partnerships (Rule 20-1(2)). If unable to locate a debtor, consider the use of a skip tracer (birthdate of the debtor may be helpful to the skip tracer, which can often be obtained from a personal property registry search). .2 If service cannot be effected under Rule 4-3 as required for a notice of civil claim, make application by desk order under Rule 4-4 for alternative service. Include affidavit evidence in support, to show that the party cannot be found despite a diligent search, or is evading service. If there has been communication by e-mail, consider whether or not substituted service by e-mail is appropriate. Alternative service by way of advertisement must be by way of an advertisement in Form 10. Serve a notice of civil claim with a copy of the order (or published advertisement), and file an affidavit of service in court. Note: the SCCR Rules do not contain a specific requirement for proof of service, nor a form of affidavit for alternative service. However, consider adapting the affidavit of personal service for this purpose (see Rule 4-6 and Form 15). .3 If service outside British Columbia is required, determine whether leave of court is required and, if so, make an application (can also be done by desk order under Rule 8-4 and serve accordingly (see Rule 4-5). <p>4.9 Note the limitation date for filing a “response to civil claim” (Form 2) in diary and “BF” systems (21 days from anywhere in Canada, 35 days from the United States, 49 days from elsewhere: pursuant to Rule 3-3(3)). For service outside British Columbia, see also Rule 4-5.</p>					

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<p>4.10 Before taking default steps against a party who is represented by counsel, ensure that counsel has been warned of your intention to take such steps (see <i>BC Code</i> rule 7.2-1 and commentary [5]). If the debtor fails to enter a response to civil claim, apply for default judgment after confirming instructions (Rule 3-8). File:</p> <ol style="list-style-type: none"> 1 Proof of service of notice of civil claim, and proof that the defendant has failed to serve a response. 2 Requisition endorsed by registrar that no response has been filed. 3 Draft default judgment (Form 8), including interest calculation pursuant to either an agreement to pay or the <i>Court Order Interest Act</i>. 4 Bill of costs (Form 63). Note, if the amount of default judgment is under the Small Claims limit of \$35,000, only disbursements are recoverable. 5 If applying for a pre-judgment garnishing order, the notice of civil claim must frame the action as a liquidated debt claim, which the SCCR Rules define as “specified and ascertainable”, and thus should include a description of how the amount of the claim was calculated (e.g., hourly rates, number of hours worked, disbursements, taxes) and that the parties specifically agreed to those amounts or rates. <p>4.11 Examine the response to civil claim and consider:</p> <ol style="list-style-type: none"> 1 Whether the defence is sound in law. Otherwise consider an application to strike (Rule 9-5). 2 Whether there are scandalous, vexatious, or embarrassing allegations. If so, consider a motion to strike (Rule 9-5). 3 Any admissions made by the debtor. 4 What evidence will be needed to support the debtor’s allegations, and whether it is available. 5 Discuss merits with the client; discuss the cost of proceeding, compared to anticipated amount of judgment. <p>4.12 If the response to notice of civil claim raises new facts that call for response, consider filing a reply (Rule 3-6).</p> <p>4.13 If a counterclaim is filed, seek instructions regarding a response to counterclaim in Form 4. Diarize and ensure compliance with relevant time limits for filing a response to counterclaim.</p>					
<p>5. PRE-JUDGMENT GARNISHMENT</p>					
<p>5.1 Obtain pre-judgment garnishing orders to attach debts owing or accruing due to the debtor (<i>COEA</i>, Part 1):</p> <ol style="list-style-type: none"> 1 Advise the client that the funds in court may be subject to claims of other creditors, and discuss the impact of any intervening bankruptcy if those funds are not paid out of court before a bankruptcy. 2 Ensure that a notice of civil claim has been filed before proceeding (<i>COEA</i>, s. 3(2)(d)(i) and 3(3)). If you expect to obtain default judgment, consider not serving the notice of civil claim until you have served the garnishing order and received notice of payment in. Then serve the notice of civil claim and garnishing order on the debtor. Be careful not to violate <i>COEA</i>, s. 9(2) and (3). 					

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<p>.3 Review the law as to what kind of debt is attachable before judgment (e.g., not wages, until they have been paid directly into a bank account).</p> <p>.4 Ensure that client's claim is for a liquidated amount, as pre-judgment garnishment is not available for an unliquidated claim. For service agreements, review terms to determine if liquidated, and include terms in the notice of civil claim to be attached to an affidavit in support.</p> <p>.5 Draft order, ensuring that it does not attempt to garnish a joint bank account or other joint property unless all co-owners are defendants.</p> <p>.6 Draft affidavit, ensuring strict observance of the essentials set out in <i>COEA</i>, s. 3(2)(d) or s. 3(3). Avoid using standard forms. If possible, get affidavit sworn by client on personal knowledge. A solicitor's affidavit appears to be satisfactory practice. For rules on garnishment, see <i>British Columbia Creditors' Remedies—An Annotated Guide</i> (CLEBC, 2001–).</p> <p>.7 Apply without notice under Rule 8-4, submitting a requisition in Form 17 (see Supreme Court Civil Practice Direction PD-10, Garnishing Orders), draft order for signature, and affidavit in support.</p> <p>.8 Consider how the garnishee must be served (e.g., if a bank, must serve the branch where the account is located; if a credit union, must be head office). Serve order on garnishee and diarize for possible follow-up. A separate order must be obtained for each garnishee.</p> <p>.9 Serve order on the defendants or obtain an order for substituted service (<i>COEA</i>, s. 9(5)).</p> <p>.10 If you do not hear from the garnishee or get a notice of payment in from the court registry, contact the garnishee. If necessary, apply to court for a garnishing order absolute (<i>COEA</i>, s. 11).</p> <p>.11 If you receive a letter from the garnishee stating that no debts are due, consider the need to obtain a formal dispute note (<i>COEA</i>, s. 16).</p> <p>.12 If the garnishee disputes liability but the garnishee's dispute appears open to challenge, prepare for and participate in the show-cause hearing (<i>COEA</i>, ss. 16 to 19).</p> <p>.13 If possible, obtain written consent from the debtor for payment out of court before judgment. File this with application form and obtain payment out (<i>COEA</i>, s. 13(4)).</p>					
<p>6. PROCEED TO JUDGMENT (Refer also to the GENERAL LITIGATION PROCEDURE (E-2) checklist.)</p> <p><i>Note: Even if notice of fast-track litigation has been filed under Rule 15-1, any party may apply for summary judgment or summary trial without a case planning conference being heard (Rule 15-1(8)(c)).</i></p> <p>6.1 If the debtor's pleadings disclose no defence, consider applying to either strike the defence (Rule 9-5), or for summary judgment (Rule 9-6), and obtain instructions.</p> <p>6.2 Consider whether a summary trial would be appropriate (Rule 9-7), and obtain instructions.</p> <p>6.3 Prepare case. (See the GENERAL LITIGATION PROCEDURE (E-2) checklist.)</p>					

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<p>6.4 Discuss settlement with the debtor. If settling for less than the full debt, consider what should happen if there is default in meeting the terms of the settlement: i.e., will the full debt still be owing, such that settlement is a forbearance from pursuing the full amount owing. Confirm instructions in writing before agreeing to a settlement. Consider getting:</p> <ol style="list-style-type: none"> .1 Post-dated cheques. .2 Signed, unfiled consent orders, in blank, to be filed in case of default. However, consider carefully the form of consent arrangements, in light of decisions and commentaries on <i>Law and Equity Act</i>, s. 58, regarding the prohibition against using a warrant of attorney; it may be that a consent order can no longer be held as ongoing security. .3 Interest. .4 Mutual release. <p>6.5 Obtain judgment.</p> <p>6.6 If acting for a debtor, consider:</p> <ol style="list-style-type: none"> .1 Whether it is possible to act for a reduced fee, or on a pro bono basis. Explain any limits to the retainer. If unable to act beyond giving summary advice, refer the debtor to private debtor agencies or to a trustee in bankruptcy. Note the “short-term summary legal services” rules in the <i>BC Code</i> regarding pro bono services: rules 3.4-11.1 to 3.4-11.4 and commentaries, regarding conflicts and confidentiality. .2 Whether other creditors may be making claims against the debtor. If so, assess the debtor’s complete financial circumstances. .3 Whether there are common-law or statutory defences to the creditor’s claim, or whether there are common-law or statutory counterclaims that may be asserted against the creditor. .4 Whether the amount claimed by the creditor is correct. Review all records, and demand full account documentation from the creditor, if necessary. .5 <i>Bankruptcy and Insolvency Act</i> remedies, including assignment in bankruptcy, notice of intention to make a proposal (or perhaps the proposal itself), and the benefits of each, including the stay of proceedings that will result. .6 Remedies under the <i>Farm Debt Mediation Act</i>, if the property is a commercial agricultural operation. .7 Whether the debtor is requesting advice or assistance that may contravene the <i>Fraudulent Conveyance Act</i> or the <i>Fraudulent Preference Act</i>. 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. See <i>BC Code</i> rules 2.1-1(a), 3.2-7, and 3.2-8. Also see <i>Abakhan & Associates Inc. v. Braydon Investments Ltd.</i>, 2009 BCCA 521, leave to appeal refused 2010 CanLII 34795 (S.C.C.). 					

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<p>7. REGISTRATION OF A FOREIGN JUDGMENT (FJ)</p> <p>7.1 Apply to Supreme Court. If applying under the <i>Enforcement of Canadian Judgments and Decrees Act</i>, attach a certified copy of the judgment to a requisition. No other documents are required. In other cases, file documents as follows:</p> <ol style="list-style-type: none"> .1 Petition (Rule 19-3(2)) or requisition (Rules 19-3 and 17-1). .2 Affidavit meeting the requirements of Rule 19-3(3). .3 Certified copy of the judgment under the seal of the foreign court, exhibited to the affidavit (Rule 19-3(3)(a)(i)). .4 If applying without notice for reciprocal enforcement under <i>COEA</i>, s. 29(2), also file a Schedule 2 certificate from the foreign court (<i>COEA</i>, s. 29(3) and (4)). <p>7.2 Apply without notice, if the criteria set out in the <i>COEA</i>, s. 29(2) are satisfied; otherwise give notice to the judgment debtor as required by the SCCR Rules or as the judge considers sufficient (<i>COEA</i>, s. 29(5)). See also Rule 19-3.</p> <p>7.3 Have costs assessed and get certificate endorsed on the order for registration (<i>COEA</i>, s. 33(c)).</p> <p>7.4 Register the foreign judgment by filing with the court registry. Either file a requisition and proceed as per item 7.1 above, or proceed under the <i>COEA</i> and file these materials:</p> <ol style="list-style-type: none"> .1 The B.C. Supreme Court order (in Form 77); .2 An exemplification or certified copy of the foreign judgment; and .3 A translation, if the judgment is not in English (<i>COEA</i>, s. 32). <p>7.5 If the application for registration was made without notice:</p> <ol style="list-style-type: none"> .1 Serve notice on the judgment debtor as required by <i>COEA</i>, s. 34(1) and Rule 19-3(6). It must be served within one month, if registered without notice. .2 Diarize the one-month limitation period during which no sale or other disposition of the debtor's property can be made (<i>COEA</i>, s. 33(a)). <p>8. ENFORCEMENT OF JUDGMENT</p> <p>8.1 Discuss options listed below with the client, and obtain instructions.</p> <p>8.2 Consider an agreement to suspend enforcement proceedings in exchange for a personal guarantee (in the case of a corporate debtor) or a payment schedule. Consider provision for the payment of interest. Consider application of <i>Bankruptcy and Insolvency Act</i> and forbearance agreements, rather than forgiveness of any debt in a settlement.</p> <p>8.3 Send a demand letter with a copy of the order, advising the judgment debtor that execution proceedings will be taken if the judgment is not satisfied by a specified date. Consider calculating and including a demand for a daily rate of judgment interest, due under the <i>Court Order Interest Act</i>. Diarize.</p>					

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<p>8.4 Examination in aid of execution (Rule 13-4):</p> <ol style="list-style-type: none"> .1 Decide whom you want to examine: <ol style="list-style-type: none"> (a) Debtor. (b) Officer or director of a corporate debtor (Rule 13-4(3)). If necessary, use Rule 7-2(5)(b) to find out the appropriate person to examine. (c) Other person, where you can show that they have knowledge (Rule 13-4(5)). Court order is necessary. .2 Obtain an appointment from the court reporter, ensuring that examination is in the registry closest to where the debtor resides. Diarize examination date. .3 Serve appointment in Form 23. Daily witness fees must also be served on any witness other than a party or a present officer, director, or partner of a party, plus conduct money (mileage of \$0.30 per km for travel between eight and 200 km, and airfare if more), at least two clear days before the examination (Appendix C, Schedule 3 of the SCCR Rules). The appointment can be served on the debtor’s lawyer (Rule 7-2(13)). If you want to examine a person in more than one capacity (e.g., personally and as a director), indicate this on the appointment, or serve two separate appointments indicating the different capacities. .4 Send a copy of the appointment to a court reporter, to confirm the date. .5 Review any credit reports obtained from credit reporting agencies. .6 Prepare questions. Ensure that they are within the scope of Rule 13-4(2). Refer to the COLLECTIONS—EXAMINATION IN AID OF EXECUTION (E-5) checklist. Be sure to ask for copies of relevant financial records, tax returns, etc. .7 If the debtor does not appear at the examination after half an hour: <ol style="list-style-type: none"> (a) Have the court reporter endorse a certificate of non-appearance on the back of the appointment (Rule 22-4(6)). (b) Apply for a court order pursuant to Rule 13-4(6) by filing and serving a notice of application and affidavit. Serve the order, and if the debtor still does not appear, apply for committal for contempt (Rule 22-8). .8 Order an examination transcript and diarize to check for receipt. .9 Review the transcript and consider whether you need to examine any other person. .10 If necessary, apply for leave to re-examine the same person before the one-year limitation period expires (Rule 13-4(4)). <p>8.5 Use a subpoena to debtor (Rule 13-3). Be aware that if you choose this route, other means of execution may not be available, and the right to cross-examine for financial information is more limited than an examination in aid of execution.</p> <ol style="list-style-type: none"> .1 Obtain an appointment from the registry by telephone, and diarize. 					

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<p>.2 Prepare and file a subpoena in Form 56, with a copy of the judgment attached, and an affidavit showing that the order is not satisfied and that there is no outstanding writ of execution (Rule 13-3(1)). If you want to examine a person in more than one capacity (e.g., personally and as a director), indicate this or serve two separate subpoenas indicating the different capacities.</p> <p>.3 Serve the subpoena personally on the debtor at least seven clear days before the hearing date, together with conduct money and witness fees (Rule 13-3(3)) and see Appendix C, Schedule 3).</p> <p>.4 Prepare questions. Use the COLLECTIONS—EXAMINATION IN AID OF EXECUTION (E-5) checklist as a guideline, but ensure that questions are confined to the financial matters set out in Rule 13-3(4). Ensure that you include questions about the debtor’s expenses and liabilities, as well as income and assets.</p> <p>.5 Decide whether it is desirable to seek leave to call witnesses (Rule 13-3(6)) and, if so, prepare witnesses.</p> <p>.6 Attend the hearing. Ensure that you have the affidavit of service. If the debtor does not appear, seek a report in Form 57, pursuant to Rule 13-3(8)(a) and (e)(i). If the debtor refuses to be sworn, produce documents, or give satisfactory answers, seek a report in Form 57 (Rule 13-3(8)(b) and (e)). If the debtor has unreasonably refused to pay, as set out in Rule 13-3(10), consider requesting a report or an order for committal. If further documents are needed, seek an order for production of specific documents and an adjournment of the subpoena hearing.</p> <p>.7 Ask the registrar to make an order for payment either in full or in installments over time. Prepare the order for the registrar’s signature and file it; send a copy to the debtor.</p> <p>.8 If you have a report in Form 57, consider seeking an order for committal (see item 8.13).</p> <p>8.6 Garnishing order:</p> <p>.1 Refer in general to the procedure set out in items 5.1.4 to 5.1.12. Garnishment is a remedy to enforce any order for the payment of money.</p> <p>.2 If attaching wages:</p> <p>(a) Collect information about pay periods. Diarize for issue of garnishing orders.</p> <p>(b) Prepare a master garnishing order.</p> <p>(c) Fill in details on separate orders, and serve them on the employer at appropriate times.</p> <p>(d) Affidavit in support cannot be sworn more than seven days before the wages become due. If the first garnishing order is successful, write to the debtor to ask if the debtor will consent to a direction to pay, to avoid paying further legal costs in respect of each order.</p> <p>.3 Consider attachment of other debts (e.g., bank accounts, term deposits, RRSPs, sale proceeds).</p> <p>.4 Consider applying for variation of an exemption (COEA, ss. 3 and 4).</p> <p>.5 If a debtor gets an installment order, consider applying for variation (COEA, s. 5(3)).</p>					

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<p>.6 Apply for payment out (<i>COEA</i>, s. 13):</p> <ul style="list-style-type: none"> (a) By filing the application and written consent of the debtor in standard form. (b) By judgment by default—three months after money has been paid into court, file an affidavit of service of the garnishing order, a copy of the default judgment, and an application. (c) By serving notice of intention to apply for payment out, together with a copy of each garnishing order (personally or by substituted service: <i>COEA</i>, ss. 9(5) and 13(2)), waiting 10 days and checking to ensure that no notice of intention to dispute has been filed, then filing the affidavit of service of the notice and orders, a copy of the judgment, and the application. (d) If a dispute is filed, by application to court. <p>8.7 Register judgment in the LTO against land in which the debtor has an interest (even a beneficial interest, such as a leasehold interest: see <i>COEA</i>, s. 86(9)):</p> <ul style="list-style-type: none"> .1 Conduct searches (including name searches) with BC OnLine for all British Columbia LTOs. .2 Obtain and file certificate of judgment. Ensure that the debtor’s name matches that shown on certificate of title, or you may be required to make a statutory declaration regarding identity. Ensure that the interest of the judgment debtor is properly described. .3 Obtain a copy of the certificate of title showing the judgment. In particular, check whether a certificate of pending litigation is registered before your judgment. Check also for the duplicate certificate of title. .4 Diarize the two-year expiry date, and advise the client to do the same. .5 Consider checking from time to time to see if the debtor has acquired more real property. .6 Consider whether the best strategy is to await foreclosure proceedings of prior charge holders or to bring proceedings to realize on the judgment under the <i>COEA</i> (the choice may affect the priority of the judgment and whether it ranks <i>pari passu</i> with other judgment holders). .7 Consider obtaining value information to determine the equity available in property. Sources include realtor comparative market analysis, formal appraisal, or Landcor Data valuation (available from BC Online). Consider requests for balances owing on any prior encumbrances. <p>8.8 Execution proceedings against real property:</p> <ul style="list-style-type: none"> .1 Pursuant to <i>COEA</i>, ss. 92 to 116: <ul style="list-style-type: none"> (a) Once the judgment is registered against land, prepare a notice of application and an affidavit for an order to show cause why the real property should not be sold to satisfy the judgment, and, if no cause is shown, for a reference to the registrar. The notice of application and affidavit should exhibit copies of the judgment and certificate of title. Consider the relevance of the home of the debtor provision in <i>COEA</i>, s. 96(2), and the exemption provisions in <i>COEA</i>, s. 71(1) and Court Order Enforcement Exemption Regulation, B.C. Reg. 28/98, s. 3. 					

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<p>(b) Prepare certificate of pending litigation (<i>Land Title Act</i>, R.S.B.C. 1996, c. 250, s. 215), to prevent any transfers of the land.</p> <p>(c) Send material to the court registry for issuing. Diarize the hearing date.</p> <p>(d) File a certificate of pending litigation in LTO (<i>Land Title Act</i>, s. 215).</p> <p>(e) Serve the debtor with notice of application and affidavit.</p> <p>(f) Attend in chambers and obtain an order for a reference to the registrar regarding matters in <i>COEA</i>, s. 94(1).</p> <p>(g) Take out an appointment and file an affidavit setting out the interests held by the judgment debtor and exhibiting the certificate of title and an affidavit from the client setting out amount owing. Diarize the appointment. Note that under Rule 23-6(3.1), a bound hearing record must be filed in advance of the hearing.</p> <p>(h) Serve the debtor and consider mailing to or serving other parties who are registered on title subsequent to your judgment (<i>COEA</i>, s. 94(4)).</p> <p>(i) Attend hearing and get the report.</p> <p>(j) Apply to court for confirmation of the report and for an order directing the court bailiff to sell the land or to list the property with a real estate licensee (and varying the advertising requirements, if required). Serve any interested parties. In the alternative, if foreclosure proceedings are brought by a mortgagee, seek, or wait for another creditor to obtain, an order for sale in those proceedings. Note: the court bailiff may require an appraisal.</p> <p>(k) After the sale, obtain payout in accordance with the order and <i>COEA</i>, s. 111.</p> <p>(l) If the judgment is satisfied without sale of the property, file an acknowledgment of payment and release the certificate of pending litigation.</p> <p>.2 In a foreclosure proceeding by a mortgagee, refer to the FORECLOSURE PROCEDURE (E-1) checklist.</p> <p>.3 Pursuant to Rule 13-5, consider sale of property (refer to the Rule for procedure).</p> <p>8.9 Execution proceedings against goods (<i>COEA</i>, ss. 47 to 80).</p> <p>.1 Try to ascertain whether the debtor has goods eligible for seizure pursuant to the <i>COEA</i> that are worth more than the exemptions that may be claimed by the debtor.</p> <p>.2 Ensure you do not violate any relevant seize-or sue-provisions, particularly when dealing with consumer goods.</p> <p>.3 Prepare a writ of seizure and sale, and send it, together with a copy of the judgment, to the registry for issuing.</p> <p>.4 Ensure that the court bailiff has the writ, fees, full information including motor vehicle searches, lien searches, etc., and, if required, a security deposit. The court bailiff will require poundage (<i>COEA</i>, s. 113, and Rules, Appendix C, Schedule 2) and money to cover costs.</p> <p>.5 If you are offered a settlement, ensure that it includes the court bailiff's poundage, and confirm instructions to settle in writing.</p>					

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<p>8.10 Execution proceedings against shares, pursuant to <i>COEA</i>, ss. 63.1, 64.1, and 65.1, and the <i>Securities Transfer Act</i>, S.B.C. 2007, c. 10, ss. 45 to 51. Consider the effect of any restrictions on transfer of shares. (Refer to the procedure set out in item 8.9.)</p> <p>8.11 Execution proceedings against money and securities for money, pursuant to <i>COEA</i>, s. 58. (Refer to the procedure set out in item 8.9.)</p> <p>8.12 Equitable execution (charging order or equitable receiver), where legal execution is ineffective (<i>Law and Equity Act</i>, s. 39 and Rule 13-2(5) and (7)).</p> <p>8.13 Order for committal of the debtor:</p> <ol style="list-style-type: none"> .1 Apply where: <ol style="list-style-type: none"> (a) You have a report in Form 57 (see item 8.5.6). (b) The debtor has failed to obey an order of the examiner (Rule 13-3(10) to (16)). .2 Diarize the one-year expiry date of committal order. .3 Enforce by delivering the order and costs of incarceration to sheriff. <p>8.14 If acting for a debtor, consider alternative remedies set out in item 6.6, and also consider:</p> <ol style="list-style-type: none"> .1 Whether a default judgment or other steps in default can be set aside. .2 Where the debtor has not had contact with the creditor or creditor’s counsel, communicating immediately to explain debtor’s circumstances and to explore settlement possibilities. .3 Urgent matters, such as making the exemption claims under the <i>COEA</i> and Court Order Enforcement Exemption Regulation, s. 2, within two days of any seizure by the court bailiff. Examine other exemption possibilities, such as under <i>Insurance Act</i>, S.B.C. 2012, c. 1, ss. 65 and 124, and the <i>Indian Act</i>, R.S.C. 1985, c. 1-5. .4 If settlement is not possible with the judgment creditor, canvass alternate remedies such as court application for installment payment order, or remedies under the <i>Bankruptcy and Insolvency Act</i>. However, note that there are both disadvantages and advantages to proceeding under the <i>Bankruptcy and Insolvency Act</i>, including limitations on the ability to withdraw a petition for a bankruptcy order, even if the debt is paid. If considering bankruptcy remedies, advice from a lawyer practicing specifically in insolvency matters should be sought. 					
<p>9. CLOSE FILE</p> <p>9.1 Send a reporting letter and statement of account to the client. Remind the client of relevant limitation periods and expiry dates.</p> <p>9.2 Close the file, after making any required entries in diary and “BF” systems. Consider storage and destruction requirements. For guidance, see <i>Closed Files—Retention and Disposition</i>, August 2017, Appendix B at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf.</p>					

