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INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) and PROBATE AND ADMINISTRATION PROCEDURE (G-5) checklists. It is written primarily from the perspective of a lawyer acting for an executor or administrator. This checklist is current to September 1, 2017.

New developments:

- **Private corporation tax proposals.** On July 18, 2017, the Department of Finance Canada released a consultation paper entitled "Tax Planning Using Private Corporations" proposing amendments to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) pertaining to taxation of private corporations and their shareholders, together with draft legislation for some of the proposals. The period for public consultation on the proposals ended on October 2, 2017. The proposed amendments may have significant tax consequences where private corporation shares are held by a taxpayer on death. Some strategies commonly employed to avoid double taxation on and after death (specifically, tax on the shareholder's capital gain on death followed by tax on the distribution of corporate property to the estate) may be rendered ineffective by the proposals. Ensure that clients holding private corporation shares obtain tax advice specific to their situation regarding the impact of the proposals.
- **Graduated rate estate (GRE) and estate donation rules.** Amendments to the provisions of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) dealing with taxation of estates and testamentary trusts took effect January 1, 2016. Generally, income retained in estates and testamentary trusts is now subject to tax at the highest marginal rates applicable to individuals. However, an estate that qualifies as a GRE is eligible to claim graduated rates for the 36-month period following death. Other amendments also in effect from January 1, 2016, provide for greater flexibility for estates to benefit from charitable donations made under a will or by designations on registered plans or life insurance policies. Where the rules apply, the gift is deemed to be made by the estate, and the donation credit may be claimed in the estate or in the terminal year or the immediately prior taxation year of the deceased. In order to qualify, the estate must be a GRE at the time of death and when the gift is paid; however, the period in which payment must be made has been extended from 36 months to 60 months.
- **Law Society Rules**
  - **Trust protection insurance.** In April 2017, the Law Society Rules were amended to ensure compliance with s. 30 of the *Legal Profession Act*, S.B.C. 1998, c. 9, which requires lawyers to maintain trust protection insurance and professional liability insurance. Also, the language of the Rules was made consistent with that in the Act. See Law Society Rules 2-16(3) and (6), 2-19(3), 2-22(3), 2-32, 2-40(2), 2-49(1), 2-77(1), 2-79(1), 2-82(1), 2-117(1), 3-39 heading and (3), 3-39.1, 3-44(1) and (2), and 3-46(1) to (3) and (5).

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• **Lawyers acting as personal representatives and trustees outside the practice of law.** In March 2015, the Rules were amended so that where the appointment derives from practice, lawyers were relieved of some, but not all, of the responsibilities to the Law Society in that regard while maintaining the Society's ability to regulate and audit lawyers' compliance. With those 2015 amendments, lawyers were no longer permitted to hold "fiduciary property" in their trust account. However, in September 2016, further amendments were made so that funds that are "fiduciary property" may be held in a trust account, provided that the trust accounting rules are followed. See definitions of "fiduciary property", "general funds", "trust funds", and "valuables" in Law Society Rules 13-53, 3-55, 3-60(4), 3-61(3), 3-75, and 3-87.					
• **Reporting criminal charges to the Law Society.** To prevent the risk of breaching undertakings of confidentiality to the Crown, lawyers are no longer required to disclose certain information when reporting criminal charges to the Law Society (Law Society Rule 3-97, January 2017 amendment).					
• **Providing contact information to the Law Society.** In January 2017, the contact information that members must provide to the Law Society was expanded to include telephone numbers and email addresses (Law Society Rules 2-9, 2-10, and 2-11).					
• The Law Society Rules are published at www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules.					
• **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 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 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 *Benchers' Bulletin*.					
• **Code of Professional Conduct for British Columbia (the "BC Code")**					
• **Introduction.** An introduction was added in March 2017 based on the Federation of Law Societies' Model Code of Professional Conduct. In determining their professional obligations, lawyers must consult the Federation's Model Code in its entirety and be guided in their conduct equally by the language in the rules, commentary and appendices. Mandatory statements have equal force wherever they appear in the Federation's Model Code.					

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• **Language rights.** In March 2017, language rights provisions from the Federation's Model Code were adapted for British Columbia (*BC Code* rules 3.2-2.1 and 3.2-2.2, including commentary). A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice. A lawyer must not undertake a matter for a client unless the lawyer is competent to provide the required services in the official language of the client's choice. • **Short-term summary legal services.** In June and September 2016, the "limited representation" rules regarding pro bono services were rescinded and replaced with a set of "short-term summary legal services" rules. See *BC Code* rule 3.1-2, commentary [7.2], rules 3.4-11.1 to 3.4-11.4, and commentaries regarding conflicts and confidentiality. (Note that "short-term summary legal services" differ from "limited scope retainers" and that the rules for the latter are unchanged.) Compare the differences in terms as defined by the *BC Code* in rules 1.1-1 and 3.4-11.1, and more generally, 7.2-6.1. • **Amendment of transferring lawyer rules.** In November 2016, the transferring lawyer rules were amended to more closely align with the Federation's Model Code (see *BC Code* rule 3.3-7 and commentary and rules 3.4-17 to 3.4-26). Appendix D was rescinded. • **Incriminating physical evidence.** Under new *BC Code* rule 5.1-2.1, added in December 2016, a lawyer must not counsel or participate in the concealment, destruction, or alteration of incriminating physical evidence so as to obstruct or attempt to obstruct the course of justice (see also commentaries [1] to [7]). • **Duty to sign court orders.** Under March 2017 amendments to the *BC Code*, in the absence of a reasonable objection lawyers have a duty to promptly sign appropriately drafted court orders that have been granted or agreed to while the lawyer was counsel, notwithstanding a client's subsequent instructions to the contrary or the lawyer's discharge or withdrawal (see *BC Code* rule 3.7-9, commentary [6] and rule 5.1-2, commentary [5]). • **Affidavits, solemn declarations, and officer certifications.** In June 2016 amendments, references to the Supreme Court Civil Rules, B.C. Reg. 168/2009 were updated (Appendix A, paragraph 1, commentaries [11], [16], and [20] of the *BC Code*). • **Table of contents.** In June 2016, the table of contents was amended. The *BC Code* is published at www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia.					

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Of note: • **Wills, Estates and Succession Act.** Most of the *Wills, Estates and Succession Act*, S.C. 2009, c. 13 (the "WESA"), as amended by the *Wills, Estates and Succession Amendment Act*, *2011*, S.B.C. 2011, c. 6, came into force on March 31, 2014 (see B.C. Reg. 148/2013). Among many other changes, the *WESA* repealed and replaced the *Estate Administration Act*, R.S.B.C. 1996, c. 122, the *Probate Recognition Act*, R.S.B.C. 1996, c. 376, the *Wills Act*, R.S.B.C. 1996, c. 489, and the *Wills Variation Act*, R.S.B.C. 1996, c. 490. For most purposes, the *WESA* applies to all deaths occurring on or after March 31, 2014. (Exceptions include: a will validly made before March 31, 2014, is not invalidated by Part 4 (s. 186(2)); a will revoked before March 31, 2014, is not revived by virtue of Part 4 (s. 186(3)); and s. 47 of the *WESA* applies only to wills made on or after March 31, 2014 (s. 189).) For deaths before that date, reference to the *Wills Act*, the *Estate Administration Act*, and related repealed legislation must be considered. This checklist assumes the death occurred after March 31, 2014, and that the *WESA* therefore applies. • **Probate Rules.** Part 25 of the Supreme Court Civil Rules (B.C. Reg 149/2013) introduced new forms and procedures for all estate proceedings, both contested and uncontested. Unlike the transition rules of *WESA*, Part 25 applies to all applications for probate made on or after March 31, 2014, regardless of the date of death. Amendments to Part 25, effective July 1, 2015, pursuant to B.C. Reg. 103/2015, included changes to probate forms. References in this checklist to "Rules" are to the Supreme Court Civil Rules, unless otherwise specified. • **Pension Benefits Standards Act.** The new *Pension Benefits Standards Act*, S.B.C. 2012, c. 30 came into force on September 15, 2015 (see B.C. Reg. 71/2015, am. B.C. Reg. 101/2016). • **Family Law Act.** The *Family Law Act*, S.B.C. 2011, c. 25 came into force on March 18, 2013. It repealed and replaced the *Family Relations Act*, R.S.B.C. 1996, c. 128 and provides a new family property division regime, as well as changes to guardianship laws. • **Aboriginal law.** The *Indian Act*, R.S.C. 1985, c. I-5, applies to wills made by "Indians" (as defined in the *Indian Act*) and to estates of deceased Indians who ordinarily resided on reserve land. The Minister of Aboriginal Affairs and Northern Development is given broad powers over testamentary matters and causes (*Indian Act*, ss. 42 to 50.1). The formalities of execution of an Indian will are governed by the *Indian Act* (ss. 45 and 46) and the Indian Estates Regulations, C.R.C., c. 954 (s. 15); the Minister may accept a document as a will even if it does not comply with provincial laws of general application. It is good practice, however, to ensure that an Indian will or testamentary document is executed in the presence of two witnesses, with those witnesses signing after the will-maker in the will-maker's presence. Note that an Indian will is of no legal effect unless the Minister accepts it, and that property of a deceased Indian cannot be disposed of without approval (*Indian Act*, s. 45(2) and (3)). The Minister also has the power to void a will, in whole or in part, under certain circumstances (*Indian Act*, s. 46(1)(a) to (f)). If part or all of a will is declared void, intestacy provisions in the *Indian Act* will apply (*Indian Act*, ss. 46(2) and 48). Should an executor named in a will be deceased, refuse to act, or be incapable of acting, a new executor can be appointed by the Minister (*Indian Act*, s. 43; Indian Estates Regulations, s. 11). The Minister has similar powers in intestacy situations. The Minister is vested with exclusive jurisdiction over estates of mentally incompetent Indians (*Indian Act*, s. 51). A provincial probate court may be permitted to exercise jurisdiction if the Minister consents in writing (*Indian Act*, ss. 44 and 45(3)).					

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- **Family Homes on Reserves and Matrimonial Interests or Rights Act.** On December 16, 2014, ss. 12 to 52 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20 came into force (see SI/2013-128); ss. 1 to 11 and 53 came into force on December 16, 2013. This legislation 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. Sections 14 and 34 to 40 pertain to the consequences of the death of a spouse or common-law partner.

  Other statutory restrictions may apply to estates of deceased Indians. For example, a person who is "not entitled to reside on a reserve" may not acquire rights to possess or occupy land on that reserve under a will or on intestacy (*Indian Act*, s. 50), and no person may acquire certain cultural artifacts situated on a reserve without written consent of the Minister (*Indian Act*, s. 91). As some Indian bands or First Nation entities have entered into treaties (e.g., the *Nisga'a Final Agreement Act*, S.B.C. 1999, c. 2, and the *Tsawwassen First Nation Final Agreement Act*, S.B.C. 2007, c. 39) that may have governance, property, and other related implications, consider the status of an Indian instructing on a will and that of the band or First Nation in which a deceased Indian was a member.

  Note that *WESA*, Part 2, Division 3 allows for the intervention of the Nisga'a Lisims Government and treaty first nations where the will of a Nisga'a or treaty first nation citizen disposes of cultural property.

  Further information on Aboriginal law issues is available on the "Aboriginal Law" page in the "Practice Points" section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications. If acting with respect to an Indian will or estate, consider seeking advice from a lawyer who has experience in Aboriginal law matters.
- **Additional resources.** For more detailed information about probate and estate administration practice, refer to *Annotated Estates Practice*, 10th ed. (CLEBC, 2014), and *British Columbia Probate and Estate Administration Practice Manual*, 2nd ed. (CLEBC, 2007–).

CONTENTS

CHECKLIST

1. INITIAL CONTACT

1.1 Ensure that there is no conflict of interest. Review the general conflict provisions in rules 3.4-1 through 3.4-4 of the *Code of Professional Conduct for British Columbia* (the "*BC Code*"). Consider rules 3.4-5 to 3.4-9 when acting for more than one client. Conflict provisions specific to wills and estates are found in rules 3.4-37 to 3.4-39. Also consider rule 3.4-26.1 to 26.2.

1.2 If you or another lawyer with your firm is the executor, determine whether the will contains a charging clause enabling your firm to be retained, and ensure that none of the partners in the firm has witnessed the will.

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1.3 Arrange an interview.					
.1 Confirm compliance with Law Society Rules 3-98 to 3-109 on client identification and verification. Complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. Consider what identification documents may be required by financial institutions for the purposes of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.					
.2 Provide the client with terms of engagement in writing, including an explanation of fees, other charges, disbursements, and taxes.					
(a) Limited scope retainer. If acting under a "limited scope retainer" (a defined term in the *BC Code*), advise the client of the nature, extent, and scope of the services that you will provide, as required by *BC Code* rule 3.2-1.1 before undertaking a limited scope retainer Note that rule 3.2-1.1 does not apply to situations in which you are providing summary advice (e.g., as duty counsel) or to an initial consultation that may result in the client retaining you. If you are providing "short-term summary legal services" (different from a "limited scope retainer) under the auspices of a not-for-profit organization with the expectation by you and the client that you will not provide continuing representation in the matter, note *BC Code* rules 3.4-11.1 to 3.4-11.4 and commentaries regarding conflicts and confidentiality. See "Limited Scope Retainer FAQs" in the Fall 2017 *Benchers' Bulletin* for more information.					
(b) Fees and disbursements. See *BC Code*, s. 3.6 as to fees and disbursements. Note 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.					
.3 Check whether the executor is a U.S. citizen or resident and if so, recommend that the executor seek U.S. tax advice before undertaking any executor functions.					
1.4 Give such preliminary advice as is appropriate; for example:					
.1 Responsibility for disposal of the deceased's body.					
.2 Responsibility for funeral costs.					
.3 Renunciation of executorship (see item 6.1 of the PROBATE AND ADMINISTRATION PROCEDURE (G-5) checklist).					
.4 Loss of right to renounce executorship if the executor has intermeddled (that, is, has undertaken some of the responsibilities of an executor, such as taking control of the deceased's estate).					
.5 Searching for and preserving any "record" which may show the will-maker's testamentary intentions (see item 1.6 below).					
.6 Safeguarding the deceased's assets (see item 1.5 below).					
.7 Duty to keep accounts of assets, liabilities, receipts, and disbursements, and entitlement to be reimbursed for all proper and reasonable expenses.					

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.8 Listing of contents of the deceased's safety deposit box: (a) The client should contact the custodian (but note that the custodian will normally not allow removal of contents, except wills, until production of probate). (b) The personal representative or authorized agent must attend, to list the box's contents in the presence of the custodian. (c) The client should catalogue the contents: certificate numbers of securities, number and kind of shares, registered owner, dates of maturity, expiry date of warrants and conversion rights, transfer agents of stocks and bonds, unclipped coupons, date of issue of certificates. (Note: ask the client to obtain photocopies of any security documents at the time of the listing.) (d) Leave a copy of the listing with the custodian.					
.9 Contacting all financial institutions the deceased dealt with, informing them of the death and requesting lists of assets and liabilities, including interest accrued to the date of death. Note that some financial institutions are now requiring Form P18, Authorization to Obtain Estate Information, before providing any disclosure. The client may instruct you to do this.					
.10 Contacting all insurers, informing them of the death and requesting claim forms and written confirmation of benefits. The client may instruct you to do this.					
1.5 Advise the client of the executor's responsibility to safeguard the assets of the deceased. Consider using a standard form for this purpose. It may include advice to:					
.1 Search for cash, securities, jewellery, and other valuables, and arrange for safekeeping. (Note: cash found among the deceased's assets may not be deposited in a lawyer's trust account unless the amount is less than $7,500. See Law Society Rule 3-59 (Rule 3-51.1 before July 1, 2015).)					
.2 Retrieve all keys for the residence and consider changing the locks if keys cannot be collected.					
.3 Check the insurance on the deceased's assets (e.g., motor vehicle, residence, furniture), including expiry date; notify the deceased's insurance company (note that a 30-day vacancy limit applies in most policies insuring residential property) and arrange for vacancy binder, where needed.					
.4 Arrange for interim management of the deceased's business.					
.5 Advise banks of the death, and deposit any outstanding cheques (e.g., pensions, dividends, interest, salary). (Note: bank accounts will be frozen until probate issues, but banks may directly pay deceased's testamentary and other debts, such as funeral expenses, income taxes, strata fees, and property taxes and insurance. Banks will not generally directly reimburse the executor for these expenses before a grant of probate, and the executor should be reminded to present unpaid invoices to the bank for direct payment.)					
.6 Arrange for redirection of mail.					

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.7 Check mortgages and agreements for sale; arrange for payment of instalments.					
.8 Check leases and tenancies, arrange for payment of rent, and give notice if necessary.					
.9 Check that utilities are paid to date, and arrange for ongoing payment.					
.10 Review cheques drawn by the deceased before his or her death if there is any question of incapacity. (Note: cheques drawn by the deceased that are not negotiated prior to death may not be honoured.)					
.11 Check with the employer regarding death benefits. Where the deceased held shares in a private company, consider entitlement to death benefit.					
.12 Notify and cancel CPP, Old Age Security, and other pensions and annuities.					
.13 Conduct a land title office search to confirm ownership of properties and identify any encumbrances, including any property tax deferment agreement.					
1.6 Ask the client to collect documents and information and bring them to the interview. Consider using a standard form for this purpose. Documents and information should include:					
.1 Original will and codicils, prior wills and codicils, and any document or record (including electronic records) that appears testamentary in nature. Documents not meeting formal validity requirements may nevertheless be held valid in B.C. pursuant to s. 58 of the *Wills, Estates and Succession Act*, S.C. 2009, c. 13 (the "WESA"), which gives the court power to order that "a record or document or writing or marking on a will or document" is fully effective as a will. The executor must be diligent in identifying documents or records that may express testamentary intention.					
(a) Do not unstaple the will for photocopying. Although Part 25 of the Rules does not refer specifically to stapling, the better practice is to ensure that the will is filed with the court in its original condition. Probate registries will usually require an affidavit to explain any visible staple holes.					
.2 Letters, memoranda, or other notes regarding the funeral or giving information relevant to a possible application for variation of the will under Part 4, Division 6 of the *WESA*.					
.3 Personal documents: the deceased's birth, marriage, and death certificates, social insurance number.					
.4 Bank books or statements, updated to the date of death.					
.5 List of outstanding debts and other liabilities, as well as funeral expenses.					
.6 Income tax returns for the past five years, account books, records of adjusted cost base of capital assets, and the name(s) of accountants and financial advisers.					
.7 Particulars of the deceased and other parties:					
(a) Names, ages, addresses, domicile, residence, occupation, and citizenship of deceased, executor, beneficiaries, and persons entitled to apply under the *WESA*.					

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(b) Particulars of any minors or mental incompetents.					
(c) Particulars of any common-law relationship.					
(d) Names and addresses of persons who would be entitled on an intestacy or a partial intestacy (*WESA*, ss. 20 to 24).					
(e) Birthplace and birthdate of the deceased, and his or her marital status.					
(f) Particulars of any ties to a First Nation or Aboriginal community, to see if the *Indian Act* applies (see the introduction to this checklist).					
(g) Whether the executor or deceased, or one of the deceased's parents, was a U.S. citizen. (If so, seek tax advice.)					
.8 Copy of any marriage or cohabitation agreement.					
.9 Legal description of real estate and interests therein; also value, charges, mortgages, agreements for sale.					
.10 Details regarding motor vehicles, boats, and other chattels, such as:					
(a) Motor vehicle description, year, serial number.					
(b) Boat registration or licence number.					
(c) Particulars of encumbrances.					
(d) Consider whether any assets require immediate attention.					
(e) Values of above.					
.11 Stocks, bonds, term deposits.					
.12 Details regarding safety deposit box, including list of contents, if available (see item 1.4.8).					
.13 Book debts and promissory notes.					
.14 Debts and other liabilities.					
.15 Agreements or orders to which the deceased was a party, or under which he or she was liable: e.g., a decree of divorce or nullity, a support order, orders under the *Family Law Act*, S.B.C. 2011, c. 25 or the former *Family Relations Act*, R.S.B.C. 1996, c. 128, a separation agreement, a guarantee, a buy-sell agreement, a partnership agreement, a lease, or an employment contract.					
.16 Financial statements of businesses and private companies in which the deceased was interested and any shareholders' agreements.					
.17 Annuities, pensions and death benefits such as: CPP, Old Age Security pension, pension plan, RRSP, RRIF, or deferred profit sharing plan.					
.18 Insurance on the deceased's life, including any insurance held with a credit card company, and accident insurance where applicable. Also, claim forms; written confirmation of benefits, including dividends and loans; name of designated beneficiary, if any.					
.19 Insurance owned by the deceased on the lives of others.					
1.7 Arrange to attend the listing of the safety deposit box contents (see item 1.4.8), if requested.					

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1.8 Conduct a will search by applying to the Vital Statistics Agency (*WESA*, s. 77 and Rule 25-3(2)(d)). The search must refer to all names proposed to appear in the grant of probate (i.e., the name used in the will, legal name as shown on birth certificate, and the name appearing on land title documents). A search may be conducted through BC Online (see www2.gov.bc.ca/gov/content/life-events/death-and-bereavement/wills-registry).					
2. INTERVIEW					
2.1 If not already done (see item 1.3.2), confirm with the client the terms of your engagement, including how fees are calculated, what other charges, disbursements, and taxes there may be, and the method and timing of payment. Confirm the division of responsibility between the executor and the lawyer. Have the client sign an engagement letter or agreement. Remind the client that the engagement is not with the "estate" but with the client personally, as the executor of the will or proposed administrator of the estate. The legal expenses are proper estate expenses, provided that they are reasonable and approved by the beneficiaries or the court.					
2.2 Review the will and advise the client regarding the following matters:					
.1 Date of death. The *WESA* applies to estates of persons who died on or after March 30, 2014. Note that in the case of an unadministered estate where the death occurred prior to March 31, 2014, you should refer to the requirements of the *Wills Act*, R.S.B.C. 1996, c. 489.					
.2 Validity. Determine whether B.C. law applies. If it does not, consult the law of the relevant jurisdiction and consider getting legal advice in that jurisdiction. For formal requirements of a will in B.C., ensure that:					
(a) The will is in writing (*WESA*, s. 37(1)(a)).					
(b) The will is signed at the end by the will-maker or in his or her name by another person, in his or her presence and by his or her direction (*WESA*, s. 37(1)(b)).					
(c) The signature was made or acknowledged by the will-maker in the presence of two or more witnesses present at the same time (*WESA,* s. 37(1)(c)).					
(i) Where the will-maker was on active service as a member of the armed forces of Canada or an ally, or was a mariner or seaman at sea or in the course of a voyage, attestation is not required unless the will is signed by another person at the will-maker's direction (in this case one witness is required (*WESA*, s. 38).					
(d) Two or more witnesses subscribed the will in the presence of the will-maker (*WESA*, s. 37(1)(c)) .					
(e) The will-maker was at least 16 years of age, or was on active service as a member of the Canadian Forces under the *National Defence Act*, R.S.C. 1985, c. N-5, or was on active service as a member of the naval, land, or air force of any member of the British Commonwealth of Nations or any ally of Canada (*WESA*, ss. 36 and 38).					
(f) If there is no attestation clause, an affidavit as to due execution should be obtained from one of the subscribing witnesses (Rule 25-3(15)), or an application under *WESA*, s. 58 should be considered (see item 1.6.1).					

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.3 Where there appears to be any other deficiency in the formalities of the will and the deceased died on or after March 31, 2014, consider an application under *WESA*, s. 58; see item 1.6.1).					
.4 Codicil, attachments, and other memoranda. Ensure that you have them all.					
.5 Check that the will is still in force, and that it has not been revoked by:					
(a) Subsequent marriage, which is generally not a concern unless the will-maker died before March 31, 2014, and the will does not contain a declaration that it was made in contemplation of the marriage (*Wills Act*, ss. 14(1)(a) and 15).					
(b) A later valid will (*WESA*, s. 55(1)(a)). Check for a revocation clause.					
(c) A declaration executed in accordance with the Act showing an intention to revoke (*WESA*, s. 55(1)(b)).					
(d) Destruction of the will by the will-maker, or by some person in the will-maker's presence and by the will-maker's direction, with the intention of revoking the will (*WESA*, s. 55(1)(c)). There is a rebuttable presumption that a will last known to have been in the hands of the will-maker but which cannot be found at the will-maker's death has been destroyed with this intention.					
.6 If the will or a part of it has been revoked, check whether there has been a revival by a valid will or codicil showing an intention to revive the will or a part of it (*WESA*, s. 57).					
.7 Check that any alterations made after execution of the will are valid (i.e., the whole will has been re-executed or the alterations have been signed by the will-maker and two witnesses in the margin or near the alteration, or at the end of, or opposite to, a memorandum referring to the alteration and written in some part of the will; *WESA*, s. 54). Alterations are presumed to be made after execution, in the absence of contrary evidence, and blanks are presumed to be completed before execution.					
.8 Check that erasures and obliterations are valid (i.e., capable of being proved to have existed at the time of execution, properly executed and attested, or rendered valid by re-execution of the will or the subsequent execution of a codicil). If not, the erased or obliterated words may still be admitted to probate if there is sufficient evidence: (see Rule 25-3(21) and (22)).					
.9 Check that there is a proper attestation clause.					
.10 Check whether there is any gift to an attesting witness or his or her spouse. If so, check whether the gift is valid (i.e., there were more than two witnesses, or it was validated by a later codicil not witnessed by the original witness or his or her spouse, and the witness can prove execution of the will and can act as executor (*WESA*, s. 43). If not, the court has the power under *WESA,* s. 43(4) to cure the gift if satisfied that the gift was intended even though the beneficiary was a witness.					

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.11 If there has been a separation or termination of relationship causing a person to cease to be a spouse of the will-maker for the purposes of the *WESA* (s. 2(2)) after the will was made, check whether a gift or power of appointment to his or her spouse is still valid (i.e., that the will indicates that revocation is not to occur). Otherwise, *WESA* , s. 56 provides that the gift or power of appointment is revoked and the gift must be distributed as if the spouse had died before the will-maker.					
.12 Check whether there is a gift to issue or siblings who have predeceased the will-maker, and consult *WESA*, s. 46 to determine whether the gift has lapsed.					
.13 If no one is named as executor, check whether some person is instructed by the will to perform some duties of the executor, such that the person may apply for probate as an "executor according to the tenor of the will".					
.14 Check whether the will devises or bequeaths property to an "heir" or "next of kin" of any person, or to the will-maker's "issue" or "descendants" and, if so, consult *WESA*, s. 42(2) and (4).					
.15 Check whether the will contains the words "die without issue", "die without leaving issue", "have no issue", or other similar words, and, if so, consult *WESA*, s. 42(3).					
.16 In construing a devise of land, consult *WESA*, ss. 41, 162, and 163.					
.17 In construing a devise of personal property, consult *WESA*, s. 41.					
.18 If the will does not have an adequate residue clause and does not dispose of all the will-maker's property, undisposed assets must be distributed to the intestate successors of the will-maker (*WESA*, s. 44).					
.19 If the gift contains lapsed or voided specific gifts, the gifted property must be, subject to a contrary intention appearing in the will, distributed in the manner described in *WESA*, s. 46.					
.20 If the will fails to carry out the will-maker's intentions because of an error arising from an accidental slip or omission, a misunderstanding of the will-maker's instructions, or a failure to carry out the will-maker's instructions, an application for rectification may be made under *WESA*, s. 59.					
2.3 Advise regarding intestacy, where there is no will or where the will does not dispose of the entire estate (see *WESA,* Part 3. Note, as well, that for intestate succession the definition of "spouse" includes legally married spouses who have not separated, and any couple where the parties lived together for at least two years in a marriage-like relationship immediately before the deceased's death and who have not terminated their relationship; see *WESA*, s. 2.).					
2.4 Review the other documents and information collected by the client, giving advice where appropriate. Your review should include the following matters:					
.1 Check the accuracy of the death certificate. If there is an error, advise the registrar of deaths (Vital Statistics Agency).					
.2 Check income tax information. Find out when the last return was filed. and whether any tax installments are due. See if prior income tax returns disclose the existence of additional assets.					

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.3 Check claims for annuities, pensions (including CPP), insurance, and voluntary payments by the deceased's employer (e.g., death benefits). Ensure that all required notices have been given and appropriate claims have been made. Note the *Pension Benefits Standards Act*, S.B.C. 2012, c. 30, which came into force on September 30, 2015 (B.C. Reg. 71/2015), replacing the former *Pension Benefits Standards Act*, R.S.B.C. 1996, c. 352, and applies to survivor rights and transferability of pension assets. Note *WESA*, Part 5 (Benefit Plans) and Part 6, Division 13 (Deceased Worker's Wages).					
.4 Review liabilities:					
(a) Check dates when they are due. (A tax return for the year of death must be filed within six months of the date of death or on April 30, whichever is later.)					
(b) Discuss payment arrangements.					
(c) Advise the client regarding the liability of the estate for obligations incurred by the deceased under a court order, separation agreement or other contract.					
.5 Review shareholders' agreements and option agreements for time limitations and any restrictions on the transfer of shares.					
.6 If there are assets outside British Columbia, consider whether it is necessary to get legal advice in the other jurisdiction.					
.7 Consider issues relating to probate taxes (e.g., which assets are subject to the taxes and which are not). Advise the client how fees are calculated (*Probate Fee Act*, S.B.C. 1999, c. 4). Note that probate fees apply differently depending on the residence of the will-maker.					
(a) If the will-maker was ordinarily resident in British Columbia, probate fees apply to the value of all real and tangible personal property in British Columbia and to the value of intangible personal property, wherever situated.					
(b) If the will-maker was not ordinarily resident in British Columbia, probate fees apply to the value of all real and tangible personal property in British Columbia but not the value of intangible personal property, such as bank accounts and investments, regardless of their location.					
2.5 Advise regarding the devolution of assets not passing by will or intestacy, such as:					
.1 Joint tenancies intended by the deceased to pass beneficial ownership. (Where there is uncertainty about the deceased's intention, further investigations may be necessary.)					
.2 Life insurance, noting:					
(a) That a designation in a will is ineffective as against a designation made later than the will (*Insurance Act*, S.B.C. 2012, c. 1, s. 61(2)).					
(b) The difference between revocable and irrevocable designations (*Insurance Act*, ss. 59(2) and 60).					
(c) That the insured may designate a successor to own the policy, in which case it will not form part of the estate (*Insurance Act*, s. 68).					

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(d) The rule applicable when the insured and the beneficiary die virtually simultaneously (*Insurance Act*, s. 83).					
.3 Pension plans, RRSPs, RRIFs, and TFSAs (see Part 5 of *WESA* and note that these sections do not apply to plans to which the *Insurance Act* applies; see also *Pension Benefits Standards Act*, which deals with preretirement survivor benefits. Also note s. 34(12) which provides that s. 34 does not apply where a spouse is already receiving a share under the *Family Law Act*, Part 5 or Part 6. If the will contains a designation of a person as a beneficiary under a plan, ensure that such designation is permitted by the terms of the plan).					
.4 Community property, e.g., where the deceased was domiciled or married in a jurisdiction in which the laws provided for community of property between spouses (consider whether it is necessary to obtain legal advice in that jurisdiction).					
.5 "Family property" under *Family Law Act*, ss. 83 to 88. If the property division provisions of the *Family Law Act* or the former *Family Relations Act* were triggered between the deceased and his or her spouse before the deceased's death, there may be a problem in determining the extent of the deceased's interest in property in his or her name and in property in the spouse's name. The obligations of the executor are unclear and it may be advisable not to proceed with the probate application pending resolution of the family law proceeding. Alternatively, the disclosure of the deceased's property may be made subject to determining values at a later date. Under the *Family Law Act*, in general, the parties share equally the increase in property acquired during the relationship, and the increase in value of "excluded property" (which includes property owned prior to the beginning of the relationship, gifts and inheritances received by one spouse before or during the relationship, and certain interests in trusts). A person who qualifies as a common-law spouse under the *Family Law Act* has the same rights as a legally married spouse to a division of property if their relationship ends.					
.6 Check whether organizations named in the will exist and, if charitable, have charitable status under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). (A search of Canada Revenue Agency's "Charities Listings" will provide information about whether a charity is registered.) Note that charitable gifts must be paid to the charity within 60 months of death in order for the estate to benefit from the charitable donation credit provisions under the *Income Tax Act* (s. 118.1(5) and (5.1)).					
.7 *Donatis mortis causa* (gifts made in expectation of imminent death and conditionally upon it occurring).					
.8 Special powers of appointment.					
.9 Statutory benefits, e.g., survivor's benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8; spouse's entitlement to unpaid wages (*Estate Administration Act*, ss. 120 to126, as amended; see *WESA*, ss. 175 to 180).					
.10 Consider whether any beneficiary or joint property owner did not survive the will-maker by five days and if so, see the survivorship rules in *WESA*, ss. 5 to 10.					

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2.6 Advise with respect to who is entitled to administer the estate: .1 Where no one is willing and competent to administer the estate, advise of the option of having a creditor of the deceased or the official administrator do so. Note that there is no longer any statutory obligation for the official administrator to administer an estate. .2 Where the will names an executor, but that person does not wish to act, advise of the option of renunciation (see items 1.4.3 and 1.4.4 and see the new provisions for renunciation and deemed renunciation in Rules 25-1(4) and 25-11(5)). .3 Where more than one executor is named in the will and not all are willing to take out the grant at that time, the executors who wish to take out the grant may do so, reserving the right to the others to apply at a later date. .4 Where the deceased died intestate, letters of administration may be granted to: (a) The persons listed in *WESA*, s. 130, in the order of the priority listed. If none of the persons in paragraphs (a) through (f) is available, the court has discretion under s. 130(g) to appoint another "appropriate" person. (b) Another person, where there are special circumstances: this grant may involve limitations, conditions, and the requirement that the administrator give security (see *WESA,* s. 132). .5 Where there is a will but no executor (e.g., no executor is appointed in the will, the executor predeceased the will-maker or died without proving, the executor renounced or has been cited and has not appeared, the appointment of the executor is void for uncertainty, the executor is a minor or incompetent, or the executor's appointment is revoked by *WESA*, s. 56(2)), administration with the will annexed may be granted to another. The order of priority is set out in *WESA*, s. 131. First priority goes to a beneficiary who has the consent of beneficiaries (including the applicant) representing a majority in interest of the estate. In estates with more complex trust provisions, determining which beneficiaries constitute a "majority in interest" may be complicated. 2.7 Advise a prospective administrator that while by default no security is required to be posted, the court may require a bond if the estate has minor or incapable beneficiaries without nominees representing their interest, or if an heir applies to the court for an order requiring security (*WESA*, s. 128). 2.8 Discuss the duties and powers of an executor or administrator. 2.9 Where the deceased was the sole remaining executor with probate of any unadministered estates, advise that on obtaining probate of the deceased's will, the deceased's executor will become the executor by representation of those estates. 2.10 Where appropriate, discuss the provisions of *WESA*, ss. 60 to 72, and the restrictions on distributing any part of the estate until the limitation period for commencing a proceeding has expired. The limitation period is 210 days from the date of issuance of the grant (*WESA*, s. 155). Advise that a spouse entitled to claim for a variation of a will includes persons within the definition of "spouse" in *WESA*, s. 2.					

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2.11 Open file: note any limitation periods that may apply, place the checklist in the file, make entries in diary and "BF" systems.					
2.12 Send a letter confirming advice and, if not already signed, an engagement letter confirming the terms of the retainer (see item 1.3.2).					
2.13 Complete the PROBATE AND ADMINISTRATION PROCEDURE (G-5) checklist.					