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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 the PROBATE AND ADMINISTRATION INTERVIEW (G-4) 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* 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 Rule 1, 3-53, 3-55, 3-60(4), 3-61(3), 3-75, and 3-87.					
• A client must agree in writing to receive a bill by any means other than that specifically addressed in Rule 3-65(3).					
• **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 (Laws 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 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.B.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 March 31, 2014, reference to the *Wills Act,* the *Estate Administration Act*, and related repealed legislation must be considered. Note that this checklist assumes the death occurred on or after March 31, 2014, and that the *WESA* thus 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). • **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). 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)-(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 new federal 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 of 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 CLEBC 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 with 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 Arrange the initial interview, using the PROBATE AND ADMINISTRATION INTERVIEW (G-4) checklist. Confirm compliance with Law Society of British Columbia Rules 3-98 to 3-109 on client identification and verification; complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.					

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2. PRELIMINARY CONSIDERATIONS					
2.1 If the executor wants to renounce probate, see item 6.1. Where the executor is a U.S. resident or citizen, recommend to the executor that he or she seek U.S. tax advice before the executor accepts the appointment.					
2.2 If the executor is a corporation outside British Columbia and not doing business in B.C., and it wishes to take out a grant or re-seal in B.C. in its own name, obtain a business authorization or an exemption under the *Financial Institutions Act*, R.S.B.C. 1996, c. 141.					
2.2A Prepare and have the client sign authorizations to obtain information regarding bank and investment accounts. Note that some financial institutions are refusing to release any financial information absent form P18 "Authorization to Obtain Estate Information".					
2.3 Where the original will or codicil has been lost or destroyed, or is not available, consider applying for an order to prove a copy (see item 6.5.5).					
2.4 Prepare other affidavits as required, with respect to:					
.1 Attachments missing from the will or codicil (Rule 25-3(22) and (23)).					
.2 Alterations or interlineations in the will or codicil (Rule 25-3(20) and (22)).					
.3 Erasures or obliterations in the will or codicil (Rule 25-3(21) and (22)).					
.4 Lack of an attestation clause or doubt as to due execution of the will or codicil:					
(a) Affidavit of execution from one or more of the subscribing witnesses (Rule 25-3(15)).					
(b) Affidavit of execution from any other person present at the execution or, if such an affidavit cannot be obtained, an affidavit stating that fact, and dealing with the handwriting of the deceased and the subscribing witnesses and any circumstances that may raise a presumption in favour of proper execution (Rule 25-3(16)).					
.5 Will signed by the will-maker in the attestation or testimonium clause (*WESA*, s. 39).					
.6 Blind or illiterate or non-English speaking will-maker, or will signed by another person or by the will-maker by a mark, with an attestation clause that fails to state that the will was read over to the will-maker and he or she appeared to understand its contents (Rule 25-3(18)).					
.7 Proof of the date of execution of the will (Rule 25-3(22)).					
.8 Proof of death where the date of death is unknown.					
2.5 If the client receives a citation or wants to issue a citation or notice of dispute, refer to items 6.2 and 6.4.					
2.6 If you want to gather information about the will or estate by way of subpoena or court order, refer to item 6.3.					
2.7 Obtain valuation of assets:					
.1 Consider use for purposes such as:					
(a) Preparing the disclosure statement required by statute and Rules of Court, and the calculation of probate taxes.					

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(b) Determining capital gains and losses for income tax purposes where there is a deemed disposition at fair market value on death and where valuation-day appraisals are required.					
(c) Determining foreign death taxes where foreign assets are involved.					
(d) Assisting in determining questions arising in estate administration (e.g., buy-sell agreements, sale or distribution of assets, insurance against fire and other perils, determination of option prices).					
.2 Discuss with the client the desirability of employing a professional appraiser where the amount of tax is significant, where expert valuation is required to preserve equality between beneficiaries, or to establish the asking price on a sale. Discuss methods of determining value and the executor's obligation to disclose (though not to adopt) appraisals.					
.3 Obtain written confirmations regarding bank accounts, insurance, pensions, annuities, stocks, bonds, etc., including accrued interest to the date of death.					
2.8 Prepare inventory of assets and liabilities:					
.1 Prepare inventory.					
.2 Use inventory in:					
(a) Preparing a disclosure statement to be exhibited in the probate application and for calculation of probate fees (see item 2.9).					
(b) Preparing income tax returns.					
(c) Transmitting, dividing, distributing, or selling assets.					
(d) Preparing accounts for approval or passing.					
(e) Assisting in determining executor's remuneration.					
(f) Reviewing any wills variation applications.					
2.9 Prepare a disclosure statement required to be exhibited to any application for a grant (Rule 25-3(2)).					
.1 Refer to the inventory of assets and liabilities (see item 2.8).					
.2 In general, include all real and personal property passing to the deceased's personal representative on his or her death (Rule 25-3). Certain types of property are not included (see item 2.5 of the PROBATE AND ADMINISTRATION INTERVIEW (G-4) checklist).					
.3 Ensure that the form and content comply with Rule 25-3 and Forms P10 and P11.					
2.10 Give notice of the application for a grant (see the requirements in Rule 25-2):					
.1 Determine whether notice is required (such as before making an application for a grant of probate or administration, including an application for re-sealing or an ancillary grant, except where the application is made by the Public Guardian and Trustee or made by a creditor in the circumstances set out in *Estate Administration Act*, s. 11(2)). For deaths on or after March 31, 2014, consider *WESA*, Part 6, Divisions 3 and 11. See also Rule 25-2.					

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.2 Mail or deliver the notice, together with a copy of the will, to each of the following: (a) Beneficiaries under the will (including contingent beneficiaries). (b) Persons entitled on an intestacy or a partial intestacy. Notice must be given to all persons who might be entitled on an intestacy, even if there is a will and no apparent intestacy, partial or whole. (c) Persons entitled to apply to vary the will under *WESA*, s. 60. (d) A spouse who qualifies as such under *WESA*, s. 2. If there is any doubt as to whether a person has become or remains a spouse, notice should be given.					
.3 Special situations: (a) Where a person entitled to notice is dead, notice must be delivered to the personal representative of the deceased, if known (Rule 25-2(12)). (b) Where a person entitled to notice cannot be found, apply to the registrar for an order dispensing with notice (*WESA*, s. 121 and Rule 25-2(14)). Note that affidavit evidence of the circumstances (e.g., efforts made to locate a person whose whereabouts are unknown) must be provided. (c) Where a person entitled to notice is a minor, mail or deliver a notice to his or her parent or guardian (unless that person is the applicant) and to the Public Guardian and Trustee. See *WESA*, s. 182. See also Rule 25-2(8). (d) Where a person entitled to notice is, or may be, mentally incompetent, mail or deliver a notice to the Public Guardian and Trustee ((Rule 25-2(11)). If a committee, or an equivalent guardian in another jurisdiction, has been appointed, deliver the notice to the committee or guardian (Rule 25-2(10) and (11)) in addition to the Public Guardian and Trustee. If no committee or equivalent guardian has been appointed for the person, deliver the notice to the person and to the Public Guardian and Trustee (Rule 25-2(11)(c)). If you know that the person has another "nominee" appointed for them as defined in the *WESA*, being an attorney, a representative, or a person appointed under s. 51(2) of the *Indian Act* or the Minister of Aboriginal Affairs and Northern Development, the notice should also be given to the nominee (*WESA*, s. 181). (e) Where a notice is required to be mailed or delivered to the Public Guardian and Trustee, ensure that it contains a list of names and the last known addresses of persons entitled to receive notice, and that it is accompanied by copies of all documents filed with the court in respect of the application. Notice must include birthdates of any minors as well as the applicable fee. See Rule 25-2(13).					

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2.11 Obtain any required consents to a grant of letters of administration:					
.1 From all persons with an equal or prior right to apply. (A spouse has priority to apply as administrator and may also nominate someone else. The spouse or nominee will not need the consent of others. However, if a child or someone nominated by a child applies, that child or other applicant will need the consent of a majority of the children. Other intestate successors may apply and the grant will issue to the one that has the consent of the "majority in interest of the estate". No further rankings are provided, leaving the discretion to the court to appoint an "appropriate" person (*WESA*, s. 130).)					
.2 From the committee appointed under the *Patients Property Act* on behalf of a person who is mentally incompetent.					
.3 From the Public Guardian and Trustee, where you intend to ask the court for a grant to the guardians of an infant for the infant's use and benefit (Rule 25-15(1)).					
2.12 Consider whether the client is bondable. A bond may be required if application is made and the court so requires (*WESA* s. 128).					
2.13 If a caveat or notice of dispute has been filed, or if you want to file one, see item 6.4.					
3. SIMPLE APPLICATIONS					
(See item 5 for contentious applications and see item 6 for special considerations.)					
3.1 For grants of probate:					
.1 Determine whether a special form of probate is appropriate (see item 6.5).					
.2 Bring an application in the Supreme Court (Rule 25-3).					
.3 Prepare and file the following documents (in special probate cases refer to special requirements set out in item 6.5):					
(a) Requisition (Rule 25-3(2) and Form P2).					
(b) Certificate of will search (Rule 25-3(2) and an affidavit pursuant to Rule 25-3(14)). Under Rule 25-3(14.1), testamentary documents believed to be invalid or irrelevant are required to be attached as an exhibit to the affidavit.					
(c) Affidavit of executor and disclosure statement exhibited thereto (Rule 25-3(2), Forms P3 or P4, P8 if applicable, P9 and P10. Note that P10 (the affidavit of assets and liabilities) may be filed subsequent to the filing of other documents).					
(d) Renunciations, if any (Rule 25-3(2) and Form P17 or P34, as applicable).					
(e) Original will and any codicils (Rule 25-3(3)) exhibited to the affidavit of executor. Do not staple the will to the affidavit of executor.					
(f) Affidavit proving delivery of the notices required under Rule 25-2 (Form P9).					
(g) Order dispensing with delivery of notice, if required (see Rule 25-2(12)(b) and (14)).					

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(h) Affidavit of execution of the will, if required.					
(i) Written comments of the Public Guardian and Trustee (see Rule 25-2(13) and *WESA*, s. 124).					
(j) Order pursuant to *WESA*, s. 124(1)(b), if grant is to be issued before the Public Guardian and Trustee has given written comments.					
(k) Probate fees. Pay filing fee of $200. Probate fees are payable when the grant is ready and are calculated on the real and tangible personal property in the estate situated in British Columbia, and the intangible personal property (wherever located) of a deceased ordinarily resident in B.C. immediately prior to death, as follows: $6 for each $1,000 of value between $25,000 and $50,000, plus an additional $14 for each $1,000 that value is above $50,000. If the value of the estate is less than $25,000, no probate tax is payable (see *Probate Fee Act*, S.B.C. 1999, c. 4, s. 2).					
(l) Note the requirement to file supplemental affidavits where further assets or liabilities are determined (Rule 25-3(9)).					
.4 Issuance of the grant:					
(a) The grant should be issued if the documents are acceptable and there are no unusual aspects.					
(b) Probate fees must be paid before receiving the grant.					
(c) Registry practice is to keep the original grant in the court file and to issue court certified copies. A fee of $40 applies for each certified copy.					
3.2 For grants of letters of administration:					
.1 See item 2.6 of the PROBATE AND ADMINISTRATION INTERVIEW (G-4) checklist regarding entitlement to apply.					
.2 Determine the appropriate type of application. See item 6.6 for types of applications.					
.3 Bring an application in the Supreme Court (note that masters have jurisdiction). (See Rule 25-3.)					
.4 Prepare and file the following documents (see item 6.6 for special requirements for different types of administration):					
(a) Requisition (Rule 25-3(2) and Form P2).					
(b) Certificate of will search (Rule 25-3(2) and an affidavit pursuant to Rule 25-3(14)). Rule 25-3(14.1) requires that testamentary documents believed to be invalid or irrelevant be attached as an exhibit to the affidavit.					
(c) Affidavit of administrator and disclosure statement exhibited thereto (Rule 25-3(2), Forms P5, P8 if applicable, P9, and P10. Form P10 (the affidavit of assets and liabilities) may be filed subsequent to the filing of other documents).					
(d) Renunciations and/or consents, if required (Rule 25-3(2)).					
(e) Consents of creditors, if required.					
(f) Order.					
(g) Pay filing fee of $200 and arrange for prospective payment of probate fees (see item 3.1.3(k)).					

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(h) Note the requirement to file supplemental affidavits where further assets or liabilities are determined (Rule 25-3(9)).					
(i) Written comments of the Public Guardian and Trustee, if required (*WESA*, s. 124).					
.5 Issuance of grant:					
(a) The matter will not have to be spoken to if there are no unrepresented minor or mentally incapable beneficiaries, no one has made application to the court for an order requiring security, and any consents required under *WESA*, s. 130 have been obtained.					
(b) In all other cases, the matter will have to be spoken to. Serve documents, ensuring compliance with Rule 4-3. Where the registrar directs that notice be given to any non-consenting person pursuant to Rules 25-4 and 25-9, diarize the time, mail the notice to non-consenting persons, search for responses on expiry of the limitation period, prepare and file an affidavit of mailing, and set the matter down for hearing.					
.6 Security:					
(a) Before applying for a grant, consider whether a bond is likely to be required (consider *WESA*, s. 128), and if so, find out whether the client is bondable.					
(b) Obtain and enter the order showing the amount of the bond, if required.					
(c) Prepare and apply for the bond (Rule 25-14(1)(j), (k), and (l)). Ensure that the bond is executed by the administrator and the sureties.					
(d) File the bond with the registry, by way of requisition.					
(e) If the administrator is unable to obtain a bond, apply to have the order varied to allow for some other form of security.					
4. AFTER OBTAINING THE GRANT					
4.1 Advise regarding transmission, management, and distribution of property, including:					
.1 Advise that where notice of an application for a grant is provided to a minor, a mentally disordered person, or a person who has a representative or a committee, a copy of the grant or resealed probate or letters of administration must be mailed or delivered to the Public Guardian and Trustee within 45 days of the grant or reseal (*WESA*, s. 124(2)).					
.2 In the case of probate, advise of the restriction on distributing any part of the estate in the 210 days following the date the grant is issued, except with consent of the beneficiaries and intestate heirs or by court order, and the estate cannot be distributed while a proceeding is pending (*WESA*, s. 155). The limitation period for commencing a proceeding will be 180 days from the date that grant of probate issues (*WESA*, ss. 61 and 146). Note: once the limitation period has expired, it may be prudent to check Court Services Online, or all court registries, to see if a notice of civil claim or writ has been filed but not served.					
.3 Advise against final distribution prior to receipt of a clearance certificate from the Canada Revenue Agency (*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 159(2) and (3)).					

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.4 If there are non-resident beneficiaries, and more than 50 per cent of the fair market value of the estate was derived from Canadian real property, advise on the requirements to withhold 25 per cent of distributions until either the beneficiary or the personal representative has obtained a certificate of compliance (*Income Tax Act*, ss. 115 and 116). Recommend that the client obtain tax advice, if appropriate.					
.5 Consider whether a notice to creditors and others should be published pursuant to *WESA*, s. 154.					
.6 If an insolvent estate of a person is being administered, advise of the distribution priorities set out in *WESA*, ss. 169 to 174. See also the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 136.					
.7 If there are proceedings relating to division of family assets or property under the *Family Law Act*, S.B.C. 2011, c. 25 (or the former *Family Relations Act*, R.S.B.C. 1996, c. 128), consider getting instructions from the court regarding distribution (see item 2.5.5 of the PROBATE AND ADMINISTRATION INTERVIEW (G-4) checklist).					
.8 Regarding creditors, advise:					
(a) That creditors must be dealt with before distribution to beneficiaries.					
(b) Of the right to compromise claims either under the will or under *WESA*, s. 142.					
(c) Of the procedure for rejecting or disputing a claim (*WESA*, s. 146).					
(d) Of the limitations for actions for loss suffered as a result of the fault of the deceased (*WESA*, s. 154(4)).					
.9 Advise of the procedure and documents required to transfer various types of assets into the name of the surviving joint tenant, the executor, or the administrator, and then to transfer to the beneficiaries where appropriate. Consider who should bear the cost.					
4.2 Prepare documents for transfer, if so instructed.					
4.3 Advise the client in writing of steps that should be taken regarding taxation matters. Specify who—you, the client, or the client's accountant—is to perform each step:					
.1 Obtain income tax clearance certificate(s) (to date of death and/or to final distribution) (see item 4.1.3).					
.2 Obligation to file tax returns (*Income Tax Act*, ss. 70 and 150).					
.3 Calculation of income for the year of death, including variations in deductions, exemptions, elections, and other methods for spreading income over several returns.					
.4 Taxation of capital property.					
.5 Special treatment with respect to certain types of property, such as spousal trust, rollover of farm or fishing property, lifetime capital gains exemption for shares of a qualified small business corporation, the principal residence exemption, and taxation of RRSP and RRIF proceeds.					

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.6 Steps to deal with private corporation shares owned on death to avoid double taxation. Certain tax planning options are only available within specified time periods. Notably, loss carry-back planning under s. 164(6) of the *Income Tax Act* must be completed within one year of death.					
.7 Claiming credits for estate donations to registered charities and other qualified donees, including optimizing use of credits and amending prior year tax returns, as applicable.					
.8 Obligation to file trust returns for income earned by the estate subsequent to death.					
.9 Obligations to withhold or obtain clearance when distributions are made to non-resident beneficiaries.					
.10 Advisability of consulting a tax specialist.					
4.4 Advise regarding remuneration of an executor or administrator:					
.1 Source of entitlement: instrument, contract, or statute (*Trustee Act*, s. 88).					
.2 Quantum: pursuant to instrument, contract, or statute (*Trustee Act*, s. 88); considerations in fixing the amount, and availability of a "care and management fee".					
.3 Indemnification for out-of-pocket expenses properly and reasonably incurred.					
.4 Apportionment of remuneration where there is more than one executor or more than one trust.					
.5 Lack of statutory authority for executor to "pre-take" remuneration in anticipation of approval, if not permitted under will or contract.					
.6 Where not all beneficiaries are willing and or able (because of a legal disability) to approve proposed compensation, make application for a formal passing of accounts and the fixing of compensation (see item 4.5 below).					
4.5 Advise regarding the passing of accounts, including:					
.1 Content of the accounts in accordance with Rule 25-13, such as:					
(a) Original assets on hand at death.					
(b) Capital receipts and disbursements.					
(c) Income receipts and disbursements.					
(d) Reconciliation of items (a) to (c), including a statement of assets on hand at the date of the accounts.					
(e) Statement of distribution.					
(f) Compliance with Rule 18-1(15) and (16).					
.2 Obligation to pass accounts and the fact that the executor may be compelled to do so (*Trustee Act*, s. 99).					
.3 Where appropriate (e.g., all beneficiaries are mentally competent adults), follow the informal procedure for approval of accounts: send the accounts signed by the executor, with a release and an indemnity, to unpaid specific legatees and residual beneficiaries. Failing approval by all beneficiaries, a formal passing of accounts is required.					

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.4 Where formal passing of accounts is required, see the procedure under Rule 25-14.					
4.6 Obtain discharge:					
.1 Informal discharge (where no administration bond has been filed): obtain beneficiaries' approval of accounts and their execution of a release and indemnity, a clearance certificate regarding income taxes, and, if applicable, undertaking notice to creditor procedure under *WESA*, s. 154. Advise the client to obtain a release from any person who may have had rights under Part 5 of either the former *Family Relations Act* or the *Family Law Act*. See item 2.5.5 of the PROBATE AND ADMINISTRATION INTERVIEW (G-4) checklist.					
.2 Formal discharge (*WESA*, ss. 157 to 161):					
(a) Where a beneficiary is missing or his or her residence is unknown, apply for an order authorizing distribution of the estate and payment of the person's share into court (*Trustee Act*, ss. 39 and 40).					
(b) Apply without notice with a supporting affidavit. If a bond was posted as security, ensure that the notice of motion includes a request that the bond be cancelled. Also, where appropriate, apply for the discharged executor to be replaced by a new personal representative.					
(c) A discharge can be applied for on an application for confirmation of the registrar's report, where distribution is to be made immediately after the passing of the accounts, and where the releases state that the beneficiaries have received their shares of the estate. Ensure that the requisition (or notice of application) and order are modified accordingly.					
.3 Advise of the effect of discharge (*WESA*, s. 157(5) and (6)).					
4.7 Report to the client, enclosing the original grant and other original documents (such as releases) for safekeeping, and send final statement of account.					
4.8 Close the file.					
5. CONTENTIOUS APPLICATIONS					
5.1 Refer to item 2.6 of the PROBATE AND ADMINISTRATION INTERVIEW (G-4) checklist regarding entitlement to apply.					
5.2 Refer in general to the Rules regarding actions commenced by notice of civil claim. Note that Rules 25-10 through 25-12 and 25-14 address contentious probate matters.					
5.3 Commence action by a notice of civil claim. Ensure that the notice of civil claim contains a statement of the interest of each plaintiff and defendant in the estate. Ensure that, where the validity of a testamentary paper is questioned, you have joined as defendants all persons having an interest in upholding or disputing the validity of the will, including intestate heirs, persons who qualify or may qualify as spouses under *WESA*, s. 2, persons entitled under earlier testamentary instruments, etc. (Rule 25-14(5)).					
5.4 Note that a person interested in the estate, but not named as a defendant, may defend the action by leave of the court (Rule 25-14(5) and (6)).					

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5.5 A counterclaim is required if the defendant has a claim, or is entitled to relief in respect of a matter relating to the grant.					
5.6 Serve notice of civil claim; note that failure to do so entitles the defendant to seek leave of the court to deliver a counterclaim and proceed as if he or she were the plaintiff.					
5.7 Where a plaintiff is propounding a will, the defendant's response to civil claim may state that he or she merely requires proof in solemn form and will only cross-examine the witnesses produced in support of the will. He or she will then not be liable for costs unless the court finds no reasonable ground for requiring proof in solemn form (Rule 25-15(4)).					
5.8 Note that Rule 3-8 (regarding default of pleadings) is restricted in its application (Rule 25-5(7)).					
5.9 Regarding security, refer to item 3.2.6.					
6. SPECIAL CONSIDERATIONS					
6.1 Renunciation					
.1 Use Form P17 if no citation to apply for a grant of probate has been served, and file together with the documents required to be filed for an application for a grant (Rule 25-1(4)(b)).					
.2 If a citation to apply for grant of probate has been served, complete Form P33 to indicate the executor's refusal to apply for a grant of probate, and serve it on the citor. Include an accessible address for service (Rule 25-11(5)(b)).					
6.2 Citations and subpoenas:					
Refer to Rule 25-11 and Form P31.					
.1 To the executor, to accept or refuse probate, or to show cause why administration should not be granted to the person issuing the citation or to some other person having a prior right who is willing to accept the grant:					
(a) May be done where an executor fails to apply for probate (Rule 25-11(1)).					
(b) Prepare citation in Form P32 (Rule 25-11(1)).					
(c) A person served has 14 days to respond. That person is deemed to have renounced the executorship of the estate (Rule 25-11(5) and *WESA*, s. 105) if that person fails:					
(i) to file the documents as required in Rule 25-11(4)(b)(i) and (ii);					
(ii) to serve an answer in Form P33 refusing to apply for probate; or					
(iii) to obtain a grant of probate within six months after service of the citation.					
.2 To the executor and any other person named to propound a document as a will may be done by any interested person who is aware that a document alleged to be a will exists (Rule 25-11(1); Form P32).					

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.3 To any person to bring in a testamentary document to the registrar or to state under oath that no testamentary document is in the person's possession or control; see Rule 25-12 and *WESA*, s. 123:					
(a) May be done where a testamentary document may be in a person's possession or control.					
(b) Prepare a requisition for a subpoena and supporting affidavit (Rule 25-12(2); Form P35).					
.4 To the executor, or a defendant who has a grant under his or her control, to bring in a grant (Rule 25-12(1); see item 6.8 regarding revocation of a grant).					
.5 In the event that the person served under Rule 25-11(1) is deemed to have renounced the executorship, the citor or any person interested in the estate may apply (Rule 25-11(6)) for:					
(a) grant of probate or grant of administration with will attached;					
(b) an order under *WESA*, s. 58 curing any deficiencies in the testamentary document;					
(c) an order that the testamentary document is proved in solemn form; and					
(d) the issuance of a subpoena if the testamentary document is in the possession of the cited person.					
.6 If the person served renounces executorship, the citor may swear an affidavit of deemed renunciation in Form P34 (Rule 25-11(7)).					
6.3 Subpoenas and orders to assist in gathering information about the will or estate (Rule 25-12):					
.1 Obtain subpoena from the registrar (Rule 25-12(2)):					
(a) Satisfy the registrar, on affidavit evidence, that the person in question has knowledge of a will, or other document, or any asset relating to the estate.					
(b) Prepare subpoena in Form P35.					
(c) Serve subpoena.					
.2 Satisfy the registrar that:					
(a) the document is required for the purpose of an application under Rule 25-12; and					
(b) a person has failed to deliver the document sought.					
.3 Serve the Form P37 subpoena issued by the registrar (Rule 25-12(4)).					
.4 If document is still not produced, apply to the court (Rule 25-12(6)) to issue a warrant in Form P36 for apprehension of the person served, with proof that:					
(a) the subpoena was served;					
(b) the documents are required for an application under Rule 25-12; and					
(c) the documents were not provided within the time period endorsed by the registrar in Form P35.					

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6.4 Caveats:					
.1 File notice of dispute in Form P29, if intending to oppose:					
(a) Issuance of an estate grant,					
(b) An authorization to obtain estate information,					
(c) An authorization to obtain resealing information, or					
(d) The resealing of a foreign grant.					
.2 Cite Rule 25-10(4) and (5) regarding amendment to notice of dispute.					
.3 Diarize one-year limitation period (Rule 25-10(12)(a)).					
.4 Apply for renewal before expiry of the notice of dispute, or demonstrate reasons for not applying before the notice ceased to be in effect (Rule 25-10(6)).					
.5 If appropriate, apply for an order in Form P31 from the court to remove the notice of dispute.					
6.5 Special grants of probate; requisition should indicate the type of grant sought:					
.1 Where an executor has renounced or predeceased the will-maker, or the appointment of the executor is void due to spousal separation under *WESA*, s. 56, ensure that the affidavit of the applicant under Rule 25-3(2) refers to the renunciation or death of the executor.					
.2 Where more than one executor is appointed and one wants to prove the will without the consent or renunciation of the other(s), reserving the right of the other(s) to apply for a grant (i.e., double probate), ensure that the affidavit of the proving executor reflects this fact (see Rule 25-14(4)).					
.3 Where a non-proving executor subsequently wants to apply for double probate, prepare and file a requisition, an affidavit of executor to which a disclosure statement and a copy of the original grant are exhibited. See Rule 25-14.					
.4 Where there is an executor according to the tenor of the will, ensure that the affidavit of the proving executor is modified and the requisition indicates the type of application. The matter may need to be spoken to and an order entered before the issuance of a grant.					
.5 Where an original will or codicil has been lost, destroyed, or is not available, consider making an application for an order to prove a copy. In this case, ensure that the affidavit of the proving executor sets out evidence rebutting the presumption of revocation and that an affidavit as to due execution by a subscribing witness is included. The matter must be spoken to; the court may order that notice be given; the grant will be limited until the original or a more authentic copy can be found.					
.6 Where an original will is not available because it is retained by a foreign court or official, ensure that a court-certified copy is attached and that the affidavit of the proving executor indicates this and explains why the original is not attached. The matter will likely have to be spoken to.					

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.7 Where the original will is a Quebec notarial will, a copy certified by a Quebec notary or prothonotary as a true copy of the original will may be filed in place of the original will (*Evidence Act*, s. 36).					
.8 Where the sole executor was an infant and administration with the will annexed was granted to some other person, and the infant has now attained the age of majority, prepare and file an affidavit of executor and a disclosure statement exhibited thereto, including a reference to the previous grant, a requisition, the affidavit re notice under *WESA,* s. 121 and Rule 25-2, and an application for revocation of the existing grant. See also Rule 25-14.					
.9 Where there are duplicate original wills, file both wills with the registry, exhibited as "A" and "A1". This will have to be spoken to, and you will need an affidavit concerning the circumstances of the execution of the wills.					
6.6 Special kinds of administration:					
.1 Administration of a small estate. Note that the small estates procedure set out in Part 6, Division 2 of the *WESA* have not been and are not expected to be proclaimed in force. Refer to the *Probate and Estate Administration Practice Manual* (CLEBC, 2014–) at §6.32 for information on informal procedures for dealing with small estates.					
.2 Administration pending legal proceedings. Apply for the appointment of an administrator pending legal proceedings under *WESA*, s. 103 and Rule 25-14(1)(q).					
.3 Administration by an attorney. Where the person entitled to administration resides outside British Columbia and does not wish to take out administration in British Columbia, application must be made under *WESA*, s. 139.					
.4 Administration of unadministered estate where the executor dies leaving part of the estate unadministered. Apply for an order under Rule 25-14(1)(d). In the event of death of the personal representative, application to be substituted as personal representative subject to the court's directions is authorized by Rule 25-14(1.2).					
.5 Administration in special circumstances. Apply for an order under Rule 25-14. In the absence of an application for estate grant, application by petition for specified orders is authorized by Rule 25-14(1.1).					
6.7 Foreign grants: (See Rules 25-6, 25-7, 25-8, and 25-9.)					
.1 Determine whether the grant can be resealed in British Columbia (*WESA*, s. 138(1)). Foreign grants of probate or administration in another province or territory in Canada or in another prescribed jurisdiction can be resealed in British Columbia. Under s. 3 of the Wills, Estates and Succession Regulation, B.C. Reg. 148/2013, Schedule B, the prescribed jurisdictions are: any member of the British Commonwealth of Nations, any of the states of the United States of America, and Hong Kong.					

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.2 If the grant can be resealed in British Columbia, apply for resealing (see Rule 25-6):					
(a) See Rule 25-2 in respect of how to deliver notice for resealing of foreign grant.					
(b) Rule 25-5 explains the application procedure in respect of correction, amendment, revocation, and authorization to obtain information in respect of a resealed foreign grant.					
.3 If the grant cannot be resealed in British Columbia, consider whether to:					
(a) Apply for a grant of administration or probate appointing the attorney of the personal representative appointed by the foreign court (*WESA*, s. 139).					
(b) Apply for an ancillary grant of administration or probate appointing the personal representative appointed by the foreign court (*WESA*, s. 138(4)).					
6.8 Revocation of grant (See *WESA*, s. 141, and Rule 25-5(5).)					
.1 Advise the client of the effects of revocation (*WESA*, s. 137).					
7. CLOSING THE FILE					
7.1 Send a letter to the client confirming the execution and location of all planning documents, recommending a periodic review and confirming that your engagement is complete. Also enclose your account for services rendered with sufficient detail for the client to understand the manner in which you arrived at the fee and the disbursements (*BC Code* rule 3.6-3, commentary [1]).					
7.2 For guidance, see *Closed Files—Retention and Disposition*, August 2017, Appendix B at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf. The guideline is for estate administration and trust files to be held for 10 years after all trusts are fully administered.					