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Bill 4-Wills Estates and Succession Act

The Proposed New Succession Law for BC: Highlights and Implications for Charities

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*Miller Thomson Seminar:
Charities & Not For Profit Update
October 22, 2009*

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1. REASONS FOR NEW LEGISLATION

- Legislation governing succession law was last comprehensively reviewed in 1920.
- The British Columbia Law Institute began the succession law reform project in 2003, and in 2006 gave a major report to the BC government recommending changes, many of which are contained in the bill.

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2. WHAT DOES THE PROPOSED ACT REPLACE?

- Legislation being repealed includes:
 - *Estate Administration Act*
 - *Probate Recognition Act*
 - *Wills Act*
 - *Wills Variation Act*
 - Amends other Acts involving succession matters - there is a long list of other provincial statutes that will change as a result of this new act. Also the court rules for probate and administration applications will need to be changed and new forms required.



3. WHEN DOES PROPOSED ACT BECOME EFFECTIVE?

- Bill 4 received Third Reading on September 24, 2009.
- The Bill is to expected to become effective in 2011.
- The new legislation will not invalidate wills made before it comes into force, but will apply to the interpretation of existing wills.



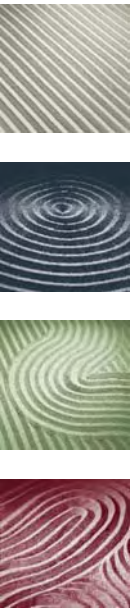
4. FUTURE PUBLIC INPUT

- The public and the legal community will need to have an opportunity to review and prepare for the new legislation before it will come into effect.



5. CHANGES TO SOME BASIC RULES ON SURVIVORSHIP

- Bill 4 proposes changes in situations where persons die “simultaneously” or where it is not possible to determine who died first and also is proposing a 5 day survivorship rule on gifts based on survival.



Current Position

Simultaneous Deaths - Youngest is presumed to survive

Simultaneous Deaths - Joint Tenancies or joint accounts pass to “survivors” based on above rule

Gifts based on survival of Beneficiaries - survival can be a matter of minutes

New Legislation

Presumption is now that each person survives the other and the estates are to be distributed on that basis [s. 5(1) and s. 9(1)]

Joint Tenancies become tenancies in common so each joint tenant’s ½ interest goes under will or intestacy (s. 5(2) [*but see 5 day survival rule in s. 10(2)*])

Section 10 introduces *5 day rule* in absence of contrary language in instrument making gift:

- (a) If beneficiary does not survive for 5 days then beneficiary is deemed to have predeceased [s. 10(1)]
- (b) on joint tenancies or joint accounts, if one joint tenant does not survive the other by at least 5 days, then becomes a tenancy in common [s. 10(2)]

Note – S.72 and 109 of *Insurance Act* dealing with presumptions on simultaneous deaths is not affected.

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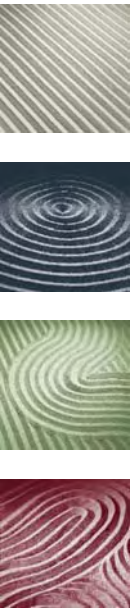
6. SMALL ESTATES

- Definition of a “Small Estate” *will only include personal property* and will be in an amount to be prescribed - (Note BCLI 2006 Report recommended \$50,000) [S. 2]
- If will, executor gives a notice of intention to file an Estate Declaration and then files an Estate Declaration [S. 109]
- If no will, spouse or next intestate heir gives a notice of intention to file an Estate Declaration and then files an Estate Declaration [S. 110]
- Registry stamped copy of Estate Declaration functions like a grant [S. 113]
- No security required [S. 117]

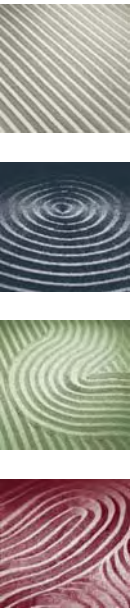


7. NEW INTESTATE SUCCESSION RULES

- “Preferred Share” of surviving spouse increased from \$65,000 to \$300,000 [s. 21(3)]
- If children from each spouse, then surviving spouse’s Preferred Share drops to \$150,000 [s. 21(4)]
- Surviving spouse gets one half of residue regardless of number of children [s. 21(5)(b)(i)]
- Right of Spouse to share ceases on marriage breakdown as follows:
 - if married, then by divorce, triggering event under *Family Relations Act* or live separate and apart for more than two years [s. 2(2)]; or
 - if not married but common law, then if one or both persons terminate the relationship.



- Right to “Spousal Home” - old “life estate for Spouse” gone and surviving spouse has preference to buy Spousal Home (“SH”) using her Preferred Share or her share of residue [s. 26-35]
 - Procedure for notice to spouse of right to acquire SH at time of application for grant [s. 27(1)]
 - Dispute resolution Spouse has 180 days after grant to give notice of exercise option [s. 27(2) and s. 29(1)]
 - process for value of SH [s. 30]
 - Surviving spouse to pay occupancy costs of SH



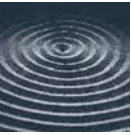
- New intestate succession rules (other than spouse) base on lineal descendants and then a parentelic order e.g. [s. 23]

Situation of Intestate	
No spouse	Lineal descendants [children or grandchildren]
No lineal descendants	Parents of deceased or their lineal descendants
No parents and lineal descendants of parents	Grandparents or their lineal descendants

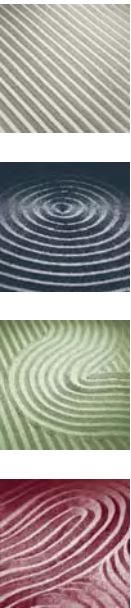


8. KEY CHANGES TO THE LAW OF WILLS

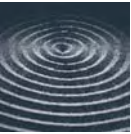
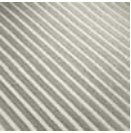
- Old formalities of execution remain [s. 37]
- The court will be given power to ensure a deceased person's last wishes or intentions will be respected, even if will execution is defective [s. 37(2) and s. 58(2) & (3)].
- Reduces age of capacity to 16 [s. 36(1)] but witness must be 19 [s. 40(1)].
- Gifts in a will to a witness or a spouse of a witness may be void unless court is satisfied that Will – Maker intended to make gift even though the person is a witness [s. 43(4)].
- A will is no longer automatically be revoked by marriage [s. 55].



- Courts can rectify a will where there is an accidental slip or omission, a misunderstanding of the testator's instructions, or a failure to carry out those instructions [s. 59(1)].
- Intended to prevent the defeat of testamentary intentions due to errors and omissions of the will drafter.
- Rules concerning the admission of extrinsic evidence of testamentary intent as an aid to the interpretation of wills have been given statutory form [s. 59(2)].



- Undue Influence –the onus is on the party seeking to uphold or defend the will or the provision in dispute;
- That person needs to establish he or she did not exercise undue influence on the Will Maker in respect of the will or the provision being challenged [s. 52].

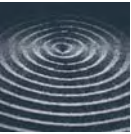


- Some Common Law presumptions are abrogated by s. 53:
 - presumption of advancement to child;
 - presumption that a legacy is revoked by a gift in same amount as the legacy made by the testator during the testator's lifetime;



9. CHANGES TO LAW REGARDING ADMINISTRATION OF ESTATES

- It will be faster and easier to administer small estates (less than \$50,000).
- Removes need for security of an administrator unless infant or incompetent beneficiary, court orders it.
- Derivative Actions – permits a beneficiary to sue in name of estate with leave of court if personal representative refuses or is unable to do so [s. 151].



- Delays distribution of estate for 210 days unless:
 - beneficiaries consent;
 - court order [s. 155(1)];
- if WVA or other proceedings have been commenced then after 210 days, need court order [s. 155(2)].



10. CHANGES TO WILLS VARIATION

- New Division 6, Part III – s. 60-72 replaces old WVA
- Limitation Period now 180 days after grant issued [s. 61(1)(a)]
- Must serve executor with Writ no later than 30 days after limitation period expires [s. 61(1)(b)]



11. DESIGNATION OF BENEFICIARIES

- Puts designation of beneficiaries under “benefit plans” under one Act [s. 2 Definition].
- Authorizes Attorney or Committee to designate beneficiary of a benefit plan if court permits it [s. 85(3)].
- Allows for irrevocable designations [s. 87(1)].
- Benefits not part of estate and not subject to claims of Creditors of “Participant” [s. 95].