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## **Bill 4-Wills Estates and Succession Act The Proposed New Succession Law for BC**

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*Miller Thomson Seminar:  
Private Client Services Update  
October 22, 2009*

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# OUTLINE OF PRESENTATION

1. Reasons for New Legislation
2. What Does Proposed Act Replace
3. When Does it Become Effective
4. Future Public Input
5. Changes to Basic Rules on Survivorship
6. Small Estates
7. New Intestate Succession Rules
8. Key Changes to Law Affecting Wills
9. Changes to Law Regarding Administration of Estates
10. Changes to Wills Variation
11. Designated Beneficiaries



# 1. REASONS FOR NEW LEGISLATION

- Existing law archaic - Legislation governing succession law was last comprehensively reviewed in 1920. Many existing provisions trace their roots to the *Wills Act* of 1837. Legislation is fragmented among too many statutes.
- 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 new act.
- Intestate succession laws are out of touch when compared to allocations to spouses under other legislation dealing with dispositions to spouses and also the value of money (“Family Assets” divisions occurring under the *Family Relations Act*, the preferential spouse share under the *Estate Administration Act* now is only \$65,000) and the increase in property values.



## 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- Legislation being repealed includes: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.





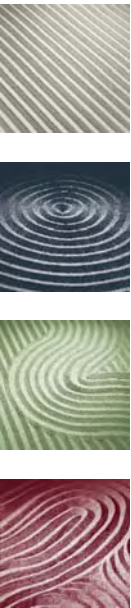
## 6. SMALL ESTATES

- 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

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

Example:

**Situation of Intestate**

No spouse

No lineal descendants

No parents and lineal descendants  
of parents

**Succession**

Lineal descendants [children or grandchildren]

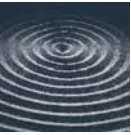
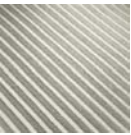
Parents of deceased or their lineal descendants

Grandparents or their lineal descendants

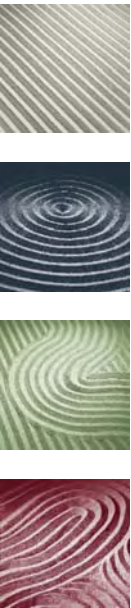


## 8. KEY CHANGES TO THE LAW OF WILLS

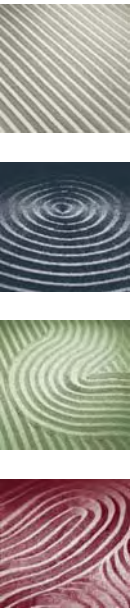
- Old formalities of execution remain [s. 37] except the court will be given power to ensure a deceased person's last wishes or intentions will be respected, even if contained in a document that does not meet the necessary requirements to be considered a will [s. 37(2) and s. 58(2) & (3)].
- Reduces 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 revoked by marriage [s. 55].
- Subject to a contrary intention in the will, gifts and appointments of spouse revoked when the parties cease to be spouses under s. 2(2) [s. 56(2)]. Concept is now extended to “Non Married” Spouses - reconciliation does not cure problem [s. 56(3)].



- Courts would be given the power to rectify a will if it does not coincide with the testator's intentions due to an accidental slip or omission, a misunderstanding of the testator's instructions, or a failure to carry out those instructions [s. 59(1)]. This power is aimed mainly at preventing the defeat of testamentary intentions due to errors and omissions of the will drafter. It would not be available in cases where the testator has misunderstood the legal effect of language used in the will or where there merely is a dispute over the meaning of the will. The rectification power could be used at either the probate or construction stage, and extrinsic evidence would be admissible to prove the facts justifying its exercise [s. 59(2)].
- 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)]. Extrinsic evidence of testamentary intent would be admissible where the will is meaningless or ambiguous, either on its face or when read in light of surrounding circumstances, but evidence of intent would not be admissible for the purpose of showing ambiguity.



- Unless the will provides otherwise, real property will abate together with personal property to pay debts and gifts under will [s. 50].
- The principle of S. 30 of the *Wills Act* (i.e. that the mortgage debt passes together with mortgaged real property rather than being borne generally by the estate) would be extended to registered charges on both real and tangible personal property, if the charges relate to the acquisition, preservation, or improvement of the asset in question [s. 47].
- Undue Influence – If it can be established that will resulted from a person being in a position where the potential for dependence or domination of the Will Maker exists and that position was used to unduly influence the Will Maker to make the will or provision in dispute, then the onus is on the party seeking to uphold or defend the will or the provision in dispute to establish that the person in the position of alleged dependence or domination of the Will Maker did not exercise undue influence on the Will Maker in respect of the will or the provision being challenged [s. 52].



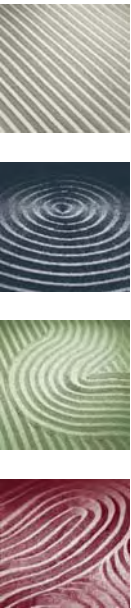
- The *Convention Providing a Uniform Law on the Form of an International Will* would be implemented in British Columbia, with lawyers and notaries public designated as the “authorized persons” before whom a will could be executed in the Convention form by testators wishing to make use of it.
- Some 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;
  - presumption that a debt owed by a testator is satisfied by a legacy to the creditor equal to or greater than the debt and the debt continues to be a claim against the testator’s estate;
  - presumption that a binding promise by a person to make a gift to advance a child in life is satisfied to the extent of the benefit promised by a gift in the person’s will to the child and the promise remains binding on the person and the person’s estate.



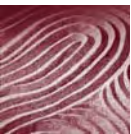
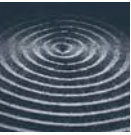


## 9. CHANGES TO LAW REGARDING ADMINISTRATION OF ESTATES

- It will be faster and easier to administer small estates (less than \$50,000).
- Land will now to be used to pay off estate debts equally with personal property. Currently, if debts are owing and the estate does not cover them, bequeaths of personal property are used first to pay the debts, followed by gifts of land.
- Notice of application is to be given to persons set out in Rules of Court.
- Removes need for security of an administrator unless infant or incompetent beneficiary, court orders it.



- Sets out specific priority among applicants which are [s. 130]:
  - spouse;
  - child if majority of other children consent;
  - other intestate successor who has consent of a majority of other intestate successors.
- Gives personal representatives same authority over assets as deceased would have if living, subject to will or court order [s. 142].
- Establishes limitation period of 180 days for disputed claims (old act is 6 months) [s. 146(1)].
- 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].



- Notice to Creditors in BC Gazette now relieves personal representative from liability for claims not advanced within 30 days after Gazette notice [S. 154(4)].
- Delays distribution of estate for 210 days unless:
  - (a) beneficiaries consent; or
  - (b) court order [s. 155(1)];
- and 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 *Wills Variation Act*
- 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].
- Can appoint a Trustee for a designated beneficiary [s. 92].