

ANNOTATED ESTATES PRACTICE 2018  
EXCERPT FROM CHAPTER I

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**Wills, Estates and Succession Act—Annotated**  
**S.B.C. 2009, Chapter 13**

[current to April 5, 2018]

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PART 1—DEFINITIONS AND INTERPRETATION

**Section 1—Definitions and interpretation [§1.1]**

1 (1) In this Act:

**“beneficiary”** means

- (a) a person named in a will to receive all or part of an estate, or
- (b) a person having a beneficial interest in a trust created by a will;

**“benefit”**, in relation to a benefit plan, means a benefit payable under a benefit plan on the death of a participant;

**“benefit plan”** means

- (a) any one or more of the following for the benefit of employees or former employees of an employer, agents or former agents of an employer, the dependants of any of them or a designated beneficiary:
  - (i) a pension plan or retirement plan;
  - (ii) a welfare fund or profit-sharing fund;
  - (iii) a trust, scheme, contract or arrangement,
- (b) a fund, trust, scheme, contract or arrangement for the payment of an annuity for life or for a fixed or variable term,
- (c) a retirement savings plan or retirement income fund registered under the *Income Tax Act* (Canada),
- (d) a fund, trust, scheme, contract or arrangement described in the regulations made under this Act,
- (e) a tax-free savings account within the meaning of the *Income Tax Act* (Canada), or
- (f) a pooled registered pension plan as defined in section 147.5(1) of the *Income Tax Act* (Canada),

whether it was created before, on or after this definition comes into force;

**“court”** means the Supreme Court;

**“descendant”** means all lineal descendants through all generations;

**“designated beneficiary”** means a person to whom or for whose advantage a benefit is payable by a designation;

**“designation”** means the designation of a designated beneficiary in accordance with section 85 [*designated beneficiaries*];

**“estate”** means the property of a deceased person;

**“foreign grant”** means a grant of probate, including letters of verification issued in Quebec, or a grant of administration or other document purporting to be of the same nature issued by a court outside British Columbia;

**“foreign personal representative”** means a personal representative to whom a foreign grant has been made;

**“gift”** includes

- (a) a beneficial devise or bequest, and
- (b) an appointment affecting property other than the appointment of a person as executor of the will;

**“instrument”** includes a testamentary instrument and other legal documents, but does not include an instrument, other than a will, to which the *Insurance Act* applies;

**“intestate”** means a person who dies without a will;

**“intestate estate”** means the estate of a person who dies without a will;

**“intestate successor”** means a person who is entitled to receive all or part of an intestate estate;

**“land”** includes buildings and fixtures, and every right, title, interest, estate or claim to or in land;

**“nominee”** includes

- (a) a person granted power over financial affairs under the *Patients Property Act*,
- (b) an attorney acting under an enduring power of attorney as described in Part 2 [*Enduring Powers of Attorney*] of the *Power of Attorney Act*,
- (c) a representative acting under a representation agreement made under section 7(1)(b) [*standard provisions*] of the *Representation Agreement Act*, and
- (d) a person appointed under section 51(2) [*mentally incompetent Indians*] of the *Indian Act* (Canada) or the Minister of Aboriginal Affairs and Northern Development;

**“participant”** means a person who makes a designation and, except when the context otherwise requires, includes an attorney or committee who makes a designation under section 85 [*designated beneficiaries*];

**“personal property”** means every kind of property other than land;

**“property”** means land and personal property;

**“registrable charge”** means a charge created by an order of the court under section 33(2) [*retention of spousal home*] and made effective by registration in a land title office under section 34 [*registrable charges*];

**“registrar general”** has the same meaning as in the *Vital Statistics Act*;

**“representation grant”** means

- (a) the grant of probate of a will in British Columbia, whether made for general, special or limited purposes,
- (b) the grant of administration of the estate of a deceased person in British Columbia, with or without will annexed, whether made for general, special or limited purposes,
- (c) the resealing in British Columbia of a grant of probate of a will or a grant of administration of the estate of a deceased person, or
- (d) an ancillary grant of probate or administration;

**“security interest”** means an interest in property that secures payment or performance of an obligation;

**“spousal home”** means

- (a) a parcel of land, owned or owned in common by the deceased person and not leased to another person, that
  - (i) is shown as a separate taxable parcel on a taxation roll for the current year prepared under the *Taxation (Rural Area) Act* or on an assessment roll used for the levying of taxes in a municipality, and
  - (ii) has as improvements situated on it a building assessed and taxed in the current year as an improvement, in which the deceased person and his or her spouse were ordinarily resident,
- (b) a share owned or owned in common by the deceased person in a corporation whose charter, as defined in section 1(1) of the *Business Corporations Act*, provides that a building owned or operated by the corporation must be owned and operated exclusively for the benefit of shareholders in the corporation who are occupants of the building, if the value of the share is equivalent to the capital value of a suite owned by the corporation, in which suite the deceased person and his or her spouse were ordinarily resident and which was not leased to any other person,
- (c) a manufactured home, as defined in the *Manufactured Home Act*, situated on land not owned by the owner of the manufactured home and in which the deceased person and his or her spouse were ordinarily resident, or
- (d) a parcel of land on Nisga’a Lands or treaty lands that has as improvements situated on it a building in which the deceased person and his or her spouse were ordinarily resident,
  - (i) owned or owned in common by the deceased person and not leased to another person,
  - (ii) held or held in common by the deceased person by way of a right to possession under Nisga’a law and not leased to another person, or
  - (iii) held or held in common by the deceased person by way of an interest under the laws of a treaty first nation and not leased to another person;

“spouse” has the meaning given to it in section 2 [*when a person is a spouse under this Act*];

“taxing treaty first nation” has the same meaning as in the *Treaty First Nation Taxation Act*;

“testamentary instrument” means a will or designation or a document naming a person to receive a payment or series of payments on death under a plan or arrangement of a type similar to a benefit plan;

“will” means

- (a) a will,
- (b) a testament,
- (c) a codicil,
- (d) an appointment by will or by writing in the nature of a will in exercise of a power,
- (e) anything ordered to be effective as a will under section 58 [*court order curing deficiencies*], or
- (f) any other testamentary disposition except the following:
  - (i) a designation under Part 5 [*Benefit Plans*];
  - (ii) a designation of a beneficiary under Part 3 [*Life Insurance*] or Part 4 [*Accident and Sickness Insurance*] of the *Insurance Act*;
  - (iii) a testamentary disposition governed specifically by another enactment or law of British Columbia or of another jurisdiction in or outside Canada;

“will-maker” means a person who makes a will;

“will-maker’s signature” includes a signature made by another person in the manner described in subsection (2).

(2) A reference to the signature of a will-maker includes a signature made by another person in the will-maker’s presence and by the will-maker’s direction, and the signature may be either the will-maker’s name or the name of the person signing.

(3) If there is any conflict or inconsistency between this Act and the *Trustee Act* with respect to the powers and duties or office of a personal representative, this Act prevails to the extent of the conflict or inconsistency.

[am. 2011-6-1, 2, 3, 4, 5, effective June 2, 2011; 2014-9-50, effective April 9, 2014; 2014-14-142, effective May 29, 2014; 2014-32-63, effective November 27, 2014; 2014-17-28 (B.C. Reg. 101/2016), effective May 4, 2016.]

### **I(1) Personal property**

Reproductive material, such as stored sperm, may constitute “personal property” resulting from rights of use and ownership, and may vest on death in a deceased’s spouse and sole beneficiary.

*W. (K.L.) v. Genesis Fertility Clinic*, 2016 BCSC 1621

**[Editorial note: The cases noted below were decided under s. 96(1) of the former *Estate Administration Act*; the relevant provisions are similar but not identical to those in the *WESA*.]**

### **I(1) Spousal home—Jointly owned**

The phrase “jointly owned” is used in its generic sense, and includes a “tenancy in common”. However, the life interest of the petitioner under s. 96 of the *Estate Administration Act* is an interest that applies only to the interest held by the deceased before his death. In other words, the petitioner has a life interest in the undivided one-half tenancy in common.

*Khan v. Khan*, 2004 BCSC 186, 23 B.C.L.R. (4th) 388

### **Spousal home—Parcel**

The court decided that the word “parcel” in the *Property Transfer Tax Act* had the limited meaning ascribed to it in the *Land Title Act*; that is, a tract of land that bears a parcel identifier under the land titles registration system.

*Claridge Development (Hawthorne) Ltd. v. British Columbia*, 1999 BCCA 702,  
71 B.C.L.R. (3d) 265, supplementary judgment 2000 BCCA 104,  
74 B.C.L.R. (3d) 253

### **Spousal home—Ordinarily resident**

Where it can be found that the widow or widower and a deceased spouse formed an intention to occupy a home before the deceased’s death and established a presence in the home in the form of their furniture and effects, it can be said that the spouses were “ordinarily resident” in the home so as to qualify the home as a “matrimonial home” notwithstanding that the spouses never actually moved into the home before the deceased’s death.

*Re Fidler Estate*, [1995] B.C.J. No. 2618 (QL) (S.C.)

## PART 2—FUNDAMENTAL RULES

*Division 1—Meaning of Spouse, Effect of Adoption  
and Construction of Instruments***Section 2—When a person is a spouse under this Act [§1.2]**

2 (1) Unless subsection (2) applies, 2 persons are spouses of each other for the purposes of this Act if they were both alive immediately before a relevant time and

- (a) they were married to each other, or
- (b) they had lived with each other in a marriage-like relationship for at least 2 years.

(2) Two persons cease being spouses of each other for the purposes of this Act if,

- (a) in the case of a marriage, an event occurs that causes an interest in family property, as defined in Part 5 [*Property Division*] of the *Family Law Act*, to arise, or
- (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.

(2.1) For the purposes of this Act, spouses are not considered to have separated if, within one year after separation,

- (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
- (b) they continue to live together for one or more periods, totalling at least 90 days.

(3) A relevant time for the purposes of subsection (1) is the date of death of one of the persons unless this Act specifies another time as the relevant time.

[am. 2011-25-465, effective March 18, 2013 (B.C. Reg. 131/2012);  
2014-9-51, effective April 9, 2014.]

**2** There can be cohabitation for the purposes of determining a marriage-like relationship where the parties maintain two residences.

*Re Richardson Estate*, 2014 BCSC 2162

To determine whether parties were living together in a marriage-like relationship, the court will consider a variety of subjective and objective factors (not all of which must be present) such as living arrangements, sexual and personal behaviour, living habits, community perception, and economic support.

*Re Connor Estate*, 2017 BCSC 978

**[Editorial note: The case noted below was decided under s. 1(b) of the former *Estate Administration Act*; the relevant provisions are similar but not identical to those in the *WESA*.]**

A common law relationship is not necessarily terminated by a spouse adopting separate living arrangements in order to care for ailing relatives.

*Chapman v. Treakle*, 2014 BCSC 2127

**Section 3—Effect of adoption [§1.3]**

3 (0.1) In this section, “pre-adoption parent” means a person who, before the adoption of a child, was the child’s parent.

(1) Subject to this section, if the relationship of parent and child arising from the adoption of a child must be established at any generation in order to determine succession under this Act, the relationship is to be determined in accordance with the *Adoption Act* respecting the effect of adoption.

(2) Subject to subsection (3), if a child is adopted,

- (a) the child is not entitled to the estate of his or her pre-adoption parent except through the will of the pre-adoption parent, and
- (b) a pre-adoption parent of the child is not entitled to the estate of the child except through the will of the child.

(3) Adoption of a child by the spouse of a pre-adoption parent does not terminate the relationship of parent and child between the child and the pre-adoption parent for purposes of succession under this Act.

[am. 2011-25-466, effective March 18, 2013 (B.C. Reg. 131/2012).]

**3** A child who is adopted but is named as a beneficiary in the will of the pre-adoptive parent does not have standing to bring a claim for variation of the pre-adoptive parent’s will under s. 60 of *WESA*.

*Boer v. Mikaloff*, 2017 BCSC 21

**Section 4—Construction of instruments [§1.4]**

4 (1) If this Act provides that a provision of this Act is subject to a contrary intention appearing in an instrument, that contrary intention must appear in the instrument or arise from a necessary implication of the instrument.

(2) Extrinsic evidence of testamentary intent, including a statement made by the will-maker, is not admissible to assist in the construction of a testamentary instrument unless

- (a) a provision of the will is meaningless,
- (b) a provision of the testamentary instrument is ambiguous
  - (i) on its face, or
  - (ii) in light of evidence, other than evidence of the will-maker's intention, demonstrating that the language used in the testamentary instrument is ambiguous having regard to surrounding circumstances, or
- (c) extrinsic evidence is expressly permitted by this Act.

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