is received. See Canada Revenue Agency Information Circular IC82-6R13, "Clearance Certificate", current to May 25, 2022 on the CRA website at www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic82-6.html for a discussion of the purpose of and procedure to obtain a clearance certificate. See also "Clearance Certificates for Estates and Trusts" in chapter 13.

The lawyer should advise the personal representative to obtain advice and written confirmation from the personal representative's tax adviser as to the amount of the reserve required to cover unpaid taxes, interest, and penalties.

Clearance certificates under s. 116 of the *Income Tax Act* may be required with respect to distribution to non-resident beneficiaries. See "Section 116 Compliance Certificate for a Non-resident Beneficiary" in chapter 13.

3. ADMINISTRATION OF ESTATES [§10.8]

a. Notice to Creditors and Other Claimants [§10.9]

Prior to the distribution of estate assets, a personal representative should consider whether a notice to creditors should be published in the *Gazette* as provided for in s. 154 of the *WESA*. By publishing a notice to creditors, the personal representative is protected from liability from any claim against the estate of a deceased person if the claim was not presented to the personal representative by the end of the period specified in the notice (*WESA*, s. 154(4)). Publication under s. 154 of the *WESA* is required only in the *Gazette* and the minimum notice period for creditors or other claimants to present claims is 30 days. Publication only protects a person in their capacity as personal representative from a valid claim. Creditors may still pursue beneficiaries.

Section 146 of the *WESA* allows a personal representative to give notice, to a creditor of a deceased person or to a person other than a creditor with a claim against the estate, that the personal representative rejects or disputes a claim that is not the subject of a proceeding, in which case the person to whom notice is given must commence a proceeding within 180 days, or the claim is barred. Section 146 likely only applies to debt claims and will not apply to other types of claims, such as tort, contract, or trust claims.

See also "Advertising for Claimants against the Estate" in chapter 11.

b. Insolvent Estates and Bankruptcy [§10.10]

Part 6, Division 12 (ss. 169 to 174) of the *WESA* deals with insolvent estates.

See also "Administering Insolvent Estates" in chapter 11.

c. Hotchpot, Advances to Children, and Other Presumptions [§10.11]

Section 53 of the *WESA* abolished several presumptions of law that a personal representative previously needed to consider before making distributions and transferring property. However, a will-maker may express a contrary intention in the will.

For example, one presumption abrogated under the *WESA* was the presumption against "double portions", which provided that where a will-maker left a gift to a child in the will, and then after the making of the will gave the child a sum of money, the will-maker did not intend to give the child's "portion" to them twice over. The presumption was rebuttable, but if it was not rebutted, the gift in the will would adeem to the extent of the *inter vivos* gift.

Under the *WESA*, the gift in the will takes effect, despite any advances during the deceased's lifetime to the child, unless the will provides otherwise. In a will, a hotchpot clause may bring into the division of a deceased's estate any advances made before or after the date of the will to any child of the deceased.

A personal representative needs to review the will before making distributions to determine if the will-maker intended for advances to be taken into account.

Similarly, on intestacy, the gift will take effect despite any advances during the deceased's lifetime to the child.

See also "Hotchpot—Inter Vivos Gifts to Children" in chapter 1.

d. Distribution of a Minor's Interests [§10.12]

Section 153 of the *WESA* governs distribution of a minor's interest. On an intestacy or when the will does not provide for money or property to be held in trust for a minor, the personal representative is required, on distribution, to pay the minor's share of the assets of the estate consisting of money or property to the Public Guardian and Trustee in trust for the minor.

Unless there are specific trust provisions in a will related to holding the minor's share, or the amount payable to the minor is less than $10,000 and the executor is permitted to pay the amount to the minor's guardian (per s. 178 of the *Family Law Act* and s. 24 of the Family Law Act Regulation, B.C. Reg. 347/2012), the executor must pay the share to the Public Guardian and Trustee. The Public Guardian and Trustee takes the position that an authorization in the will to distribute to a guardian is not sufficient to allow such distribution unless the will authorizes the distribution to be made on specific trust provisions and the distribution is made on that basis. In most cases, the will contains such provisions and s. 153 will not apply.

Section 153(2) provides that, with respect to a minor's interest consisting in whole or in part of property other than money, the Public Guardian and Trustee has the discretion to convert the property interest to money, to transfer it to the minor, or to decline to accept the property interest and recommend to the court that a private trustee be appointed to administer this interest until the minor reaches 19 years of age.

As well, under the *WESA*, an application can be made to the court, before distribution of the estate, for the appointment of a private trustee to administer a minor's interest in the estate, provided that notice is given to the Public Guardian and Trustee (*WESA*, s. 153(3)). Accordingly, a personal representative (or perhaps another interested person) may seek appointment of a trustee, other than the Public Guardian and Trustee, in circumstances where the will is deficient with respect to the trusts for a minor's share or if there is an intestacy where there is a minor. Such an application could be made under s. 179 of the *Family Law Act*.

In *Re Leniuk Estate*, 2016 BCSC 159, the court held that an executor who is appointed a trustee in the will to hold the share of a minor beneficiary cannot apply under Part 8 of the *Family Law Act* to appoint the minor's guardian as a trustee under s. 179 of that Act. Punnett J. held that s. 179 is not intended to override wills and trust documents, and does not apply when a will or trust appoints a trustee.

e. Legatees Who Cannot Be Found or Fail to Claim Specific Bequest [§10.13]

Section 147 of the *WESA* prescribes the procedure to follow if a personal representative, after making reasonable efforts, is unable to locate a beneficiary of a specific gift of property in a will.