

---

## **Fundamental Principles in Estate Disputes**

---

- I. Introduction to Estate Disputes in British Columbia [§1.1]**
  - A. Legislation Governing Estate Disputes [§1.2]
  - B. Estate Disputes Terminology [§1.3]
  - C. Common Types of Estate Disputes [§1.4]
  
- II. The Nature of an Estate Dispute File [§1.5]**
  - A. Identifying the Parties [§1.6]
  - B. Avoiding Conflicts of Interest [§1.7]
  - C. The Role of the Lawyer [§1.8]
  - D. Understanding the Estate in Dispute [§1.9]
  - E. Considerations when Representing Personal Litigants [§1.10]
    - 1. Trauma-Informed Practice [§1.11]
    - 2. Family Dynamics [§1.12]
    - 3. Working with Elderly Clients [§1.13]
    - 4. Language Barriers and Cultural Differences [§1.14]
  - F. Application of the *Indian Act* [§1.15]
  - G. Interplay Between Estate Disputes and Other Litigation [§1.16]
  
- III. The Life of an Estate Dispute File [§1.17]**
  - A. The Initial Interview [§1.18]
  - B. Fees and Retainer Agreements in Estate Disputes [§1.19]
  - C. Options for Early Resolution [§1.20]
  
- IV. Notices of Dispute [§1.21]**

### **I. INTRODUCTION TO ESTATE DISPUTES IN BRITISH COLUMBIA [§1.1]**

Disputes involving wills, estates, and succession matters can vary widely and range from the relatively straightforward to the complex and protracted. Such disputes may arise:

- at any time (i.e., either before or after a will-maker or other individual's death);
- amongst or between a variety of interested persons (i.e., family members, unrelated beneficiaries, creditors, benefit plan providers, committees, attorneys, personal representatives, or trustees); and
- whether or not there are testamentary instruments involved (i.e., whether or not there is a will).

When contacted by a prospective client in respect of an estate matter, counsel need to be able to determine the nature of the concern, the type of estate in dispute, and the parties involved. The purpose of doing so is, of course, to advise the client on the best way to proceed.

The purpose of this chapter is to introduce the most common types of estate disputes and give practitioners some practical guidance when engaging a new client in this area.

## **A. LEGISLATION GOVERNING ESTATE DISPUTES [§ 1.2]**

Estate disputes are governed and informed by both legislative and common law principles. While there are a great number of legislative instruments applicable to this area, the primary statutes include the:

- *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 (the “WESA”), which governs the creation of testamentary instruments and the administration of estates;
- *Trustee Act*, R.S.B.C. 1996, c. 464, which extends to persons entitled or acting under a deed, will, codicil, or other instrument irrespective of the date of its execution (*Trustee Act*, s. 2);
- *Patients Property Act*, R.S.B.C. 1996, c. 349, which provides for the appointment of a committee where an adult is incapable of managing their own affairs;
- *Adult Guardianship Act*, R.S.B.C. 1996, c. 6, which creates dual frameworks for aiding abused or neglected adults who are unable to seek support on their own and provides decision-making assistance to incapable adults where no advance planning documents are in place;
- *Indian Act*, R.S.C. 1985, c. I-5 and Indian Estates Regulations, C.R.C., c. 954, which provide the framework applicable to the estates of registered “Indians”, as defined by the *Indian Act*; and
- Supreme Court Civil Rules, B.C. Reg. 168/2009 (Part 25 in particular), which are specifically applicable to estates.

For an annotated review of many of these and other applicable statutes, see *Annotated Estates Practice* (CLEBC, 2025).

## B. ESTATE DISPUTES TERMINOLOGY [§ 1.3]

It is helpful for counsel to be familiar with some general terminology to understand what type of estate they are dealing with, the nature of the claim being asserted, and the potential client's rights, obligations, and defences, if applicable.

While this is not intended to be an exhaustive list, some of the key terms include:

- **Testamentary instrument:** By statutory definition, a testamentary instrument is 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 (*WESA*, s. 1).
- **Will:** A will is a testamentary instrument that is made in writing, signed at the end by the will-maker (or the signature at the end must be acknowledged as the will-maker's signature) in the presence of two or more witnesses present at the same time and signed by two or more witnesses in the presence of the will-maker (*WESA*, s. 37). Sections 35.1, 35.2, and 35.3 of the *WESA* specifically address testamentary instruments made in an electronic format (often referred to as an “**electronic will**”). For the purpose of the *WESA*, a will also includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power, a “cured” document, and any other testamentary disposition (with certain specific exceptions) (*WESA*, s. 1).
- **“Curing” a will:** Where a will or other testamentary instrument is defective in its execution, a court may “cure” that deficiency by operation of s. 58 of the *WESA*. This concept is discussed in detail in chapter 9 (Curing a Defective Will).
- **Intestacy:** When a person passes away without a will, the person is said to have died **intestate**, and the resulting state is one of “intestacy”. An **intestate estate** refers to the estate of a person who dies without a will. In such cases, the distribution of the deceased's estate is governed by Part 3: Division 1 of the *WESA* (Distribution of Estate When There is no Will). A **partial intestacy** occurs where a person dies leaving a will that does not give away or otherwise dispose of all of the deceased person's estate. This is governed by s. 133 of the *WESA*.

- **Personal representative:** An umbrella term referring to the person or persons appointed by the court to administer the estate. A personal representative includes an **executor** named under the will and an **administrator** appointed by the court to administer the estate. An executor is properly described as an “executor of a will” and not “executor of the estate”.
- **Administrator pending legal proceedings:** A person or persons appointed by the court pursuant to s. 103 of the *WESA* to administer an estate pending the outcome of a challenge to the validity of a will.
- **Administrator with will annexed:** A person or persons appointed by the court to administer an estate in accordance with a valid will, where the named executor is unwilling or unable to act, and either there is no alternative executor named in the will, or the alternative executor is unable or unwilling to act.
- **Trustee:** the person or persons nominated pursuant to an *inter vivos* or testamentary trust to administer the trust in accordance with the terms of the trust.
- **Beneficiary:** In the case of a will, a beneficiary is the person or persons who are either named in a will to receive all or part of an estate, or who have a beneficial interest in a trust created by a will (*WESA*, s. 1). A beneficiary may also be a person or persons who are named in insurance policies, pension plans, registered investment accounts, or testamentary trusts to benefit on the death of the person making the designation or settling the trust (or, in the case of an *inter vivos* trust, upon the creation of the trust). Most commonly, beneficiaries include relatives, charitable organizations, friends, and acquaintances. An **intestate beneficiary** refers to a person or persons who are entitled to a portion of an intestate estate, pursuant to the provisions of Division 1 of the *WESA*.
- **Notice of dispute:** A document filed in the probate registry by a person who challenges the validity of a testamentary document of the appointment of a named personal representative. The filing of a notice of dispute prohibits the issuance of an estate grant until the notice of dispute is withdrawn, expires, or is discharged by the court. See chapter 2 (Notices of Dispute in Estate Litigation) for further information.
- **“Proving” a will:** The formal process of determining whether a will is the valid last will of a will-maker resulting in the issuance of a representation grant. A will may be proved in common form (meaning that the subject will was executed in compliance with the requisite statutory formalities) or in solemn

form (which additionally requires confirmation of the capacity of, and knowledge and approval by, the will-maker). Applications for proof in common form are discussed in chapter 4 (Proceedings Relating to Estate Grants) of the *British Columbia Probate and Estate Administration Practice Manual*, 2nd ed. (CLEBC, 2007–). Issues related to proof in solemn form are discussed in chapter 7 (Validity of Wills Disputes) of this publication.

- **Special administrator:** A person or persons appointed by the court under “special circumstances” pursuant to s. 132 of the *WESA* to administer an estate, whether conditionally or unconditionally, or for general, specific, or limited purposes.
- **Representation grant:** Commonly referred to as a grant of probate or an estate grant, s. 1 of the *WESA* defines a representation grant as:
  - (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 ...

### C. COMMON TYPES OF ESTATE DISPUTES [§1.4]

Estate disputes can take many forms and involve many parties or interested persons. For example, beneficiaries who are disappointed with the contents of a will may take issue with the document’s authenticity, the fairness of its provisions, the manner in which the personal representative administers the estate, or a combination thereof. Each of these issues involves different considerations, legal principles, and procedures. The most common types of estate disputes include:

- **Validity of the testamentary document:** When a person discovers that a will does not provide what they may have expected or thought that they would receive from the deceased’s estate, it is not uncommon for that person to allege that the will-maker was not of sound mind or was unduly influenced by others when making decisions. Such disputes are discussed in chapter 7 (Validity of Wills Disputes).