



Seeking Legal Declaration of Death for a Missing Person The Survivorship and Presumption of Death Act

The disappearance of a family member, relative or friend is undoubtedly one of the most tragic and painful events a person can experience during his or her lifetime. Questions often arise in the wake of a person's disappearance, and finding answers to these questions can be difficult. The following information is to help family members, relatives and friends of missing persons understand how and under what circumstances they might wish to obtain a legal declaration of death for a missing person.

Seeking a legal declaration of death for a missing person – Coroner's Role

When it appears unlikely that a missing person will be found, it is often incumbent upon the person's next-of-kin to resolve any issues pertaining to the missing person's estate, including, in some cases, distribution of the estate. In order to distribute a missing person's estate, there must be issued a legal declaration of death for the person.

The British Columbia Coroners Service has established strict criteria that must be met before the Chief Coroner will declare a missing person presumed dead. In certain missing persons cases, the circumstances surrounding a person's disappearance are such that the evidence suggesting the person has died is insufficient to satisfy these criteria. Consequently, the British Columbia Coroners Service is unable to issue a legal declaration of death for the missing person.

Seeking a legal declaration of death for a missing person – The Survivorship and Presumption of Death Act

The Survivorship and Presumption of Death Act (hereinafter referred to as the Presumption of Death Act) is a British Columbia statute that provides for an alternative method of obtaining a legal declaration of death for families and relatives of missing persons who are unable to obtain such a declaration from the British Columbia Coroners Service. The Presumption of Death Act is of its own statutory authority, and entirely separate from both the British Columbia *Coroners Act* and the British Columbia Coroners Service.

Under the Presumption of Death Act, a family member or relative of a missing person, or any other interested party, may apply to the Supreme Court of British Columbia for an order declaring the missing person presumed dead. The *Act* lists certain criteria that must be met before the court will make such an order.

Evidence required of an applicant

If the missing person has not been seen by you or any other person since he or she went missing; **and** you have no reason to believe that the person is alive; **and** there is some evidence from which it can be reasonably inferred that the person is dead, the circumstances of your case may satisfy the criteria

listed by the Presumption of Death Act and you may be able to obtain a legal declaration of death from the court. It should be noted that the court will refuse an application for an order under the Act where the missing person has neither next-of-kin nor property in British Columbia.

Length of time a person has been missing

The Presumption of Death Act does not stipulate that a period of time must elapse before an interested party is eligible to apply for an order under the *Act*. However, the length of time a person has been missing is a factor that may be considered by the court in determining whether the circumstances of a case satisfy the Presumption of Death Act criteria.

How to apply under the Presumption of Death Act

You may commence proceedings by filing an originating application with the court. The totality of the evidence the court will use to decide an application is set out in affidavits, which are filed in conjunction with the originating application. The affidavits filed as part of an application must include as much evidence as possible that indicates the missing person is deceased. This is to ensure the application will have the best possible chance of success in court. A strong application will generally include affidavit evidence from the police that corroborates an applicant's own affidavit evidence that the missing person is, in fact, deceased.

Seeking legal advice

You may wish to seek legal advice before commencing an application to determine whether, from a legal standpoint, there is sufficient evidence of death such that an application for an order under the *Act* would stand a reasonable chance of success. It may also be prudent for an applicant to seek legal assistance when drafting affidavits to ensure the evidence submitted in support of an application is cogent and comprehensive.

The Supreme Court of British Columbia maintains an *Online Help Guide* to provide information about the court system and procedures. It also outlines various methods for obtaining legal advice, and includes a "Guidebooks for Representing Yourself" section to assist self-represented litigants. You can find this guide at www.supremecourtbc.ca.

To read the Survivorship and Presumption of Death Act go to the BC Laws website www.bclaws.ca the direct link to the act is:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96444_01