

# Wills, Estates and Succession Act and Probate Rules

## Questions and Answers

### 1. Why was the legislation changed?

- The new Wills, Estates and Succession Act (WESA) clarifies, simplifies and streamlines processes related to inheritance and the administration of estates.
- The law of succession was among the most dated areas of law in B.C. The former laws were fragmented and did not reflect modern circumstances.
- The Wills, Estates and Succession Act closely follows recommendations of the B.C. Law Institute, which has an exceptional reputation in law reform.
- Some of the province's top wills and estate practitioners worked on the Act, along with legal academics with expertise in succession law.
- The ministry agreed with the institute that succession law needed reform — and provided funding to the institute to work on it.

### 2. How does the new act affect me?

- Among its benefits, the new act:
  - clarifies the process of inheritance when a person dies without leaving a will;
  - clearly outlines the sequence in which to look for heirs to a person's estate;
  - provides the courts with more latitude to ensure a deceased person's last wishes are respected;
  - clarifies obligations relating to property inheritance in the context of Nisga'a and Treaty First Nation lands; and
  - lowers the minimum age at which a person can make a will from 19 to 16 years old.

### 3. Do existing wills need to be re-written?

- WESA does not invalidate any wills that were written before it came into effect. However, the Act affects all wills no matter when they were written. (See below).
- Some laws governing wills have changed, such as whether marriage revokes a will or whether gifts a will-maker gives a particular person during the will-maker's life are deducted from gifts that person receives under the will-maker's will.
- People who already have a will may wish to sit down with their lawyers to ensure their wishes are upheld in light of these changes to how wills are interpreted.

#### **4. What are some indicators that I should review my will?**

You should consider reviewing your will if:

- You've made specific gifts of both personal property and land;
- In your will you gave someone personal property which is subject to a security interest (such as a car with car payments);
- You made a gift to a child in your lifetime and intend that the amount of this gift be deducted from their share of your estate;
- You made a gift of a specific amount of money to a person in your will and then decided to give them the money as a gift while you were alive;
- You made a promise to give your child a gift of money while you were still living and this gift is unpaid; or
- You intend to pay a debt by making a gift to the person you owe money to in your will.

#### **5. What are the general transition rules for the Wills, Estates and Succession Act?**

- Generally, WESA applies to a deceased's will or estate if they died on or after March 31, 2014.
- The Estate Administration Act, Wills Act, and other legislation replaced by WESA apply to the deceased's estates if they died before March 31.

#### **6. Does the new law apply to wills that have already been written?**

- If a person died on or after March 31, 2014, WESA applies to their will, regardless of when the will was made.
- However, a will revoked by marriage under the old act is not revived by the Wills, Estates and Succession Act, even if the person who made the will died after March 31, 2014.
- WESA does not apply to a will if the person who made the will died before March 31, 2014.

#### **7. What are the general transition rules for the new probate rules?**

- For the probate rules it is the date of application (not date of death) that matters. If you apply after March 31, 2014, then, regardless of the date of death, you should use the new forms (and the new rules apply).

#### **8. What if someone was in the middle of administering an estate when the new law came into effect?**

- After March 31, 2014, the new probate rules apply to all applications for probate and administration, regardless of when someone died.
- In a situation where someone applied for probate under the old probate rules (using the old forms), if they or someone else needed to file additional forms related to that application after March 31, 2014, then they would use the new forms and follow the new probate rules.

- It's important to note that estates that have already been administered are not affected.

**9. Under the old act, a will was revoked if someone married. Why wasn't this provision carried forward into the new act?**

- Many people were unaware that marriage revokes a will.
- Under the old act, this meant that people who married -- and subsequently died without revising their will -- weren't necessarily having their last wishes carried out.
- This change helps ensure their wishes are carried out as intended.

**10. How does the new legislation impact costs? Will it cost more to file for probate?**

- The new act has virtually no impact on probate or filing fees.
- Currently, a person does not need to pay probate fees if the estate is worth less than \$25,000. This stays the same under the new rules.

**11. What are the fees associated with probate?**

- In British Columbia, the basic fee to apply for probate is \$200.
- The basic fee is waived if the value of the estate does not exceed \$25,000.
- In addition to the basic application fee, there is a requirement that the following fees be paid:
  - \$6 for each \$1,000 or part of \$1,000 of the value of the estate in excess of \$25,000, up to \$50,000, plus:
  - \$14 for each \$1,000 or part of \$1,000 of the value of the estate in excess of \$50,000.
- These fees are unchanged under the new act and probate rules.

**12. Why did it take so long for the act to come into effect?**

- The legal community and the general public, as well as the courts, needed to have an opportunity to understand, prepare for and adapt to the changes.
- It's not uncommon to have an extended period between the time an act is passed and the date it is implemented.
- The length of time depends on the complexity of the changes that need to be completed prior to implementation.

**13. Why was the small estates provision left out?**

- It is no longer needed.
- In drafting the new probate rules, we have created prescribed forms very similar to the small estate declaration proposed by the B.C. Law Institute.
- The new rules make a distinction between simple and complex applications and ensure that their processing is dependent upon the complexity of an application, rather than the value of the estate.

- Therefore, there wasn't any advantage to the small estate provisions, as all applicants will get the same benefits under the new probate rules – those with simple applications in particular.
- As an example, simple applications are those where there is no apparently later will that needs to be explained, where there are no issues surrounding the signing of the will, where there are no hand written alterations to the will and no documents referred to in the will that appear to be missing.
- It should also be noted that the fee structure has not changed – individuals are not required to pay probate fees if the estate is with less than \$25,000.

#### **14. How does the new law support First Nation treaty obligations?**

- As a result of treaty legislation, the Nisga'a First Nation and other Treaty First Nations have authority to make their own land laws.
- The new law clarifies how the new Act works – particularly around property inheritance – in the context of Nisga'a and Treaty First Nation lands.
- Certain property of a deceased member of a First Nation, such as cultural artifacts or land, may be communally owned. Therefore, the deceased may not have an unfettered right to give that property away under their will.
- The legislation ensures that First Nations have a right to be informed when a member of their nation dies, to ensure they can assert their rights under the laws they make in accordance with the treaties, if necessary.

#### **15. How do probate rules provide for consistency for registries across the province?**

- This is another example of government working to streamline court processes to provide more timely service for British Columbians.
- Under the old rules, there were no standardized application forms, and court registries across the province had their own processes for dealing with probate applications.
- That has changed under the new probate rules. By standardizing the forms and the court process throughout the province, we have ensured consistency for probate applicants.
- Consistent forms and greater certainty around registry obligations in the application process will also make things easier for registry staff and could shorten processing times.

#### **16. What has the government done to ensure British Columbians know about the new law?**

- The ministry has sent out letters to identified stakeholders and those who participated in the consultation process.
- The ministry has worked with organizations that provide continuing legal education to lawyers and public legal education organizations to develop material to assist

lawyers and the public prepare for the new law and court rules. Some of those resources are available here: [www.ag.gov.bc.ca/make-a-will](http://www.ag.gov.bc.ca/make-a-will)

### **17. Who was consulted on WESA?**

- WESA is the result of extensive consultations.
- There were two consultation stages.
- First, the B.C. Law Institute had over 30 volunteer lawyers and academics working on various subcommittees developing recommendations, as well as consulting beyond these volunteers in developing its recommendations.
- The ministry then undertook its own consultation process after receiving the B.C. Law Institute's recommendations.
- The consultation was open to the public and identified stakeholders were contacted directly and invited to comment.
- Feedback was received from the public, Canadian Bar Association, estate and financial planners, bankers, legal advisors and the public guardian and trustee.
- The probate rules also represented the recommendations of volunteer lawyers and academics. The final development was the result of close collaboration with a Master of the Supreme Court and court registry staff.