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The Scrivener: What’s in a Name?

“A professional penman, a copyist, a scribe . . . a Notary.” Thus the Oxford English Dictionary describes a Scrivener, the craftsman charged with ensuring that the written affairs of others flow smoothly, seamlessly, and accurately. Where a Scrivener must record the files accurately, it’s the Notary whose Seal is bond.

We chose The Scrivener as the name of our magazine to celebrate the Notary’s role in drafting, communicating, authenticating, and getting the facts straight. We strive to publish articles about points of law and the Notary profession for the education and enjoyment of our members, our allied professionals in business, and the public in British Columbia.
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BC Notaries Speak Your Language
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Job Fair
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ABCLS. The Future of Land Surveying in BC
Spring Tech/Auto 2019
Akash Sablok
HONOURS AND EVENTS
PEOPLE
Where in the World Has The Scrivener Been?

The Society of Notaries Public of BC
604 681-4516

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Send photographs to
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**Peace of Mind**

Every year when I see spring flowers and feel spring rains, my spirits lift and I am invigorated after a dreary winter.

Spring is a time for putting the garden plan in motion, ordering seeds, planning the changes for the patio plants, and deciding the row configuration for the vegetable garden.

With energy levels up, it is a good time to take a look at your personal and estate plans, too. *The Scrivener* will not be planning your garden but we may be able to help you with some of your personal plans. In this issue, we offer tips and stories about what you might want to do, what others have done, and who can assist you along the way with your personal planning documents.

Our world has become so much more complicated. We can no longer rely on simply telling our children or spouse what to do in the event of our demise. We are all encouraged to have "documents" to support all our plans.

**Where to Begin**

There are many different types of plans.

- A finance plan for you for the next decades
- The fund for your children’s education
- A plan for your health care
- The person(s) to name in your Power of Attorney document and Will
- Who will look after your estate
- What to do about the house, condo, or property
- Those are all very personal decisions and they can be complicated. It is best to break the plan into steps.

**Having the conversation with yourself about what you want in future will help you decide how to accomplish your goals.**

**The First Step**

Do a quick inventory of where you are now. Consider the following questions.

- Do you have a Will?
- What assets do you have? Do you need to protect them?
- For whom do you currently provide? People, pets, charities?
- How long will your support continue?
- Have you granted a Power of Attorney to anyone?
- Have you spoken to your doctor about your care if you become incapacitated?
- Who will benefit from your plan?

If you want to do some research while you are making your plan, here are links to some resources to assist you. They are applicable to a Will or personal care plan in British Columbia.

**BC Courthouse Libraries**

**Province of British Columbia**
https://www2.gov.bc.ca/gov/content/family-social-supports/seniors/financial-legal-matters/wills-and-estate-planning

**Nidus Personal Planning and Resource Centre**
http://www.nidus.ca/

Having the conversation with yourself about what you want in future will help you decide how to accomplish your goals. You may need to consult an accountant, your local BC Notary, and your family doctor to get advice about the direction you should go.

Be sure your plans become legal, binding documents. It is strongly recommended that you have a BC Notary or lawyer draft the documents you require. The representatives you choose must have legal authority to act on your behalf.

**Easy as 1,2,3**

1. Take the time to make your plans.
2. Imagine how they will work for you and your family.
3. Have the appropriate legal documents prepared.

Your family will thank you and you will have peace of mind.
In folklore, there is the story of Christopher Columbus as a young boy, sitting on the dock, observing the sailing ships of the day disappear into the distance.

The notion that the Earth is round is arguably attributed to Columbus for, at the time, the common belief was that the Earth was flat. To prove his theory, Columbus set sail for the New World.

There is, of course, some real irony in the fact that a good part of this edition of The Scrivener is dedicated to Wills and other personal planning documents; the arrival of explorers brought with them disease and plague that resulted in the deaths of millions.

The indigenous people of the New World have a different perspective on what we now call estate planning. Whereas the common law approach to Wills, Estates, and Succession planning is deeply rooted in Colonialism, few argue that the planning and setting out of our final wishes in writing is a foolish exercise.

For many, Notaries are full life-cycle service providers. Often, the first contact is for the notarization of a document or letter. Or it could be the birth of a first child or the result of a referral during the purchase of a first home. Throughout the client’s life, the Notary has not only the opportunity but the responsibility to engage in thought-provoking and difficult discussions.

Notarial services have been described as “happy law,” those areas of jurisprudence that are generally less adversarial than some of the others.

For many, Notaries are full life-cycle service providers. There are several underlying constructs to engaging in those discussions. With younger clients, death and events that may lead to an untimely demise could be best described as distant. Midlife often brings with it the complexities of separation and divorce, financial difficulties, nuclear families, and relocation for employment reasons.

As midlife turns, we may face the added stress of aging parents and compromised health. There may be experience with loss and grieving. There are those who refuse to plan or are otherwise unwilling to face the inevitability that their time here is limited.

The challenge for the Notary, notwithstanding the obstacles, is to engage with each client to understand the individual’s situation and wishes, to educate as to the customs and laws of estate distribution, and to capture in the form of a Will the final wishes.

While the Will may be the end state, there is much in the preparation. Personal planning is a process that seeks to ameliorate difficulties before they arise, whether through the granting of the Power of Attorney, Representation Agreement, or an Advance Health Care Directive.

BC Notaries are highly educated, competent, and qualified legal professionals.
I am pleased to bring you an update on the BC Notaries Association and further explanation about why the Association has been formed.

For over 90 years, The Society of Notaries Public was primarily a regulator of BC Notaries, performing that obligation as required under the Notaries Act; The Society also advocated for BC Notaries Public and their interests, secondary of course to the public interest.

In its duties, the regulator is expected to put the public’s interest first, so being an advocate for Notaries at the same time can generate conflicts that may not be reconcilable.

The arrangement needed to graduate to a more modern model, one that meets the needs of the public and the needs of our Notaries. For that reason and a few others, it was time for the Association to separate from The Society and go on its own. BC Notaries now have an organization with a mandate to represent its members’ interests and advocate for Notaries in our province, while leaving the very important public protection responsibility to The Society.

That means matters such as continuing education (including annual conferences); certain government communications; promoting and marketing Notaries around BC; seeking legislative changes to the expansion of our scope of practice; building alliances with similar organizations such as BCREA, REIBC, and CMBA-BC; responding to media requests; and many other such activities are now handled by the BC Notaries Association.

As a group, we must be sure that BC Notaries remain relevant and part of the discussion when it comes to legal services in our province.

This work is crucial to the continued growth of our membership and our professional practices. As a group, we must be sure that BC Notaries remain relevant and part of the discussion when it comes to legal services in our province.

There are numerous challenges on the horizon in BC when it comes to the delivery of legal services. Now more than ever, it is important that BC Notaries have a strong Association that keeps our “Trusted Tradition” brand first and foremost in the eyes of both the public and government.

Access to Justice is very much on the minds of government and BC Notaries offer part of the solution to expand access to justice for many British Columbians. The BC Notaries Association is committed to advocating that very theme to all stakeholders.

As we go forward, we are calling on all BC Notaries to become members of the BC Notaries Association. We are not a large group, but we are a proud group . . . very proud of our in-depth postgraduate education in noncontentious legal matters, our wealth of individual and collective on-the-job experience, and our very special rapport with our clients.

Do reach out to me or any other BC Notaries Association Board member if you have questions and you want to become more directly involved. Please email me for the simple one-page form that will kick-start your membership process. We need lots of good people to share their time in making the BC Notaries Association an outstanding success. daniel@deltanotary.ca
New Directors Appointed for BC Notaries Association

The BC Notaries Association is honoured to announce the appointment of two new Directors to the Board of the Association; they bring a variety of regional and demographic perspectives to serve Association members.

The Directors will serve until the first Association Annual General Meeting in September 2019 at the Fall Conference in Kelowna, when all Board positions will be open for election.

Rimpy Sadhra
Rimpy Sadhra has been practising as a BC Notary for the past 8 years. Her business, West Coast Notaries, has offices in Burnaby, Vancouver, and Surrey where she works alongside her husband and fellow Notary Raman Sadhra.

As a graduate of the MA ALS program, Rimpy believes both practical training and continuous educational development are essential elements for being a successful Notary. She has been teaching the conveyancing course for new Notary students since its inception. She has also been Chapter Chair for Burnaby/New Westminster for the past 5 years. As a Board member, Rimpy aims to promote the education and development of Notaries and increase public awareness of the Notary Public profession.

Brendon Rothwell
Brendon Rothwell was commissioned as a BC Notary in the spring of 2013 after completing the Master of Arts in Applied Legal Studies program through Simon Fraser University. His busy Notary practice is located in the central Okanagan city of Kelowna, a community known for its industrious residents and its beautiful scenery.

Brendon is married and the father of two girls. His past experiences, both professional and personal, have provided him the necessary framework and motivation to meet the challenges ahead. Never one to take the easy path, Brendon accepts his appointment as a Board member, ready to work hard and apply his skills and knowledge to the best of his ability.

Charities to Consider

LET’S TAKE THE KID OUT OF KIDNEY DISEASE
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Hailey-Ann will need a kidney transplant.

TO LEARN MORE, CONTACT:
Pia Schindler, Senior Director of Development
1-800-567-8112 EX.223 | 604-736-9775 EX.223 | pias@kidney.bc.ca

Rest.Q Animal Sanctuary

Our volunteer-run organization rescues and cares for animals who have been abused, abandoned, injured, or neglected. We find perfect forever homes for most animals and provide permanent housing to another 170. We serve the Southern Gulf Islands region including Galiano Island and Mayne Island.

Please consider a one-time donation or the monthly sponsorship of one of our residents.

info@restqsanctuary.org • (250) 539 3105

www.restqsanctuary.ca

Rest.Q is a not-for-profit society under BC’s Societies Act and a registered charity with Canada Revenue Agency (Charity No: 83035 9568 RR0001).
On International Women’s Day March 8 this year, I found myself thinking about the financial security of single women, particularly seniors, when their partner has passed.

And the financial insecurity that can be experienced when you are not the primary wage earner and you and your partner did not sufficiently consider the protection that good estate planning provides.

Gender pay inequality is still an issue in British Columbia.

- A Financial Health Report by Vancity Credit Union published in March 2019, analysing the survey results of 5200 people, found that women are more concerned than men about their financial health, for good reason; women in our province earn 35 per cent less each year than their male counterparts and less than women in comparative positions in the rest of Canada.

- The report also indicates this is a mental health issue for women, with 52 per cent of women surveyed experiencing extreme emotional stress, worrying about rent, mortgages, food security, cost of medications, and the ability to obtain adequate credit.

At the end of their working lives, many women may lag behind their male partners in terms of total accumulated assets and rely on the sharing or transference of their partners’ assets for financial security in their retirement years.

Women also live longer than men; Statistics Canada indicates in its 2010 data that 56 per cent of the population age 65 and older were women; that rises to 67 per cent for those age 85 and older. That is where good estate planning is critical, particularly for those in more complex relationships such as blended families.

So what should women be doing? We must continue to lobby for equal pay, spread the message by sharing credible research, help other women up the pay ladder, and educate our children, spouses, colleagues, and community.

Those are of course longterm tactics, but what can we do for our personal protection from financial insecurity?

First, be informed.
Understand your financial position, options, and obligations, including joint income, monthly outgoings, taxes, property maintenance, debt including your mortgage or rent and credit cards, and insurance. Understand what you will need to live and your options for your later years. Know where all your important documents are and keep written and properly filed records.

Second, take action based on expert advice.
I wish I had a dollar for every time I have heard, “Well, my friend said her mum/dad/friend/neighbour did such and such, so that's what I did” or “I looked on the Internet and did it myself.”

I would not extract my own teeth or do my own surgery; I go to professionals…

No one wants to think about being alone, but making a plan beforehand is your best protection.
Your donation dollars rescue donkeys who are in moderate to severe mental or physical distress and give them a safe, healthy, and loving permanent home in a nature-respectful setting in beautiful Turtle Valley, British Columbia.

Our information:
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(250) 679-2778
donkeyrefuge@gmail.com
www.facebook.com/TurtleValleyDonkeyRefugeSociety

By helping your clients include a gift to Coast Mental Health Foundation in their Will, you make recovery possible for people living with mental illness.

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Recovery is possible. You can help.

Please contact us for more information:
Website: www.coastmentalhealth.com | Direct: 604.349.2217
Charitable Registration No: 86150 8018 RR0001

These should not be impossible dreams!

A collective effort is needed to help those in our communities who need it most. For generations, United Way has been analyzing local social service needs, raising funds, and supporting effective programs and charities in our BC communities, changing people’s lives for the better.

Donors can trust that through United Way, they can make a positive difference in their community now, and through a gift in their Will into the future.

For more information on Will planning or other estate gifts, please contact your local United Way or:

BC Lower Mainland
Elaine Fung: (604) 268-1317  Email: elainef@uwlm.ca

Thompson – Nicola – Cariboo Region
Danalee Baker: (250) 372-9933
Email: danalee@unitedwaytnc.ca

Okanagan – Columbia – Shuswap – Similkameen
Sarah Anne Taylor: 1-855-232-1321
Email: sarahanne@unitedwaycso.com

Greater Victoria – Saanich Peninsula – Gulf Islands
Peter Brimacombe: (250) 220-7379  Email: peter@uwgv.ca

Central and Northern Vancouver Island
Patti Mertz: (250) 591-8731  Email: dd@uwcnvi.ca

UNITED WE CHANGE LIVES

A collective effort is needed to help those in our communities who need it most. For generations, United Way has been analyzing local social service needs, raising funds, and supporting effective programs and charities in our BC communities, changing people’s lives for the better.

Donors can trust that through United Way, they can make a positive difference in their community now, and through a gift in their Will into the future.
Why Delay Such Contentment?

This issue of The Scrivener contains much valuable information on the “how and why” of estate and personal planning in British Columbia.

The laws that apply to Wills, Estates, Powers of Attorney, Representation Agreements, and Advance Health Care Directives that are made, used, and “probated” in BC are governed by BC provincial legislation and BC Court decisions.

As a result, great care is needed in using the advice given in Internet searches and by online experts. Doing online research can be useful but, as they say, “Discretion is advised.” There is excellent BC information available online through sources such as “Nidus” (www.nidus.ca) and the Legal Services Society websites. Use those sites as a way to get informed and prepared for a visit to your local BC Notary.

That said, the most significant problem that occurs in regard to estate and personal planning is not faulty research or a failure to comply with a technical point of law. Most often it is simply a failure to take the necessary steps to make the necessary documents. Our laws naturally cover off what happens when nothing is done, but that is rarely desirable and certainly not less expensive.

There is a marvellous passage in the novel Moby Dick where, after a harrowing encounter while whaling, Ishmael makes a Will. When it is done, he comments, “I felt all the easier; a stone was rolled away from my heart . . . I looked round me tranquilly and contentedly…”

That reflects my experience of many years in assisting clients with these documents. The discomfort of dealing with difficult and sensitive issues is real but I can assure readers that the relief Ishmael expresses is not just a passage in a work of fiction; it is the experience of many who thoughtfully make those documents.

So why delay such contentment? Make an appointment to see your local BC Notary as soon as possible.

Ron Usher is General Counsel and a Practice Advisor for The Society of Notaries Public of BC.

www.notaries.bc.ca

Do You Have All Your Docs in a Row?

Articles in our theme section will enlighten you about the four personal and health care planning documents in British Columbia.

1. Will
2. Representation Agreement
3. Advance Health Care Directive
4. Power of Attorney

Helpful Explanations

The attorney appointed by a Power of Attorney document is not a lawyer. He or she is the person designated in the Power of Attorney document.

An Enduring Power of Attorney is a Power of Attorney that can continue or endure even in the event of the subsequent incapacity of the adult.

• The Power of Attorney is in effect while you are alive. If you pass away, your Power of Attorney is no longer in effect.

• The Representation Agreement and the Advance Health Care Directive are in effect while you are alive.

The articles that follow more fully explain the personal planning documents.
WHEN SHOULD YOU HAVE YOUR PERSONAL PLANNING DOCUMENTS IN PLACE?

Now!

Our office is very busy in the area of Wills and personal planning.

So many people do not understand the importance of having personal planning documents in place.

Over the years, I have been witness to situations where those documents proved invaluable to clients of all ages.

I have been appointed executor/trustee for many senior clients who have no family or no family close by; I also act for many clients as their attorney (under their Power of Attorney) and representative (under their Representation Agreement).

I have had clients end up in hospital, unable to be involved in their own decision-making because they did not feel comfortable appointing me or another person to make future personal care decisions for them. Unfortunately, some have ended up receiving treatment they did not want because they were unable to speak for themselves and no one was legally named to speak for them.

A 66-year-old client suffered a minor fall last week that led to a catastrophic spinal cord injury due to a pre-existing condition. I had been appointed her executor/trustee and attorney 8 years ago, but she had not appointed me her representative under a Representation Agreement. She had, however, done an Advance Health Care Directive herself and just happened to send me a copy of it last year.

I found out about her fall when I received an urgent call from Vancouver General Hospital because in all her medical records, my name was noted as her emergency contact. They were about to take her into surgery.

The surgery, if successful, would have left her a quadriplegic; she would have needed full-time care in a care facility.

The Advance Health Care Directive that she had sent me very clearly stated “any condition where others have to wash, dress, and feed” her or if she could not stay in her own home would be intolerable or unacceptable. I was able to provide that document to the hospital to stop a surgery she absolutely did not want. In that instance, the Advance Health Care Directive proved a very important tool.

My client died shortly after her ventilator was removed that evening because the doctors were able to follow her wishes . . . she had made them known.

Alert: When you need a Power of Attorney, Representation Agreement, or Advance Health Care Directive, it is generally too late to do one.

Tiah Workman is a BC Notary practising in Nanaimo.
The mandate of “Make a Will Week” is to encourage British Columbians who don’t have a current Will:

- to have a legal professional prepare them a Will or update the one they have, and
- to encourage families to discuss the topic.

Two-thirds of parents with dependent children do not have a Will.

March 2018 Ipsos Survey conducted for BC Notaries

A recent online survey of 800 BC residents found 66% of parents of children 18 or younger do not have a Will. That leaves the family vulnerable to outside decision-makers, delays, and conflict if something were to happen to one or both parents.

Research also shows a significant gap between the number of British Columbians who own a home and those with a legal Will in place, particularly among those under age 35. In a survey of individuals 18 to 34, 50 per cent own a home but only 13 per cent have a Will.

No Will?

If there is no Will in place or the Will is not properly prepared, custody of children under 18 and property distribution may not occur the way the deceased intended. If the Public Guardian and Trustee is brought in to administer the estate, the Province may decide on the future of dependent children and assets.

“It is essential that anyone with dependent children has a current Will,” says Victoria Notary Morrie Baillie. “The lack of a Will can leave dependent children vulnerable to wait in foster care while the Courts decide on a suitable guardian. Contrast that to the simplicity of a Will that empowers you to nominate someone you trust to take immediate care of your minor children.”

The kindest thing people can do is ensure they have an up-to-date Will in place...

The costs of administering the estate may be higher if a legally enforceable Will does not exist. The kindest thing people can do is ensure they have an up-to-date Will in place so their loved ones don’t need to worry about the details of an estate while they are grieving.

“We know many people pass without a Will because BC Notaries help families navigate the bureaucracy and uncertainty created for those left behind when a person dies intestate,” says Prince Rupert Notary Rhoda Witherly.

“Many people put off creating a Will. Absence of a Will can create stress and conflict among family members after a person’s death and lead to increased costs to the estate and unexpected outcomes for children and beneficiaries,” says Tsawwassen Notary Daniel Boisvert.

Your Time is Valuable

A good way to start the Will process is to think about who you would want to care for your children and to inherit your home and any other assets. Then visit your BC Notary to assist you in preparing a proper and legal Will.

Creating a Will takes less time than most people think. It can usually be completed in two short meetings. Says Vancouver Notary David Watts, “During the first meeting, we discuss a general overview of your assets and your intentions for their distribution. The second meeting finalizes your plan and your paperwork.”

Most people find creating a Will leads to important discussions and decisions with family members. Knowing your assets will be distributed to family, friends, and charitable organizations according to your wishes brings families closer by creating more certainty and peace of mind for everyone.

BC Notaries are available in many areas of BC to discuss Will planning.

www.notaries.bc.ca
Who Needs a Will?

• **Do you have dependent children?**
  Wills help protect dependent children by appointing someone to care for your underage children if you die. That is particularly important for single parents or blended families where the law may not align with your wishes. If you don’t designate custody, that decision may be made by a stranger through the Court system.

• **Are you a homeowner?**
  If you share ownership of a property or a home, it is important to review the structure of that agreement because it can impact what happens to that ownership if you die. Your BC Notary can do a title search and discuss the options available to ensure your wishes are legally possible and your Will is clear.

• **Are you separated, divorced, or living in a common law relationship?**
  Changes in your living arrangements or marital status can call for changes to your Will. Creating or updating a Will is very important for people whose relationship status has changed, for example, due to marriage, separation, divorce, or when there has been a birth or death in the family. Your Will indicates the way you want your assets to be divided or assigned.

• **Do you want to reduce conflict within the family?**
  Creating a Will and ensuring it is up-to-date is very important to show exactly how you want your assets divided. The kindest thing you can do for your loved ones is to have a Will . . . and make sure it is up to date to dispel doubt, anxiety, hurt feelings, and delays.

• **Do you have pets?**
  For many British Columbians, pets are family. People want to ensure their pets will continue to be cared for, if something were to happen to their human mom or dad. A Will designates those provisions.

• **Do you want peace of mind?**
  A BC Notary can eliminate or at least reduce stress, taxes, and conflict among loved ones when a family member dies. Having a Will gives you and your family peace of mind that your assets will go to those you love and your wishes will be followed. Most people find the process leads to important discussions and decisions and brings families closer. It also provides you with assurances that your assets will be distributed to family, friends, and charitable organizations according to your current wishes.

To find a Notary near you, please visit www.notaries.bc.ca.

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**Change cancer forever. Leave a gift in your Will.**

**A gift in your Will is a gift for the future. By funding research you can make a difference in people’s lives and help to eradicate cancer for our children and grandchildren.**

**Canadian Cancer Society, BC & Yukon**

Charitable Registration Number: 118829803 RR0001

Janice Williams, CFRE
Manager, Estate & Gift Planning
1-800-663-2524 ext 7112
janice.williams@cancer.ca

cancer.ca
Undue Influence, Spouses, and Defective Wills
5 Years Post-WESA

It has now been just over 5 years since British Columbia’s Wills, Estates and Succession Act (”WESA”) was introduced. This article will review some of the leading cases in three areas of law, namely

1. undue influence and section 52 WESA;
2. the definition of spouse and marriage-like relationship; and
3. what is a Will and section 58 WESA.

PART 1
What is Undue Influence?

It is odious, secretive, more prevalent than one would think, and difficult to expose and “prove.”

Undue influence is influence that overbears the will of the person influenced to the extent that what he or she does is not his or her own act. [Longmuir v. Holland, 2000 BCCA 538, at para. 71]

By definition, virtually every estate litigation fact pattern involving an allegation of undue influence will involve a situation where one party is dominant and another dependent on that person, and then a questionable transaction either by Will or inter vivos occurs.

It is extremely difficult to win an undue influence case where the mental capacity of the deceased is not at least questionable at the time the Will or gift was made. It is difficult enough to persuade Judges that someone has acted under the undue influence of another person when the party in question is not mentally impaired.

Photo credit: Matthew Chen

Trevor Todd

Section 52 WESA reads as follows.

52 In a proceeding, if a person claims that a will or any provision of it resulted from another person (a) being in a position where the potential for dependence or domination of the will-maker was present, and (b) using that position to unduly influence the will-maker to make the will or the provision of it that is challenged,
and establishes that the other person was in a position where the potential for dependence or domination of the will-maker was present, the party seeking to defend the will or the provision of it that is challenged or to uphold the gift has the onus of establishing that the person in the position where the potential for dependence or domination of the will-maker was present did not exercise undue influence over the will-maker with respect to the will or the provision of it that is challenged.

There have been two decisions, as discussed below, in which the presumption of undue influence has been mentioned and then more or less ignored.

(a) Trudeau v. Turpin Estate

In Trudeau v. Turpin Estate, 2019 BCSC 150, the Judge reviewed the law starting with citing section 52 WESA and then went on to basically ignore the presumption of undue influence by finding the evidence was clear that there was no potential for domination by the defendant over the deceased.

The Judge went so far as to say, at para. 121:

I reject as absurd plaintiff counsel’s submissions that Dorothy’s continuous presence at the Property, her provision of assistance and care to Isabel, her statement to Isabel in the lawyer’s office in April 2005 that she should simply provide for an equal distribution, and her suggestion that Isabel change doctors after her previous doctor had misdiagnosed her bladder condition equates to or resulted in Dorothy having influenced Isabel’s testamentary decision-making in 2015.

In coming to that conclusion, the Judge discussed the applicable law as follows.

[110] Undue influence can arise where the relations between the donor and donee at the time of or shortly before the execution of a will have been such as to raise a presumption that the donee had influence over the donor: Allcard v. Skinner (1887), 36 Ch.D. 145 (C.A.) at 171; Modonese at para. 97. A gratuitous transfer from a parent to an adult child creates the presumption of undue influence by the adult child: Geffen v. Goodman Estate, [1991] 2 S.C.R. 353 at 378.

[111] In this context, undue influence does not depend on proof of reprehensible conduct—indeed, the donee may have acted sincerely and honestly. However, equity will intervene as a matter of public policy to prevent influence existing from certain relationships from being abused: Ogilvie v. Ogilvie Estate (1998), 49 B.C.L.R. (3d) 277 (C.A.) at para. 14, citing Allcard at 171; Modonese at para. 99.

[112] In Geffen at 378–79, Justice Wilson discussed the presumption of undue influence in the following passages.

What then must a plaintiff establish in order to trigger a presumption of undue influence? In my view, the inquiry should begin with an examination of the relationship between the parties. The first question to be addressed in all cases is whether the potential for domination inheres in the nature of the relationship itself. This test embraces those relationships which equity has already recognized as giving rise to the presumption, such as solicitor and client, parent and child, and guardian and ward, as well as other relationships of dependency which defy easy categorization.

Having established the requisite type of relationship to support the presumption, the next phase of the inquiry involves an examination of the nature of the transaction. ...

...in situations where consideration is not an issue, e.g., gifts and bequests, it seems to me quite inappropriate to put a plaintiff to the proof of undue disadvantage or benefit in the result. In these situations the concern of the court is that such acts of beneficence not be tainted. It is enough, therefore, to establish the presence of a dominant relationship.

Once the plaintiff has established that the circumstances are such as to trigger the application of the presumption, i.e., that apart from the details of the particular impugned transaction the nature of the relationship between the plaintiff and defendant was such that the potential for influence existed, the onus moves to the defendant to rebut it. As Lord Evershed M.R. stated in Zamet v. Hyman, [1961] 3 All E.R. 933] at p. 938, the plaintiff must be shown to have entered into the transaction as a result of his own “full, free and informed thought.” Substantively, this may entail a showing that no actual influence was deployed in the particular transaction, that the plaintiff had independent advice, and so on.

Additionally, I agree with those authors who suggest that the magnitude of the disadvantage
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or benefit is cogent evidence going to the issue of whether influence was exercised.

[113] Accordingly, once a relationship with the potential for domination has been established, the next phase of the inquiry is to examine the nature of the transaction. Where a gratuitous transfer is concerned, the onus moves to the defendant to rebut the presumption on the balance of probabilities: Stone v. Campbell, 2008 BCSC 1518 at paras. 43–44.

[114] In Stewart v. McLean, 2010 BCSC 64, Mr. Justice Punnett summarized the legal approach to the question of whether the presumption of undue influence has been rebutted at para. 97:

To rebut the presumption of undue influence, the defendant must show that the donor gave the gift as a result of her own “full, free and informed thought”: Geffen at 379. A defendant could establish this by showing

a. no actual influence was used in the particular transaction or the lack of opportunity to influence the donor (Geffen at 379; Longmuir at para. 121);

b. the donor had independent advice or the opportunity to obtain independent advice (Geffen at 379; Longmuir at para. 121);

c. the donor had the ability to resist any such influence (Calbick v. Warne, 2009 BCSC 1222 at para. 64);

d. the donor knew and appreciated what she was doing (Vout v. Hay, [1995] 2 S.C.R. 876 at para. 29, 125 D.L.R. (4th) 431); or

e. undue delay in prosecuting the claim, acquiescence or confirmation by the deceased (Longmuir at para. 76).

Another relevant factor may be the magnitude of the benefit or disadvantage (Geffen at 379; Longmuir at para. 121).

[115] These statements of the law were recently confirmed by our Court of Appeal in Cowper-Smith v. Morgan, 2016 BCCA 200 at paras. 49–53.

(b) Ali v. Walters Estate

In Ali v. Walters Estate, 2018 BCSC 1032, the Judge similarly found that he did not need to address the presumption as ample evidence existed that the deceased was not unduly influenced by the defendant. Specifically, the Judge stated as follows.

[30] In my view, the presumption is unnecessary to address, because ample evidence makes clear that Ms. Ali did not exercise undue influence over Mr. Walters. If the presumption applies, Ms. Ali has rebutted it.

PART 2

The Definition of Spouse and What Is a Marriage-Like Relationship?

CFM v. GLM, 2018 BCSC 815, involved a determination as to whether the claimant was a spouse as defined by section 3 of the Family Law Act. In order to succeed, the claimant must establish that she lived with the respondent in a marriage-like relationship for a continuous period of 2 years.

The couple participated in what is known as a swinging lifestyle, but the Judge expressly stated that since it was a consensual arrangement, he did not factor their lifestyle into his finding that they were not in fact in a marriage-like relationship.
Specifically, the Judge found that the claimant did not live with the respondent on anything like a continuous basis and there were regular, perhaps annual intervals when the parties separated and saw other people.

No one factor governs whether a relationship is marriage-like. Every case must be evaluated individually considering all factors supporting or negating spousal status: Austin v. Goerz, 2007 BCCA 586, at para. 58.

In Dey v. Blackett, 2018 BCSC 244, at paras. 192–196, the Court provided the following overview of the principles to be borne in mind in determining a marriage-like relationship.

[192] The determination of whether a relationship was marriage-like requires a “holistic approach” in which all of the relevant factors are considered and weighed, but none of them are treated as being determinative of the question: Austin v. Goerz, 2007 BCCA 586 at paras. 58–62.

[193] While a “checklist” approach to this question is not appropriate, it can still be helpful during the analysis to consider the presence or absence of commonly-accepted “indicators of the sorts of behaviour that society, at a given point in time, associates with the marital relationship”: Weber v. Leclerc, 2015 BCCA 492 at para. 25. A frequently-cited authority has identified these indicators as including “shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple”: M. v. H., [1999] 2 S.C.R. 3 at para. 59, citing Molodowich v. Penttinen (1980), 17 R.F.L. (2d) 376 at para. 16 (Ont. Dist. Ct.).

[194] While financial dependence was at one time considered an essential aspect of a marriage-like relationship, this is no longer so: Austin at paras. 55–56

[195] The intentions of the parties, particularly whether they saw the relationship as being “of a lengthy indeterminate duration,” will be important to the determination of whether the relationship was marriage-like. However, evidence of their intentions must be tested against objective evidence of their lifestyle and interactions, which will provide direct guidance on the nature of the relationship: Weber, at paras. 23–24. In other words, “subjective or conscious intentions may be overtake by conduct such that whilst a person living with another might not say he or she was living in a marriage-like relationship, the reality is that the relationship has become such”: Takacs v. Gallo (1998) 48 B.C.L.R. (3d) 265 (C.A.) leave to appeal to SCC ref’d, [1998] S.C.C.A. No. 238, at para. 53.

[196] In weighing the various factors, it is also an error to give undue emphasis to the future plans of a couple, in contrast to the current realities of their respective situations: Takacs at para. 58.

A party to a relationship that lacks such characteristics is not entitled to pursue a family law action, as the person is not a spouse. There is no middle ground; either a person is a spouse or is not: Gostlin v. Kergin (1986) 3 B.C.L.R. 264 (C.A.) at para. 16. People may live together continuously and interdependently and yet fail to establish that they developed the kind of psychological and emotional union associated with marriage: Takacs at para. 55.

The marriage-like commitment must be combined with sufficient evidence of 2 years of continuous cohabitation. The Family Law Act has no application to more transitory connections. There is, of course, a substantial unpredictability in the progress of nascent relationships and this is why the legislature fixed a 2-year standard before imposing legal matrimonial obligations on common law couples without children: Parke v. Veale, 2015 BCSC 2554, at para. 79.

Connor Estate, 2017 BCSC 978, could be a bit of a game-changer for common law WESA spouses, in that the Court finding that the parties were spouses could be an “expansion” of the concept of common law spouse.

The applicant in the case, Joseph Chambers (“Chambers”), sought a declaration that he was the “spouse” of the deceased Patricia Connors (“Connors”), within the meaning of section 2 WESA. The Court found that Chambers and Connors were common law spouses despite the following facts.

- They maintained two entirely separate residences and did not live under the same roof.
- Each undertook their own separate domestic tasks such as meal preparation, shopping, tending to clothing, and household maintenance.
- No mingling of finances occurred.
- Sexual relations between them in their respective households were significantly reduced in the last 2 years.
- Connor's hospital records identified her marital status as “single” and indicated Chambers as an alternative contact, identifying him as a “friend.”
- Connor identified herself as “single” on her tax returns and

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Chambers identified himself as “separated” after 2012.

- Chambers identified his wife as his “current spouse” in the spousal declaration for his municipal pension plan application in September 2011, a designation that was never changed.
- In August 2013, Chambers declared for the purposes of his group benefits with Manulife Financial that he had no common law spouse and he did not declare Connor as a beneficiary.
- Chambers’ children had no involvement in the life of Connor and indeed the son was never even introduced to her.
- Neither Chambers nor Connor displayed photographs of each other in their respective residences.
- Chambers’ application to be declared Connor’s spouse was opposed by Connor’s five half-siblings that she did not know.

During much of his longtime relationship with Connor, Chambers lived with his wife and family and saw Connor when he could.

Chambers had left Chambers her $410,000 RRSP and the Judge found it likely that while she died intestate, she had prepared a Will that left Chambers a substantial bequest, but she had prepared a Will that left Chambers identified his wife as his “current spouse” in the spousal declaration for his municipal pension plan application in September 2011, a designation that was never changed.

In August 2013, Chambers declared for the purposes of his group benefits with Manulife Financial that he had no common law spouse and he did not declare Connor as a beneficiary.

Chambers’ children had no involvement in the life of Connor and indeed the son was never even introduced to her.

- Neither Chambers nor Connor displayed photographs of each other in their respective residences.
- Chambers’ application to be declared Connor’s spouse was opposed by Connor’s five half-siblings that she did not know.

During much of his longtime relationship with Connor, Chambers lived with his wife and family and saw Connor when he could. The Judge found they never lived together under the same roof as a result of Connor the Will could not be found. In the result, the Judge declared that at the time of Connor’s death, Chambers was her “spouse” within the meaning of section 2 WESA.

Molodowich v. Penttinen, as cited above, was invoked in Richardson Estate (Re), 2014 BCSC 2162, a recent WESA decision, as follows.

[22] A leading authority with respect to the meaning of “marriage-like relationship” (sometimes also referred to as “cohabitation,” Campbell v. Campbell, 2011 BCSC 1491 at para. 80) is Molodowich v. Penttinen (1980), 17 RFL (2d) 376 (ONDC):

[16] I propose to consolidate the statements just quoted by considering the facts and circumstances of this case with the guidance of a series of questions listed under the seven descriptive components involved, to varying degrees and combinations, in the complex group of human inter-relationships broadly described by the words “cohabitation” and “consortium”:

| (1) SHELTER | (a) Did the parties live under the same roof?  
| (b) What were the sleeping arrangements?  
| (c) Did anyone else occupy or share the available accommodation?  

| (2) SEXUAL AND PERSONAL BEHAVIOUR | (a) Did the parties have sexual relations? If not, why not?  
| (b) Did they maintain an attitude of fidelity to each other?  
| (c) What were their feelings toward each other?  
| (d) Did they communicate on a personal level?  
| (e) Did they eat their meals together?  
| (f) What, if anything, did they do to assist each other with problems or during illness?  
| (g) Did they buy gifts for each other on special occasions?  

| (3) SERVICES | (a) Preparation of meals,  
| (b) Washing and mending clothes,  
| (c) Shopping,  
| (d) Household maintenance,  
| (e) Household maintenance,  

| (4) SOCIAL | (a) Did they participate together or separately in neighbourhood and community activities?  
| (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?  

| (5) SOCIETAL | What was the attitude and conduct of the community towards each of them and as a couple?  

| (6) SUPPORT (ECONOMIC) | (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessaries of life (food, clothing, shelter, recreation, etc.)?  
| (b) What were the arrangements concerning the acquisition and ownership of property?  
| (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?  

| (7) CHILDREN | What was the attitude and conduct of the parties concerning children?  

[23] Other authorities have emphasized that this is not a checklist and “these elements may be present in varying degrees and not are all necessary for the relationship to be found conjugal” (M. v. H. [1999] 2 SCR 3 at para. 59; cited in Austin v. Goerz, 2007 BCCA 586 at para. 57; the Court of Appeal equated “conjugal” with “marriage-like” in the same paragraph).

In Weber v. Leclerc, 2015 BCCA 492, leave to appeal to SCC refused, [2016] S.C.C.A No 19, the Court again reviewed the case law respecting “marriage-like relationships,” noting:

[23] The parties’ intentions—particularly the expectation that
the relationship will be of lengthy, indeterminate duration—may be of importance in determining whether a relationship is “marriage-like.” While the court will consider the evidence expressly describing the parties’ intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.

[24] The question of whether a relationship is “marriage-like” will also typically depend on more than just their intentions. Objective evidence of the parties’ lifestyle and interactions will also provide direct guidance on the question of whether the relationship was “marriage-like.”

PART THREE
What is a Will and Section 58 WESA
For centuries the law has been that a document may be admitted to probate if it is clear that it contains a record of the deliberate and final expression of the testator’s wishes with regard to his property.

The best evidence of whether a writing was intended to be a testamentary act is the document itself: Bennett v. Toronto General Trusts Corp., 9 D.L.R. (2d) 271 (MBCA) at 375, aff’d [1958] S.C.R. 392.

In Estate of Young, 2015 BCSC 182, the Court described some of the factors that should be present to have a noncompliant document accepted under the curative provisions of section 58(3) WESA as representing the deceased’s person’s intentions.

[36] The burden of proof that a non-compliant document embodies the deceased’s testamentary intentions is a balance of probabilities. A wide range of factors may be relevant to establishing their existence in a particular case. Although context specific, these factors may include the presence of the deceased’s signature, the deceased’s handwriting, witness signatures, revocation of previous wills, funeral arrangements, specific bequests and the title of the document: Sawatzky at para. 21; Kusak at para. 7; Martineau at para. 21.

[37] While imperfect or even non-compliance with formal testamentary requirements may be overcome by application of a sufficiently broad curative provision, the further a document departs from the formal requirements, the harder it may be for the court to find it embodies the deceased’s testamentary intention: George at para. 81.

The curative provisions of section 58(3) WESA are fact-sensitive.

Extrinsic evidence is permitted in order to determine whether the noncompliant document is the deceased’s final expression, as to his or her testamentary intentions pursuant to section 58(3) WESA: Litke Estate (Re), 2017 BCSC 1079 at para. 39, citing Langseth Estate v. Gardiner, (1990), 75 D.L.R. (4th) 25 (Man. C.A.) at 33.

It comes down to this: Whether the document presented was prepared by the deceased and that its contents represent a “deliberate or fixed and final testamentary intention at the material time for the disposition of the estate”: Litke Estate (Re) at para. 42.

In Skopyk Estate, 2017 BCSC 2335, an unsigned and undated Will was found to be valid under section 58 WESA as the Court was satisfied it represented the deceased’s fixed and final testamentary intentions.

Section 58 WESA enables a Court to give testamentary effect to documents that were intended to be testamentary. It does not enable a Court to give testamentary effect to a document that the deceased never intended would be a Will.

Conclusion
In summary it would appear that 5 years post-WESA, the following three areas of law have developed the following way.

1. Undue Influence: In the two decisions post-WESA relating to section 52, the Courts have largely ignored the new presumption of undue influence in a Will where there is a potential for domination and dependence between the parties in question.

2. Marriage-Like Relationship: This area of law and its definition of spouse has continued to expand and generally support the notion of a marriage-like relationship. If the parties held themselves out to the world as an exclusive couple living together for at least 2 continuous years. The Courts are recognizing that there are innumerable types of relationships and as in the Connor decision, the parties were found to be in a marriage-like relationship even though they never physically lived together.

3. Section 58 WESA: The Courts have generally given wide latitude to curing defective Wills so long as the Court is satisfied that the document represents the deceased’s final testamentary disposition. The law has become such that I think a Court in British Columbia would follow a decision of Australia’s Supreme Court of Queensland that remedied an unsent text message on the cell phone of the deceased, just prior to his committing suicide, and declared the document to be a valid Will.

Trevor Todd restricts his practice to estate litigation. He has practised law in Vancouver for 46 years.
INTRODUCTION

It is important that Wills drafters be aware of and watch for any suspicious circumstances that might exist when taking Will instructions.

Preparing a Will in the presence of suspicious circumstances simply increases the risk that the Wills drafter might end up testifying about the validity of the Will in subsequent years. The litigation issue is usually an allegation of lack of testamentary capacity when the Will instructions were given and when the Will was signed, both being requirements for a valid Will.

The Doctrine of “Suspicious Circumstances”

In addition to testamentary capacity, the propounder of a Will must establish “that the will-maker knew and approved of the contents thereof.” With regard to that requirement, the Supreme Court of Canada in Lidstone v. McWilliams [1931] SCR 695, stated as follows.

When it has been established that a will has been duly executed by a will-maker having testamentary capacity, and also established that it was read by, or read over to, the testator before execution, there arises ordinarily, in the absence of suspicious circumstances, a

The doctrine of suspicious circumstances may be applied in situations where the background concerning the making of the Will gives rise or should give rise to some suspicion.

The doctrine is intended to ensure there is no doubt that the making of the Will was the free and voluntary act of the Will-maker.

In considering the Will in Vout v. Hay (1995) 2 SCR 876, the Supreme Court of Canada stated that when dealing with the doctrine of suspicious circumstances and the onus of proof, the party alleging undue influence must prove it; the question becomes which is more persuasive—the evidence calling into question the validity of the Will (the suspicious circumstances) or the evidence supporting it.

Examples of “Suspicious Circumstances”

It is crucial that a Wills drafter look for and identify factors that might appear to be suspicious and to ensure there is ample evidence to discount those circumstances as having had an effect on the Will-maker prior to the execution of the Will. The Wills drafter should make detailed notes of his or her observations after “probing the mind of the potential will-maker,” and those notes should be preserved.

The following is a nonexhaustive list of the innumerable circumstances that might be suspicious.

a) Where a gift is made to a person with whom the Will-maker had a close relationship but who was not known or recognized by the Will-maker’s family

b) Where a gift is made to a person who is in a position to influence the Will-maker such as a caregiver or—the worst example, the party preparing the Will
c) Where an apparently unwarranted, undeserved, or unpopular gift is made to a beneficiary who, in the minds of those left behind, should not receive the gift

d) Where a gift is made to a beneficiary to whom the Will-maker has had no close relationship, such as a charity

e) Where the division of assets among the children of the Will-maker is substantially unequal or where a certain child or children are harshly treated

f) Where the Will substantially deviates from previous Wills

g) Where a gift is made to a person standing in a fiduciary relationship to the Will-maker

h) Where the beneficiary accompanies the Will-maker on each trip to the Wills drafter’s office during the process to complete the Will

i) Where the Wills drafter receives the Will instructions from someone other than the Will-maker

j) Where the Will-maker has had a recent serious illness or hospitalization

k) Where there is any question at all about the Will-maker’s testamentary capacity

l) Where there are indications that the Will-maker is using substantial medications that are potentially mind-altering

m) Where the Will-maker has entered into a hasty or unwise marriage or common law relationship

n) Where there is evidence that the Will-maker suffers from depression

o) Where the Will-maker has a language disability or is illiterate

p) Where the circumstances fit “the recent widower and the young woman to inherit everything” scenario

If a Wills drafter is asked to prepare a Will by which he or she is to inherit, the Wills drafter should ensure that the Will-maker receives independent legal advice and preferably should take no part whatsoever in the preparation of the Will.

In circumstances where the Will-maker has a current Will and substantial changes are being made, it would be prudent for the Wills drafter to enquire of the Will-maker as to the provisions of the current Will and the reasons for the changes.

Similarly, if a child or children are being disinherited, the Wills drafter should consider preparing for the Will-maker’s signature a detailed memorandum pursuant to the Wills Variation Act (now section 60 of the Wills, Estates and Succession Act) to accompany the Will. The memorandum’s facts must be accurate so that the Will-maker is not subsequently viewed by the Court as being vindictive, as opposed to objective.

Judicial Consideration of “Suspicious Circumstance” Cases

The law relating to testamentary capacity and suspicious circumstances was canvassed in Laszlo v. Lawton 2013 BCSC 305.

The Court recognized that faltering mental capacity is prone to fluctuate and the Court authorities permit variation of the degree of capacity required at those pivotal times.

To lack testamentary capacity does not mean that the Will-maker must be in a perpetual state of substandard competence. Seemingly rational persons may be without mental capacity, while seemingly compromised persons may possess it. Mental capacity may change slightly or wildly so that at times, a person may be of sound mind, while at other times he or she may not be.

The Courts recognize that dementia can impair a Will-maker’s mental powers, such that he or she is not capable of making a Will. A diagnosis of dementia, however, standing alone, does not automatically correspond to testamentary incapacity.

Similarly, a person who is judicially declared incapable of managing his or her affairs pursuant to adult guardianship legislation or who suffers a chronic psychotic illness such as schizophrenia may still have the capacity to make a valid Will.

The issue of whether a Will-maker has the requisite capacity to make a Will is a question of fact to be determined in all of the circumstances. Testamentary capacity, however, is not a medical concept or diagnosis; it is a legal construct.

Medical evidence, while important and relevant, is neither essential nor conclusive in determining the presence or absence of testamentary capacity.

Lay witnesses who have known the Will-maker for many years can be very significant witnesses; it is open to the Court to accord greater weight to lay evidence than to medical evidence or to reject the medical evidence altogether.

The leading decision of Vout v. Hay, as cited above, affirmed that the legal burden of proving due execution of the Will, and that the Will-maker both had testamentary capacity and knew and approved of the contents of the Will, is with the party propounding the impugned Will.

Where the Will was duly executed, there is a rebuttable presumption that the Will-maker did possess testamentary capacity and the requisite knowledge and approval.

The Vout decision clarified that the presumption may be rebutted by evidence of well-grounded suspicions,
known as “suspicious circumstances,” relating to one or more of the following.

1. Circumstances surrounding the preparation of the Will
2. Circumstances tending to call into question the capacity of the Will-maker
3. Circumstances tending to show that the free will of the Will-maker was overborne by acts of coercion or fraud

The presumption places an evidentiary burden on the party challenging the Will to adduce or point to some evidence which, if accepted, would tend to negate knowledge and approval or testamentary capacity (Vout at paragraph 27).

The usual civil standard of proof, being proof on a balance of probabilities, generally applies to dispelling the suspicious circumstances that have been raised. As a practical matter, the extent of proof required will be proportionate to the gravity of the suspicion, which will vary with the circumstances peculiar to each case.

The Courts have made it clear that a general miasma of suspicion that something unsavoury may have occurred will not be sufficient (Clark v. Nash (1989) 61 DLR (4th) 409 BCCA).

CONCLUSION

Suspicious circumstances exist in a wide array of situations and are not necessarily sinister in their nature. Very often a close observation and questioning of the Will-maker will reveal one or more of a nonexhaustive list of circumstances that might be labelled “suspicious circumstances,” and thus cause the onus of proof to be reversed in a testamentary capacity case.

Accordingly, in such situations Wills drafters should spend extra time questioning the Will-maker and reviewing records and ownership documentation, to determine whether there are suspicious circumstances sufficient to question whether the proposed Will-maker has sufficient mental capacity. ▲

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The Public Guardian and Trustee (PGT) is established under the Public Guardian and Trustee Act with a mandate that includes administering the estates of deceased persons under the Wills, Estates and Succession Act (WESA) and the estates of missing persons under the Estates of Missing Persons Act.

The PGT encourages every British Columbian to make a Will. In BC, any person 16 years of age or older can make a Will if the person has testamentary capacity. A Will not only allows you to choose who will benefit from your estate, it authorizes the person(s) you name as your executor to take immediate action to secure and preserve your residence and assets.

When selecting your executor, you should choose a person or persons you trust to take the following steps after your death.

- Enter and secure your residence and personal possessions and make appropriate arrangements for your pets, etc.
- Go through your personal papers and electronic devices searching for funeral wishes and instructions, financial records, tax documents, etc.
- Make funeral and burial arrangements in accordance with your wishes.
- Make prudent financial decisions regarding the sale of your assets and payment of your debts.
- Distribute your personal possessions in accordance with your wishes.
- Complete the administration of your estate and distribute to your chosen beneficiaries.

It is often wise to choose an executor who is also a beneficiary so he or she has a vested interest in ensuring the timely administration of the estate.

Alternatively, you may choose a trusted friend or professional such as an accountant, lawyer, Notary, or a trust company.

The PGT may also act as an executor named in a Will. You may wish to consider naming the PGT as your executor, particularly if a beneficiary is a minor or a mentally incapable adult or if your primary beneficiaries are charitable organizations.

It is important to ensure that the person or company you choose to appoint as your executor is aware of his or her appointment and has agreed to act.

You may also appoint a guardian of your minor children in your Will. The guardian will have immediate authority to attend to the needs of your children.

The Role of the Public Guardian and Trustee

The PGT has the authority to and may agree to administer an estate in the following circumstances (WESA section 164).

- The PGT is named as the sole executor in a Will.
- A deceased person dies without a Will and there is no intestate
successor in British Columbia who is willing and able to administer the estate. The intestate successors have the first right to administer, in priority to the right of the PGT; the PGT may exercise the discretion to administer but is not required to do so.

- A deceased person dies leaving a Will, but no executor is appointed or the executor is deceased or does not wish to act and there are no beneficiaries willing and able to administer the estate. If there is no executor, the beneficiaries have the first right to administer, in priority to the right of the PGT.

- The PGT is the guardian or committee of an intestate successor or beneficiary.

The PGT must provide written consent before it can be appointed by a Court to administer an estate (WESA section 165). The PGT is not required to administer every estate when there is no one else willing to act. The PGT must be satisfied that there are sufficient assets to pay the funeral and administration expenses and the PGT’s fees. Estates of minimal value or insolvent estates may remain unadministered.

When administering an estate, the PGT has all the same powers and duties as a private executor or administrator. In addition, the PGT is specifically authorized to take certain steps prior to the issuance of a grant of administration, including arranging the deceased’s funeral and taking possession of and disposing of the deceased’s property (WESA section 167).

The PGT often administers estates in circumstances where a person dies without a Will and his or her intestate successors are unknown or uncertain. In those situations, the PGT constructs a family tree and researches the deceased person’s genealogy.

The PGT has staff trained in genealogical research as well as private genealogists on contract throughout the world who are able to identify and locate intestate successors. Historically, the PGT distributes on average 95 per cent of the estate funds administered by the PGT to the lawful beneficiaries and intestate successors. If certain beneficiaries or intestate successors cannot be documented or located, the PGT pays the funds to the BC Unclaimed Property Society.

Historically, the PGT distributes on average 95 per cent of the estate funds administered by the PGT to the lawful beneficiaries and intestate successors.

Effective March 31, 2014, WESA provides that if there are no intestate successors within the 4th degree of kinship to the deceased (i.e., beyond first cousins), the estate passes to the government and is subject to the Escheat Act (WESA section 23). It is extremely rare that there are no intestate successors within the 4th degree of kinship. Any person advancing a legal or moral claim to the estate funds may still make a claim to the government under the Escheat Act.

How Much Does the PGT Charge?
The PGT fees are set by Regulation to the Public Guardian and Trustee Act and are summarized here.

- Capital fee as Administrator: 5% of real property sold through an agent, 3% of real property distributed in specie, 7% of all other capital assets, and subject to a minimum fee of $3500
- Capital fee as Executor: 3% of real property sold through an agent and 5% of all other capital assets
- Income fee: 5% of the income earned by the estate
- Asset management fee: 0.7% per annum on the gross value of the estate assets

Please visit our website for more information on our services and fees. www.trustee.bc.ca

Brad Anderson is a solicitor for the Public Guardian and Trustee.
This is the revival of an article I wrote 6 years ago but it is still very current.

In the last 6 years, unfortunately I have seen some of my clients pass over the “rainbow bridge” and have assisted their families and relatives to navigate through the compliance rules with Canada Revenue Agency when dealing with the tax affairs of the deceased.

There are a number of special rules in connection with filing the tax return of deceased individuals and, unless you are familiar with these rules, I recommend you seek professional assistance.

• If an individual dies between January 1 and October 31, the final tax return is due April 30 of the year following the year of death.

• If the individual dies between November 1 and December 31, the return is due 6 months after the death of death.

The executor must ensure that all the necessary returns are filed and the taxes owed are paid. The executor must advise the beneficiaries of any “taxable” amounts of money or other benefits they will be receiving from the estate.

Before distributing any property to the beneficiaries, the executor must obtain a clearance certificate from CRA that certifies that all the above applicable taxes have been paid.

If the executor does not get a clearance certificate, he or she can be personally liable for any amount the deceased owes.

The clearance certificate is requested by filing the prescribed form TX19. The form should be mailed to CRA only after the notice of assessments has been received for all the returns required to be filed and the taxes owed are paid.

• business income from a partnership or sole proprietorship, and

• earned income from a testamentary trust.

Rights or Things

• Salaries, commission, and vacation pay earned but not received at time of death

• Dividends declared but unpaid

• Unclipped matured bond coupons

On each optional return, a claim can be made for the basic personal amount, age amount, spouse amount, claim for eligible dependants, and the caregiver amounts.

When individuals die, they are deemed to have sold their assets at fair market value at the time of death.

The form must be filed together with

✓ a copy of the Will,
✓ all probate documents, and
✓ a statement showing a list of assets (with market values) owned by the deceased at time of death.

CRA will usually accept the copy of the statement of assets and liabilities included in the probate documents.

The estate of a deceased individual may file multiple tax returns as the deceased’s final filing. That allows the deceased to claim personal tax credits on more than one return and reduce the income tax otherwise payable. The estate of a deceased Individual may file up to three tax returns if there is

• an income from “rights or things,”
Family Home

The gain on the family home will qualify for the principal residence exemption. Assuming no other property has been designated as a principal residence, no income tax will be payable on the home.

Starting in 2017, a new rule provides the sale or deemed disposition of a principal residence must be reported on Schedule 3 and form T2091 or form T1255 must be filed to designate the property as a principal residence and to claim the exemption. The legal representative would have to file the form T1255 for the deceased individual.

I have witnessed a few instances where the legal representative has not reported the deemed disposition on the final tax return. CRA will be able to accept a late designation in certain circumstances, but a penalty may apply.

The penalty is the lesser of the following amounts:
1. $8000, or
2. $100 for each complete month from the original due date to the date the request was made in a form satisfactory to CRA.

Investments

Investments in GIC or T-bills do not appreciate in value and can be transferred to a beneficiary without tax consequences.

Any income earned prior to death is included in the final tax return.

Any income earned after death is taxable to either the estate or the beneficiary.

Investments in real estate, stocks, mutual funds, and bonds whose value fluctuates may generate a capital gain or loss that is included in the final tax return. Particular attention must be paid to determine the cost of the assets to calculate the proper gain or loss. For this purpose, it is important that the deceased kept good documents and records of all his or her investments. A review of the 1994 income tax return is required to determine if the capital gain exemption election was filed to increase the cost of any investment to the extent of the capital gain exemption available (in 1994) of up to $100,000.

The rule of the deemed disposition at fair market value at the time of death gives rise to a basic estate planning strategy.

If there are assets to be distributed to the surviving spouse and to other beneficiaries, consider leaving assets to the spouse that have increased in value, and leaving assets with no increase in value, such as cash and GICs, to the other beneficiaries.

Registered Retirement Savings Plans

If the RRSP has not yet matured, the fair market value of the RRSP is included in the deceased's income in the year of death. There are, however, a few exceptions to this rule.

- If the surviving spouse is the beneficiary, the funds can be transferred to the spouse's RRSP. The amount transferred is included in the spouse's income but an offsetting deduction will remove any tax due on the transfer.
- If the estate is named as a beneficiary and there is a surviving spouse, the executor and the surviving spouse can file a joint election with CRA allowing the transfer of the RRSP funds from the estate to the RRSP of the spouse.

- If there is no surviving spouse, any amounts paid to a dependent child or grandchild will be included in the income of the child. If the child is younger than 19, the income can be deferred by rolling the RRSP to an “age 18 annuity”; that annuity requires all the funds to be paid to the child before the age of 19.
- If there is no surviving spouse and the child or grandchild is financially dependent due to a physical or mental infirmity, the funds may be rolled tax-free into the RRSP of the child or grandchild.

Registered Retirement Income Fund

When the deceased owns a RRIF, the market value of the RRIF at time of death is included in the deceased’s income. As with the RRSP, there are exceptions for the RRIF, as well.

- If the annuitant of the RRIF made a written election on the RRIF contract or in the Will, to continue the RRIF payments to the surviving spouse after death, then the surviving spouse becomes the annuitant and pays tax on future RRIF payments.
- If the deceased neglected to select the spouse as the recipient of the RRIF, it is still possible to designate the surviving spouse as the beneficiary of the RRIF. The legal representative, the executor, must consent to the spouse becoming the annuitant of the RRIF.

- If the beneficiaries of the RRIF are dependent children, the same rules for the RRSP apply to the RRIF.

Tax Free Savings Account

The tax implication of the TFSA at time of death will depend on the type of beneficiaries and if any income is earned after the death of death. Technically the tax-free nature of the plan ceases immediately before death. There is no income inclusion for the deceased, but future earnings in the plan become taxable from the time of death.

If the TFSA contract named a successor holder, however, the survivor will become the new holder of the TFSA.

In the year of death, some of the rules for deductions and claims of tax credits are more generous.

Charitable Donations

The inclusion rate of the amount of donations that are eligible for the tax credit is increased from 75 to
What will your legacy be? You can guide the future of your community and the causes you care about by making a legacy gift to the Victoria Foundation. Our endowment fund is one of this community’s greatest strengths, allowing us to manage charitable gifts and bequests in perpetuity. We continually build the fund and invest in our community — granting annually to a broad range of charitable organizations and worthy causes. If community matters to you, the Victoria Foundation is where you can make your priorities known.

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victoriafoundation.ca

100 per cent. Any donations that cannot be claimed in the year of death can be carried back to the previous year and applied at the 100 per cent inclusion rate; all donations made in the Will of the deceased are deemed to be made in the year of death.

Medical Expenses
The general rule provides that medical expenses may be claimed for any 12-month period ending in the year of death, to the extent they exceed the lesser of 3 per cent of the taxpayer’s net income and an amount set from year to year. The legal representative (the executor) of the deceased may claim, in the year of death, medical expenses paid within any 24-month period, which includes the date of death, but the same expenses cannot be claimed more than once.

Net Capital Losses
Generally, allowable capital losses are deductible only against taxable capital gains. This limitation is removed in the year of death and in the immediately preceding year. All allowable capital losses and net capital-loss carry-forwards may be deducted in computing taxable income in the year of death and the year preceding death.

CPP Death Benefits
A CPP death benefit up to $2500 is paid upon application by the legal representative. This benefit is designed to offset funeral expenses but it is taxable to the recipient. This benefit is not to be included in the final death tax return but it is to be included in the estate tax return or in the return of a spouse or beneficiary who received the benefit.

Estate Income Tax Returns
Any income of the deceased earned after the date of death is considered income of the estate. An estate is considered a trust, an arrangement where the trustee or legal representative holds the property in trust for the beneficiaries. The trust is a taxpayer and must file the T3 estate tax return.

There are various and complex rules about trusts and particularly trusts established because of the death of a taxpayer.

And this is the perfect time to say “Coming soon in The Scrivener” . . . in my future columns.

Protecting the estate means ensuring the income tax due at death is minimized by taking advantage of all the rules and elections available. It is highly recommended that you consult professional advisors before any financial decisions are made that affect the estate of the deceased.

Andréa Agnoloni, CPA, CGA, Notary Public, is a Principal with EPR North Vancouver, an Independent Member Firm of EPR Canada Group Inc.
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For the inaugural seminar in November 2017, BC Notaries were invited to participate in the Simon Fraser University End-of-Life Expo, noted a “Canadian First of its Kind” by Thomas C. Easkin, Program Designer at SFU.

I welcomed the opportunity to speak on Powers of Attorney, Representation Agreements, Advance Health Care Directives, and Wills. Estate planning is a subject I hold in high esteem.

Like many of my Notary colleagues, I daily face questions that centre on estate planning matters.

• My dad is in the hospital, he has dementia. How can we take control to make sure his bills are paid? We need to sell his house to pay for his extended care. How can we do that?

• The mortgage came up for renewal but my spouse is in a coma. What do I do?

• Who is in charge of my mom’s estate? There is no Will.

End-of-life wishes can be a challenging subject to contemplate, never mind the actual nitty gritty of deciding and recording instructions.

Much earlier in my life, I personally experienced the loved one’s nightmare when a person has not put the correct legal documents in place.

With a view to tearing down some of the barriers that impede making wishes known, I will launch into a very real scenario.

The phone rings. The news? Your brother-in-law has died in a car accident. He has no Will; owns various businesses and real estate; has minor and adult children; was divorced and may be re-married, maybe not.

My young nephew-in-law got the news that his headache was not simply a migraine. In 36 hours, he would be having a major brain operation to remove a grapefruit-size tumor.

Although no one wants to be making important decisions under such tense and critical circumstances, the doctor suggested that my nephew ensure he had a Power of Attorney, Representation Agreement, Advance Health Care Directive, and a Will in place.

No Will?

In the absence of designating the person you want to be in charge—if you have no Will, the responsibility defaults to the Public Guardian and Trustee of the Government of BC. It does not automatically default to a spouse or family member. Personal participation by a loved one is at the Government’s consent and the Government’s approval, all by Court appointment. And it is not free.

I’ll explain.

In my first scenario, a qualified, capable volunteer from the family came forward to take on the duty of winding up the estate rather than leaving the Government in charge. He had the family’s best interest at hand in liquidating assets to maximize their inheritance. The Court approved his application to act as administrator and thus, months after the death, he was appointed with very limited power.
Fortunately in this case, the mothers of the minor children were living and no minors were placed in foster care. The process of navigating, managing, and winding down the estate, paying the bills, and disbursing the residue took Court involvement, Government consents, and many legal costs over 13 years!

In the second scenario, my nephew-in-law took on the immediate responsibility of engaging a professional to record his instructions in writing and luckily he had the luxury of those 36 hours to actually get it done. The attorney named under his Power of Attorney was able to apply for his disability insurance funds forthwith to protect his assets and his accounts from becoming delinquent.

Statistics record over 65,000 people in BC living with dementia, 10,000 under the age of 65.

- Who will see that their independence is being secured for as long as possible?
- Who will decide where they live and the quality of care they receive?
- Are they going for outings and getting their personal grooming needs met?
- Do we want the Government making those decisions for us or do we want our family and friends to take comfort in the knowledge that we have appointed capable, qualified people we trust . . . and on our own terms?
- How will our end-of-life wishes be known if we don’t take the time to carefully and thoughtfully document instructions?

Our goal at the inaugural End-of-Life Expo was to broadcast to the public that you do have a choice and a say in managing your future. Take the opportunity to meet with your local BC Notary to document your wishes in these estate planning tools: Power of Attorney, Representation Agreement, Advance Health Care Directive, and a Will. ▲

BC Notary Tammy Morin Nakashima practises in Steveston/Richmond.
In my opinion, it is extremely important for adults in most circumstances to have a Power of Attorney.

Why?

There are many situations where a Power of Attorney (PoA) can help a situation tremendously. The appointment of an attorney gives the appointee the ability to act for the adult with regard legal and financial matters.

The PoA document is normally intended to be used when the adult is either incapable of making decisions or is unavailable, perhaps while travelling or on vacation.

If the adult passes away, the Power of Attorney is no longer in effect.

A PoA Makes a Significant Difference!

- Recently, my client Brian came into the office. Through a PoA, he had been appointed attorney for his sister and brother-in-law. Unfortunately, Brian’s sister and brother-in-law were in a car accident. His sister passed away and his brother-in-law survived the crash but suffered a severe brain injury. Because he had Power of Attorney, Brian was able to sell his brother-in-law’s property because it was necessary to move him to a care facility for the foreseeable future. If Brian had not had Power of Attorney, the process of selling the property would have taken quite a while to go through the Court process to legally appoint a committee . . . a person to handle matters in the brother-in-law’s stead. Brian’s brother-in-law did not have the funds to get into the facility without the sale of the property so it was extremely valuable that the PoA document was already in place.

- Donna came into our office to discuss getting a Power of Attorney for her young-adult son Brent who was in his 20s. He had suffered a severe assault, beaten to the point of brain damage. Since Brent was no longer capable of appointing an attorney, his mother had to proceed by way of applying for “committee ship” where the Court appointed her Brent’s guardian. She advised that the process was lengthy and lead to significantly more costs and stress than if a Power of Attorney had already been in place.

- Last year, clients Ken and Sarah came into our office to have Wills drawn. At the time, they were advised about Powers of Attorney but didn’t believe those documents were necessary and said they didn’t have the money to have them done.

One year later, Ken was in a car accident and was in a coma for 6 months. Sarah came back to our office to see if it was too late to do the Power of Attorney. She had been driving daily to visit Ken in Royal Columbia Hospital.
When the car insurance was up for renewal, Sarah was unable to renew it because the car was in Ken's name. She could no longer drive the car and did not have money to buy a vehicle in her name. That made her life even more difficult.

- Brother and sister Darryl and Lila came into our office hoping to get a Power of Attorney for their mother Jean. Jean had already lost her mental capacity and had moved into assisted living but she still owned a condo. Darryl and Lila were paying the strata fees and property taxes for the empty condo and could not sell the property on behalf of their mother because they did not have Power of Attorney.

They were unable to rent out the condo because the strata had a rental restriction. Darryl and Lila had hoped they could get a Power of Attorney, but because their mother did not have capacity, we were unable to assist them. Darryl and Lila were stuck paying all the fees associated with keeping the condo as long as their mother was alive. That was a very unfortunate but common situation that could have been avoided if a Power of Attorney been done while Jean still had capacity.

- Two weeks ago, I received a call from a social worker at a seniors care facility enquiring about a situation she had never seen before.

The facility has a residential care side as well as a hospice. Mother Mary and daughter Hailey were living in the facility at the same time. Mary no longer had capacity and was in residential care; a few years prior, she had appointed her daughter Hailey as her attorney. Mary had not specified a backup attorney.

Hailey had terminal cancer and was in the hospice; she had an appointment for palliative sedation (elective death) the following day. Hailey's children/Mary's grandchildren were hoping Hailey could sign Power of Attorney for their grandmother over to them before Hailey passed away so they could assist Mary with her affairs. I advised that was not possible and unfortunately, Mary was not capable of doing a new Power of Attorney.

The family was worried that Mary's son, who had not been around for a number of years due to addiction issues, might show up and try to take advantage of Mary's vulnerable situation. I was able to advise her grandchildren that to become Mary's guardian(s), they would have to call a lawyer to get the process started with the Public Guardian and Trustee.

There is a common misconception that an individual will lose control of his or her finances by appointing an attorney under a Power of Attorney.

There is a common misconception that an individual will lose control of his or her finances by appointing an attorney under a Power of Attorney. While the appointment of an attorney does not come without some risk, a person capable of managing his or her own affairs will continue to do so. As shown in the above examples—just a few of the many stories out there, the benefits of having an attorney far outweigh the risks.

It is important that clients have all the relevant information they need to make an informed decision when choosing an attorney for their Power of Attorney document. BC Notaries can advise regarding the positives, the potential negatives, and the process of appointing an attorney.

Note: The names in this article have been changed to protect privacy.

Kim McLandress is a BC Notary practising with Simpson Notaries in Chilliwack, BC.
My passion in my Notary practice is to help people with their personal planning that includes Powers of Attorneys, Representation Agreements, Advance Health Care Directives, and Wills.

In particular, my value to my clients is that I know from personal experience the power a Representation Agreement can play in each and every family.

Managing our own or a loved one’s health care requires personal fortitude, especially when the situation is unexpected and there is no option to hear from the loved one what he or she would want as care or health interventions.

A Representation Agreement is done pursuant to the Representation Agreement Act in British Columbia. A Representation Agreement authorizes someone to make health care and personal care decisions on your behalf when you can’t make your own decisions. The Representation Agreement Act section 1 defines “Personal Care.”

Under that law, people are presumed to have capacity to make their own decisions unless it’s obvious they don’t or are determined by diagnosis not to have capacity. A person with full capacity can make an agreement, drawn up by a BC Notary or lawyer, where the person appoints one or more representatives to act on his or her behalf. Typically, representatives are close family members, but not always.

• A person with full capacity can make a section 9 Non-Standard Representation Agreement.
• A person with reduced capacity can make a section 7 Standard Representation Agreement.

Section 9 Representation Agreements
The section 9(1) Non-Standard Representation Agreement sets out what a Representative may be authorized to do.

Section 9(2)(a) states that unless expressly provided for in a Representation Agreement, a representative must not give or refuse consent on the adult’s behalf to any type of health care prescribed under section 34(2)(f) of the Health Care (Consent) and Care Facility Admission Act.

In section 9(3), if a representative in a section 9 Representation Agreement is provided the power to give or refuse consent to health care for the adult, the representative may give or refuse consent to health care necessary to preserve life.

The basic scope of powers granted to a representative under a section 9 Representation Agreement includes making major health decisions about surgeries, resuscitation, life support, cancer treatments, laser
My Dad’s Story

This could be any family’s story. It was the first time I had to represent another person and make life and death decisions.

On a deep level, I knew something was wrong. I’d had a happy Sunday night with my two boys making gingerbread houses but, just after 10 PM, I couldn’t settle. My spirit took a 180 that made no sense to me at the time. I was agitated throughout the night. At 7:40 AM on December 24, I got a phone call from my oldest brother telling me Dad had fallen down the stairs the night before and landed on his head on the cement basement floor. He was rushed away in an ambulance and was not expected to live.

That call set in motion a flurry of activity, including hauling my boys out of bed, grabbing a few Christmas presents, and getting on the ferry to Vancouver and then making the difficult drive through snowy passes to the Okanagan Valley. I cried. I cried a lot. I never expected to see Dad alive again.

He lived another 12 days. Those days gave me the biggest insight into our medical system and what happens when our lives do an about-face and we’re thrown into a traumatic event where action is required on behalf of someone we love. Seeing Dad in the Penticton Hospital ICU for the first time, I knew he would never return to the active man I knew and that he would not survive his catastrophic injury.

Dad had no Representation Agreement so there was no designated person to act for him. And, as with many of his generation, he never talked openly about anything health-related. He certainly never spoke about death. He probably had never heard of a Representation Agreement.

Of course, by position in the family, Mom was the obvious person to make health decisions for Dad but her physical health was not great, making it difficult for her to get to the hospital, plus she was in the early stages of cognitive decline.

Hierarchically, the decision-making fell to us four kids. But which one? I realized grief was a new experience for each of my brothers that profoundly impacted them to the core. Grief is a powerful emotion; we can never know how any one of us would be in a given situation. With such clarity, I saw the various stages of Elizabeth Kubler Ross’s grief identifiers in each of my brothers . . . shock, denial, anger, and false hope.

I could see how grief was crippling them. It’s not to say they wouldn’t have made it through, but they may not have made crucial life-altering decisions in a timely manner. I also recognized I had the skills and experience necessary to make decisions about my dad and one would eventually be an end-of-life decision.

The only evidence I had about how Dad felt about death was what he said about a close friend, “It was a good thing the family pulled the plug on Donnie.” We had had a general discussion about how Donnie would not have wanted to be kept alive on life support. That was a crystal-clear memory for me because Dad never talked about his own death or anyone else’s for that matter. Ever.

Ultimately, my assessment of his condition, his prognosis, and my ability to think critically and manage Dad’s daily care made me the “go to” person for the medical staff; the decisions about Dad’s care fell to me as a temporary substitute decision-maker.

From the beginning of his final journey, I felt powerfully connected to Dad. His care in the ICU was excellent but, when he stabilized 4 days later, they moved him to a ward. I was his eyes and ears and voice. He could not speak for himself or ask for help as the people in the other beds could. I needed to protect him and preserve his dignity in a way that would allow him to pass from this world. In the end, I had the highest privilege of being with Dad when he died.

Your representative must have the capability to act solely for you and not in his or her own interests. A Representation Agreement puts in place the people to act as your representative; that document is the catalyst for important conversations we all need to have with respect to our own future health care. If you are a representative, such decisions must be made with your personal knowledge about what the person would choose and prefer.

At 51, I have had many up-close-and-personal experiences with health, death, and dying. Those events have given me much wisdom and the ability to connect with my clients as we create documents related to them and their health. We have realistic discussions about both unexpected or expected scenarios that can happen in any of our lives.

None of us has a crystal ball about what our health issues will be or how they will progress. Fast or slow, we truly don’t know. I learned that as a society, we are not well equipped to deal with difficult, sudden, or traumatic events regarding ourselves or a loved one.

Dad’s recent fall confirmed why we need to be prepared with a Representation Agreement and that we need to tell our family what we would want in case the proverbial bus hits us.

Mother’s slow decline to a place she would never have wanted to be with Alzheimer’s taught me to be patient and accepting and to focus on her quality of life in her medical care and day-to-day living. I also used Mom’s Representation Agreement as an advocacy tool for her at times when the system let her down.

treatments, kidney dialysis, and anything else deemed major by the regulating authority. Personal care decision-making about what you eat or wear, your driver’s licence, your living companions, and your personal contacts is also part of a Representation Agreement.

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My own critical health issues 2 years ago forced me to face my fears about dying and took me to a deeper level of understanding the fears we all have. I learned that making a document while you’re severely stressed is not the best time to do it.

Those experiences allow me to pass forward some critical learning and the message that we all should have a Representation Agreement in place.

When a person does not have a Representation Agreement, under our laws a temporary substitute decision-maker can be put in place... either an adult appointed by the Court to be a committee of the person under the Patients Property Act or a temporary substitute decision-maker (TSDM) chosen by a health care provider or authorized by the Public Guardian and Trustee.

Temporary decision-makers can be immediate family, friends, neighbours, or any appointee designated or recommended from within the medical system, including the Public Guardian and Trustee. In my experience, that appointment will depend on the information available to health care providers charged with overseeing a patient regarding the natural support people in the person’s life and whether those individuals are available, known, capable, and willing to step up to act.

People can be blinded so much by grief, they cannot make a timely decision. Families can disagree on treatment because old resentments get in the way of their acting responsibly for the adult needing decisions or ongoing care.

Further, the common blended-family scenario presents the additional dimension of spouse vs. adult children making decisions. I know you can
muddle through a health crisis, but there is a strong vulnerability where the adult needing care might not end up with the right or the most trusted person in place to make decisions. A Representation Agreement allows you to appoint the appropriate individual.

Note: If there is no Representation Agreement but there is a legally valid Advance Health Care Directive in place that gives or refuses consent to the treatment or health care that is being proposed by the health care provider, the health care provider must follow the adult’s direction as set out in the Advance Health Care Directive.

As a BC Notary, I am trained in the laws surrounding Representation Agreements and Advance Health Care Directives. In part of my process for preparing the documents, I talk in-depth with clients about health care, current health risks, personal values, and how to choose their representative. I inform on the laws pertaining to their health documents. I weave my stories where appropriate to illustrate why appointing legal health representatives is important and how the documents work for the clients.

My advice? All adults should make an appointment to get a Representation Agreement drawn up . . . to prepare while there is no health crisis. That gives the adult and the family the gift of time to think through and plan the routes around health care.

The best scenario is that you have the Representation Agreement document prepared and you never need it. The likelihood is that you will need it at least once. And you and your family will be very glad you have it. ▲

Beverly Carter is a BC Notary practising in Victoria.

Mercedes Wong, CRE CCIM FRI RI
Mercedes Wong Personal Real Estate Corporation
Vice President of International Development

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CONTESTED WILLS AND ESTATES
Regardless of your answer, it is imperative to prepare for changes in our health, as we do for our wealth.

In our province, multiple efforts have been made to allow all adults to make health care choices now for situations that may be imminent or possible in our future.

This article will focus on Advance Directives.

Part 2.1 of Health Care (Consent) and Care Facility (Admission Act) states a capable adult may make an Advance Health Care Directive (consistent with statutory requirements) that gives and/or refuses consent to specific health care. The definition of health care for Advance Directives is “means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic, or other purpose related to health.”

Before making an Advance Directive, take steps to plan.

- Learn what health care options are available.
- Discuss the options with your medical team, family, and/or friends.
- Outline your requirements.

Then sign the Advance Directive your BC Notary will prepare for you.

1. An example of an Advance Directive could be a person being aware that a specific disease is possible due to family traits. Upon noticing symptoms of the disease, a decision is made to prepare for the type of treatment desired to combat and/or live with the disease, as well as outline end-of-life requirements. As a part of the planning process to deal with the disease, with the help of a BC Notary the affected person will prepare and sign a written Advance Directive with clear instructions for treatment protocols.

2. A second example is longevity. Since we are living longer, why not plan for the possibility of extended care? Your Advance Directive can outline your care pattern with options for more than one extended care possibility.

Are you planning on aging in your current residence?

Are you planning on aging in your current residence? If so, what types of upgrades are required to your residence for health care purposes?

Have any of your relatives or friends expressed an interest in providing a suite for you in their residence, should you require further health care? If so, what are the parameters and how will you pay for that type of care? If you are moving in with family or friends, it is suggested you also consider an ancillary agreement for residence costs.

What if you have to live in a care facility? Do you want to outline the type of facility and perhaps request graduated health care?

“My Voice” is a care planning guide developed by the Province of BC.

There are four basic steps outlined in the guide.

1. Access the My Voice advance care planning guide online at www.gov.bc.ca/advancecare or call HealthLink BC at 8-1-1. Many medical practitioners, hospitals, and related facilities offer print versions.

2. Ponder your values, beliefs, and wishes for future health care treatment.

3. Write down your values, beliefs, and wishes for future health care treatment. Decide what treatments are acceptable or not desired.

4. Write down the contact information for those people who can be asked to be your temporary substitute decision-makers (in order of individual priority) if a health care decision is needed for you. Your Advance Directive can specify the details.

Keep in mind that an Advance Directive does not require the appointment of a representative. All attempts should be made to enter into a Representation Agreement to appoint at least one representative who will be able to enforce your wishes and make all other personal/health decisions not covered by the Advance Directive.

Further, an Enduring Power of Attorney document is very important to allow for the payment of all expenses related to your Advance Directive.

Imagine your relief and satisfaction in completing those matters!

Lorne Mann is a BC Notary practising in Creston.
CHICAGO TITLE gives back

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Commercial Accounts
Western Canada

Karima Samji
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Pulmonary Hypertension Association of Canada
Steveston Notary
Tammy Morin Nakashima

You Have the Power . . .

We've all heard stories of real property being caught in estate litigation or being transferred unexpectedly to an acquaintance.

Making your professional estate planning documents—your Will, Power of Attorney, Representation Agreement, and Advance Health Care Directive—positions you to give the most security to your family and loved ones for the management of your estate the way you wanted.

You have the power to state the guardian of your children so they are not subjected to foster care while everyone argues over where they belong.

You spent your lifetime making a mark on this earth; your estate planning documents frame your achievements by assigning the person you think is most qualified to assist you in your finale and who will best appreciate, benefit, and use the legacy you leave.

Vancouver Notary Filip de Sagher

A Man Walks into My Office . . .

A man walks into my office and asks, “You the Notary?”

As I don’t deny, he continues. “So you the person for when I die, you make the paper so I don’t have to come back, right?” I smile and say, “You got that right!” He seems relieved.

“But now, another question. If I don’t die but my mind is no good, you also make the paper for my daughter to do my banking then, right?”

…your estate planning documents frame your achievements by assigning the person you think is most qualified to assist you in your finale and who will best appreciate, benefit, and use the legacy you leave.
Such dialogues are almost a daily occurrence in our office, although in this particular case the client at least knew about the existence of two very different personal planning documents: A Will and a Power of Attorney.

Clients don’t usually know that and first come to us for information or education and to enquire how they can plan for the inevitable. They ask what documents are available to assist their planning.

The reasons clients make that first step are various. Often “the inevitable” has already happened to a friend or family member or they were referred by another professional who told them it was about time to put their house in order. Protecting their loved ones or the wish to avoid family conflicts after their demise are other motivations often heard.

Recent developments in our neighbourhood, Vancouver’s Westside, that impact people’s decisions to start their personal planning are the influence of high property values and the rapid increase of blended families. Elevated house prices unfortunately make some people look more at the potential windfall coming their way than at the people who are still living in the home.

And blended families inherently have conflicting interests. That means BC Notaries are asked to draft not only the correct legal documents, we also find ourselves providing more and more mediation services for clients. Real or perceived conflicts need to be determined before they can be addressed.

The first time clients arrive at the office is an important milestone in their decision-making process, if not the most important one. That has to be acknowledged and humour often finds its way into the initial conversation. After all, it is not easy to talk about death; a joke can bridge any awkwardness.

Here are a few expressions I have noted over the years . . . when I kick the bucket, go belly-up, am 6 feet under, when the guy upstairs decides it’s my turn, pull the plug, get my final reward, curtain-time . . .

My main advice? Come and see us to finalize those documents before it’s too late. It’s all about peace of mind before the mind blows a fuse. Let’s knock on wood that the big reaper leaves us as much sunshine as possible!

…proper estate planning can make your death just a little bit easier for your loved ones. Giving them that small bit of comfort is worth the time it takes to make a Will.
For many people, not having a valid Will is source of great stress. They know they should have one but for whatever reason, they have not actually put pen to paper.

In our Notary practice, we have found that Wills are frequently drafted at the suggestion of a prudent financial advisor or when there has been a recent death in the family and the deceased did not have a Will.

In any event, after we sit down with our clients to finally take instructions about the Will, they exhibit a great sense of comfort in knowing their wishes have been properly documented.

Other times, we are summoned to the hospital to take instructions from an ailing client. Those times are very trying, for both the Notary and the client. How can such complex matters be quickly resolved in such complex circumstances? We do our best but always tread carefully in those situations. Sometimes clients will wonder why we are so cautious. When we explain the potential for the Will to be challenged, they soon appreciate our diligence.

I met with a gentleman in the hospital to make a new Will; he was in intensive care and was told he was terminal. I returned with the Will for him to sign.

I later learned he had been waiting just for me to be able to sign his Will, then he ended his life through assisted suicide a couple of hours later. That experience highlighted the magnitude of what we BC Notaries do and the importance placed on it by our clients.

Our clients are always surprised at how much they learn from our personal planning appointments.

We help guide them on how to think strategically about their estate planning to ensure that their loved ones benefit from the Will as intended, while avoiding potential issues and conflicts that may arise down the road. Interestingly enough, not many people realize that in addition to having a Will, a Power of Attorney and a Representation Agreement are also crucial. Saving our clients’ time and money is our goal and efficiency is key. As we recently handed the final documents to our clients John and Christina, they smiled and said to us, “It’s been an absolute pleasure!”

The dad of one of my clients wanted to get a Will done before his heart surgery and thought he needed a lawyer to do it. He called around and NO lawyer would or could take them in on short notice. They googled and found my Notary office location. I was able to give them an appointment the next day. The family was very satisfied with the Will we drew together.

Knowing the document was in place made them feel so much more secure. They wrote to thank me. “You are very professional and kind and made my parents feel so assured that I decided to do my own Will with you at the same time. We had no idea that BC Notaries could take care of so many legal matters; the cost was fair and reasonable! When we learned how else you could assist us, my parents had you handle some land transfers and other legal matters.”

The usual concern expressed in our Notary office is, “Do I need to do a Will?” Our immediate response is, “Yes, we can help you with that but have you done a Power of Attorney? That is the most important document in the whole of our estate planning system.”

I was recently told by a client that her family needed estate planning documents but she was not prepared to go through all the necessary detail. This client had assets, a spouse, minor children, and a good job. She was at high risk for not being prepared for any number of emergencies that could arise in her life.

To make the personal planning process easy, we provide our clients with an “Estate Planning Package” in hard copy, by email, or by fax. The package contains all the details required for our clients to prepare a Will, Power of Attorney, Representation Agreement, and Advance Health Care Directive and a letter explaining why they need each one of those documents. The package also has instructions for maintaining an Estate Record Keeper of all their assets, liabilities, and important contacts and details.

They read our information, complete the three questionnaires in the comfort of their home when they have time, and we do the rest! I review their instructions, communicate with them to discuss any concerns I may have, then we meet to sign the final documents.

**We had no idea that BC Notaries could take care of so many legal matters; the cost was fair and reasonable! When we learned how else you could assist us, my parents had you handle some land transfers and other legal matters.”**
Victoria Notary
Morrie Baillie

Representation Agreement Success

My Victoria Notary practice, near Oak Bay, is surrounded by other business professionals, a dynamic food market, multiple coffee shops, and antique stores.

Walk-bys stop in daily with a variety of questions and seniors are a large part of our client base. One day I received a call from a woman in Vancouver explaining her mom was in our nearby Royal Jubilee Hospital. The social worker at the hospital mentioned it would be good for Mom to draft a Power of Attorney (PoA) so her daughter could assist with banking and ensure her mom’s pension continued to be deposited to the correct bank account.

My out-of-office process included going to the hospital and taking instructions directly from her mom. It is important that I first meet with the mom alone. I ask questions to ensure mental capacity and explain the difference between a Power of Attorney and a Representation Agreement (section 9).

Most people understand the concept of a Power of Attorney but many erroneously believe a Power of Attorney includes power over personal and health care decisions. Those decisions live in a document known as a Representation Agreement. Once I explained the difference between the two documents and the benefits of a Representation Agreement, Mom decided to have both, naming her daughter as the documents’ attorney and representative, respectively. I soon returned to the hospital with the papers for Mom to sign.

The daughter was relieved she did not have to travel from Vancouver for that first appointment. She could sign the PoA and Representation documents with me any time she ventured to Victoria.

About 4 weeks later, Mom was back home and the daughter called to thank me. She found the Representation Agreement extremely helpful. As Mom’s legal representative, the daughter was able to ask the doctor and pharmacist thoughtful questions and work seamlessly with those professionals to consider alternative medicines for Mom. New prescriptions helped Mom come out from under what had felt to her like a permanent fog; she came back to being herself.

Note: The representative of a Representation Agreement can speak directly with doctors and pharmacists to enquire about the person’s care. Without that legal document, the pharmacist speaks directly to the client (i.e., Mom) and will not necessarily speak with concerned family members.

Daughter was able to help with Mom’s overall physical well-being and ensure Mom was receiving the best care possible. The Representation Agreement document provided peace of mind for both of them.

The Representation Agreement is an important tool to ensure seamless support for your loved ones around personal and health care decisions, as required.

The Aboriginal Mother Centre Society (AMCS) is a community-based non-profit charitable organization incorporated in 2002.

AMCS is dedicated to moving mothers and children who are at risk of homelessness and/or child protection interventions into the Aboriginal Mother Centre location, under one roof.

Questions about dementia or memory loss?

English: 1-800-936-6033
Punjabi: 1-833-674-5003
Cantonese or Mandarin: 1-833-674-5007
Hours: Monday to Friday, 9 a.m. to 4 p.m.
Learn more: https://alzbc.org/fldh1

Alzheimer Society
BRITISH COLUMBIA

First Link®
Dementia Helpline
1-800-936-6033

Charities to Consider
Being a substitute or supportive decision-maker is challenging work for which few people receive training—yet people are called upon to get involved in health care decision-making or make deeply important decisions for others at a time of great stress and loss. A crisis is not the optimal time for learning.

Ideally, people should learn about health care decision-making rights and responsibilities before they need to make decisions. People need support to better understand their rights and responsibilities. BC Notaries are critical community gatekeepers of information on health care decision-making and advance planning in our province.

Demystifying Health Care Decision-Making

Later this year, you will be able to watch a new CCEL animated video on health care decision-making rights and responsibilities. The work has been funded by The Notary Foundation of BC.

The CCE is also developing a factsheet, “Decision-making about Health Care: Legal Rights for People Living with Dementia.” The plain language, elder-friendly factsheet has been designed specifically for people living with dementia.

In 2016 the Canadian Centre for Elder Law (CCEL) and the Alzheimer Society of B.C. (the Society) formed a collaboration to study health care decision-making for people living with dementia in BC. The CCEL wanted to better understand the following points.

- What does the law say about the right to make medication and treatment decisions at home, in hospital, and in longterm care?
- Who is entitled to make decisions for people living with dementia, if and when they are not able to make their own decisions?
- What is health care providers’ understanding of health care consent law?
- What options do people have when they disagree with decisions others make about their health care?
- How can BC laws be improved to better support the decision-making autonomy and well-being of people living with dementia?
- What can be done to further support best practice in hospitals, physician offices, and longterm care facilities?

As part of the Health Care Consent Project, the CCEL examined legislation governing

- informed consent to health care;
• substitute and supported decision-making for health care;
• medication use in longterm care; and
• involuntary committal for psychiatric treatment.

Consultation formed a significant part of the project. To explore how the law is applied in community, the CCEL spoke with professionals who are involved in health care decision-making as part of their work and people who have had personal experiences with health care consent, including people living with dementia and family caregivers.

BC Notaries are critical community gatekeepers of information on health care decision-making and advance planning in BC.

CCEL also studied the broader framework that impacts the relationships between people living with dementia and their health care providers, including the regulation of health care professionals and staff in BC, codes of ethics and practice guidelines, and education and professional development of health care professionals and staff in relation to health care consent.

In February 2019, the CCEL published a report that summarizes research and consultation findings. The 34 recommendations address law reform, access to justice and legal aid, public and health care professional legal education, and systemic barriers to informed consent.

Consultation findings point to a lack of advance planning for health care in BC and a need for public legal education about health care decision-making rights and responsibilities. One of the recommendations of the report is that the Government of BC should develop a comprehensive public education plan regarding substitute and supported decision-making for health care, including Representation Agreements.

BC Notaries are critical community gatekeepers of information on health care decision-making and advance planning in BC.

Here are the essential issues people need to understand regarding personal planning documents and health care decision-making.

• What are the rights and responsibilities of substitute and supportive health care decision-makers?

It is particularly important to raise the awareness of the substitute decision-maker about the duty to consult with the person for whom the decisions are being made. Substitute decision-makers are required under BC law to talk to the person about, and consider, the person’s wishes. The representative must comply with those wishes if it is reasonable to do so. The temporary substitute decision-maker must consult with the adult “to the greatest extent possible” before giving or refusing consent to the person’s wishes.

• What are the rights of older people receiving health care?

For example, they have a right to receive support with communication and understanding, under both health care and human rights law. That right applies regardless of whether they took the opportunity to create a Representation Agreement while they had adequate capacity.

• How do the roles of substitute and supportive decision-maker differ? How can you be supportive without undermining decision-making autonomy?

Many people think substitute decision-making is the only option available to them; they have never heard about supported decision-making. To learn more about supported decision-making, please read the CCEL study paper, “Understanding the Lived Experience of Supported Decision-Making in Canada.”

https://www.bcli.org/project/understanding-lived-experience-supported-decision-making

BC Notaries around the province offer many noncontentious legal services (see pages 18 and 48) in an impressive variety of languages.
The following agencies offer good learning resources.

- Nidus Personal Planning Resource Centre and Registry
  http://www.nidus.ca
- People’s Law School
  https://www.peopleslawschool.ca/
- The Office of the Public Guardian and Trustee
  http://www.trustee.bc.ca/

Consent to health care: An informed, voluntary decision to accept or refuse health care treatment

Substitute decision-maker: A person or agency authorized to make decisions on behalf of another. In BC, a substitute decision-maker for health care can be

- a Court-ordered guardian (also called a committee of person);
- a representative appointed through a Representation Agreement, created when the person was able to make that decision; or
- a temporary substitute decision-maker chosen by a health care provider under the Health Care (Consent) and Care Facility (Admission) Act.

Temporary substitute decision-maker:

A person or agency chosen by a health care provider when a health care treatment decision is required and the person

- does not have an Advance Health Care Directive that addresses consent to treatment for the treatment in question;
- is not capable of making the decision; and
- does not have a representative or guardian with authority to make the health care decision.

The temporary substitute decision-maker could be a family member, a close friend, or the Public Guardian and Trustee of British Columbia.

Supported decision-making: When people use friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions

Supported decision-making allows many people with disabilities to make decisions without the need of a Court-appointed guardian. Most people make significant decisions with support from others.

Supportive decision-maker: A person who helps another person with decision-making. Supportive decision-makers “support” people to

- understand the issues involved in a decision;
- understand the consequences of a decision;
- access assistance or information to help them make a decision;
- express their views;
- help others to understand them and to respect their needs, rights, values, preferences, and goals.

Supported decision-making can occur with or without a formal agreement. In BC, formal supportive decision-makers get their authority from a Representation Agreement.
Having an estate plan is about you and the people you care about . . . and planning for those “what ifs” along your aging journey.

The more you learn about what you want and how you can facilitate your wishes, the easier it is to move your estate planning to the top of your “to do” list.

I am always hopeful but never surprised at the lack of waving hands when our seniors workshop presenters ask attendees, “Who has their estate planning documents in place and recently reviewed?” There’s inevitably a multitude of reasons why not, but the answer that always resonates the most with me is this, “It’s so complex and I didn’t know where to start.” But then I’m hopeful again because our estate planning workshops are always full and education is a great first step.

Take a look to see what is available in your community.

The Eldercare Foundation of Victoria believes strongly in the value of providing free education to help people navigate the journey of aging. We engage experts from the legal, health care, and financial professions who gladly volunteer their time to lead free estate and financial planning workshops at our Wellness Centre, Adult Day Programs, and extended care facilities Eldercare supports.

Take a look to see what is available in your community. You can also check out this helpful BC Government link. https://www2.gov.bc.ca/gov/content/family-social-supports/seniors/financial-legal-matters/wills-and-estate-planning

Here are five things you can do to get started.

• To get information about the planning process and documents, see if senior-serving organizations in your community are offering any free estate-planning information workshops.

• Make a list of questions for your BC Notary, financial advisor, and accountant.

• Talk with your loved ones so they are clear about what you want.

• If you don’t already have your team of professional advisors in place, ask friends and family for recommendations; then make a list of interview questions to help you choose the professionals who are right for you.

• Be curious. You don’t know what you don’t know, until you know what you should have asked!

Armed with your list of questions and some basic knowledge, you’ll find it much easier to engage the right professionals to ensure that your estate plan reflects you and your wishes.

Lori McLeod is Executive Director of Eldercare Foundation in Victoria, BC.
More and more Canadians are looking after their senior parents, often at the same time they are caring for their own children.

The number of seniors requiring care is expected to double in the next 10 to 15 years.1

Many adult children are doing their best to step in to help their parents, but very few have any real training to set them on the right path to manage that responsibility.

If you are acting as a caregiver for your senior parents, here are three important things you should know.

1. Get your Legal Documents in Order.
If your parents have appointed you as an attorney (under a Power of Attorney) or a representative (under a Representation Agreement), you need to know where the originals of those documents are being kept.

If you are acting as a caregiver for your senior parents, here are three important things you should know.

1. Get your Legal Documents in Order.
If your parents have appointed you as an attorney (under a Power of Attorney) or a representative (under a Representation Agreement), you need to know where the originals of those documents are being kept.

If your parents have not made those documents yet, talk with them about whether they are willing to have them created by a legal advisor such as a BC Notary. Those documents are crucial to ensuring someone can stand up for their wishes if your parents are unable to do so themselves.

1 http://www.carp.ca/2016/08/10/caregiving-by-the-numbers/

Your parents can refuse to have those documents created but, without them, your ability to help is significantly reduced.

Be prepared for your parents to name someone other than you in the role of attorney or representative; they may choose anyone they wish.

Be prepared for your parents to name someone other than you in the role of attorney or representative; they may choose anyone they wish.

If you have not been named and your parents don’t wish you to act for them, then stay out of their affairs. It is not your concern at that point and you could be found to be interfering in their lives. Your role is to honour their wishes, even if their wishes are for you to stay out of things.

Assuming your parents have those documents and they have appointed you as their agent, the next step is to activate the documents. Your parents will have signed the documents; you also need to sign them to accept your appointment.

• You must accept a Power of Attorney by signing in front of a BC Notary or lawyer. Special signing requirements exist if you live outside of BC.

• You may sign their Representation Agreements yourself, without a witness. They do not need to be notarized.

Once you have signed the documents, share them with the appropriate people. Never give away the original and do not take the original documents apart. Always keep a copy of the documents with you or at least on your phone.

• Copies of the Power of Attorney should go to banks, investment firms, or other asset holders involved with your parents’ assets.

• Copies of the Representation Agreement should go to caregivers, doctors, dentists, social workers, and any other health care or personal care providers with whom your parents are interacting.

To keep it handy, attach a copy of the Representation Agreement to your parents’ fridge, along with your name, phone number, and other contact information.

If your parents have cell phones, make sure your name and contact information are in their phone under “emergency contacts.” For example, an iPhone has a “Medical ID” section that health care providers can access without needing the security code.

Place little cards or notes in your parents’ wallets that say, “I have a Representation Agreement and [name] is my representative. Call 000 000-0000.”
2. Know Your Role.

We often hear horror stories about children bossing their parents around, putting them into care homes before they are ready, and taking over their parents’ assets so they can control everything.

That is not your role. Your role is to understand and carry out their wishes and to act in their best interests.

In this situation, you are not just your parents’ child; you are acting as a legal agent for them. Think of yourself as their Chief Financial Officer and/or their Chief Health Care Provider. You aren’t taking over; you are supporting and facilitating their wishes and needs.

Just because your parents have appointed you as their agent doesn’t mean they are finished making their own decisions. Making a Power of Attorney or Representation Agreement doesn’t mean they must stop looking after their own affairs. As long as they are capable, they can continue making their own decisions and taking their own actions. You are simply coming alongside and helping them, not replacing them.

You have a fiduciary duty to your parents when you act as an attorney or a representative; that is a very special legal responsibility. Your parents are trusting you to care for them and for their estate. You have an extra-special duty of care to ensure their needs are met before yours or the needs of any other family member.

Your role is to foster your parents’ independence, to safeguard their assets, and to ensure their personal and health care needs are met above all else.

- For example, you must keep your parents’ assets at their own disposal (not mix them with your assets) and ensure you are managing their finances prudently.
- You must not give away any assets listed as gifts in their Will, change beneficiary designations, or make gifts or loans using their funds without following the rules set out in the law.


At some point, you will be asked to report to others about your work as agent. Your parents can ask you to report to them, as can a Court, the Public Guardian and Trustee, and the beneficiaries of your parents’ estate.

If you are looking after your parents’ personal or health care, keep a record of conversations you have with them about their wishes and instructions and also with their caregivers about what is happening in your parents’ lives.

- Track medications, recommendations, and opinions.
- If you are looking after your parents’ finances, you must keep thorough financial records of everything you have done so you can provide an “accounting” to your parents, the beneficiaries of their estate, and so on.

The above items are not suggestions. They are legal requirements.

For example, you must do the following.

- **Document your starting point.**
  
  Make a list of all your parents’ assets and liabilities so you know where they stood when you started helping them.

- **Record all your actions.**
  
  Keep a diary that sets out all the things you have done for your parents. Filled their car with gas? Document it. Paid a bill? Document it. Retain all receipts, even if you do not plan to ask for reimbursement.

- **Keep copies of all banking documents.**
  
  Save copies of any banking statements, investment reports, credit card statements, and so on. You will need them as proof of your work and proof of what your parents did (since they can keep acting on their own behalf).

That work will help you defend yourself when your parents pass and your siblings look at you and say, “what happened to all the money?”

Stepping into the role of agent for your parents is a privilege and an honour. It is a way to repay them for the care they gave you during your childhood.

Serving as an agent is an incredible amount of work; don’t assume the responsibility unless you feel you can give it the time and energy it requires—practically and legally.

For legal advice about the documents, ask your friendly BC Notary or lawyer. We are great resources for you.

**Linda Caisley** is a BC Notary practising in the Okanagan.
When it comes to planning a Will, beyond allocating assets to family and friends, many of us wish to make bequests to charities and causes important to us.

When those gifts are sizeable, it is important that we choose recipients wisely to ensure the charities we’ve chosen maximize the impact of our contribution.

How do we assess the effectiveness of charities?

My passion has always been the humane treatment and well-being of animals. I have followed and supported the work of various animal and environmental protection charities over the years, but was never really sure if I was supporting the most effective organizations.

Was I being swayed to donate to those with the most evocative photographs and campaigns? Perhaps. I admit I never really did much due diligence when it came to making small donations. When I was allocating much larger gifts in my own Will, I knew I had to dig a little deeper. I wanted to ensure my legacy donations were based on more than an emotional response.

I surveyed and interviewed the executives of 25 animal welfare organizations and foundations from across North America; their input helped me identify four common themes or pillars of importance. I refer to them as the PREP Framework.

Philosophy: The organization’s beliefs, values, and position statements

Red Flags: Criteria that indicate problems in the organization

Efficiencies: Financial and operational conduct of the organization

People: Abilities and involvement of those who work for, with, and that support the organization

To explore the idea, I left my marketing career in the technology sector and enrolled in UBC’s graduate program in Animal Welfare. My idea was to develop a framework to help donors and foundations better assess the effectiveness of animal welfare organizations to improve their philanthropic decision-making, and I figured if I could objectively assess the controversial and emotional field of animal welfare, that tool could also be applied, with slight modification, to other nonprofit entities—to help other donors make better decisions, too.

I surveyed and interviewed the executives of 25 animal welfare organizations and foundations from across North America; their input helped me identify four common themes or pillars of importance. I refer to them as the PREP Framework.

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Red Flags: Criteria that indicate problems in the organization

Efficiencies: Financial and operational conduct of the organization

People: Abilities and involvement of those who work for, with, and that support the organization

Maximizing the Philanthropic Impact of Your Will

Leanne at UBC Farm with a Belted Galloway, a Scottish breed of cattle

Leanne McConnachie

Photo: Martin Dee

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I believe the two most important aspects are Philosophy and People. They also happen to be the two easiest subjects to investigate.

**Philosophy**

Although an organization’s stated mission and objectives provide a high-level overview of their goals, to truly understand the core values, morals, and beliefs of an organization donors need to review an organization’s position statements and ethical policies. At a basic level, those statements should disclose what the organization supports and what it is against.

For example, two organizations may state their goal is to protect waterfowl and their habitat but, on closer examination, one organization proves to be a group of hunters seeking to preserve hunting opportunities, while the other is opposed to hunting and tries to conserve spaces for wild animals to live. Superficially, both groups appear to have the same goal, but their philosophies are very different.

The calibre of an organization’s people, particularly its management team, is another major indicator of effectiveness. More telling than its staff credentials are its relationships with credible peers within their sector and the foundations that support them.

Successful organizations tend to participate in collaborative partnerships and projects with other known groups, scientific experts, academics, and government agencies. Evidence of this will be mentioned in their press releases and program work; sponsors will likely be listed on their website. Donors may also wish to call a peer charity and ask for their opinion about the organization in question. Lack of collaboration with peers or less than positive reviews from other charities or experts is certainly a red flag.

When it comes to efficiencies and red flags, donors and charity rating services often assess efficiency based on the allocation of the organization’s funds to program and administration costs. Those details can easily be viewed online in Canada Revenue Agency’s Listing of Charities.

Merely meeting an established financial benchmark does not mean that the organization is effective, however. Donors may wish to review an organization’s strategic plan or the outcomes of past and current programs and campaigns to see if they have achieved objectives that resulted in positive and measurable change.

As you can imagine, there are many aspects to consider. The amount of research you conduct will likely be commensurate with the size of your donation. My **PREP** framework provides a systematic but flexible approach to making informed judgments about organizations.

If donors combine their research of some or all four pillars of the **PREP** framework, they should garner enough information to ensure that they focus their legacy gifts on capable, fiscally responsible, and effective organizations with philosophies that align with their own values.

**My PREP framework provides a systematic but flexible approach to making informed judgments about organizations.**

**People**

If donors combine their research of some or all four pillars of the **PREP** framework, they should garner enough information to ensure that they focus their legacy gifts on capable, fiscally responsible, and effective organizations with philosophies that align with their own values.

Leanne and Teddy, a white boxer she adopted in 2017

Leanne McConnachie, MSc, BA, is a consultant, President of the Animal Welfare Foundation of Canada, and an advisor to the Vancouver Foundation’s Systems Change Grants Committee.
Most countries including Canada have long struggled to find satisfactory mechanisms to recognize and give effect to foreign Wills that purport to dispose of foreign-owned real and personal property located within their borders.

All too often the established conflict of laws rules have not been up to the task, forcing countries to look to bilateral and multilateral treaties to resolve legal and technical issues.

The Convention

Contracting States
Currently the Convention is in force in 12 Contracting States, namely Australia, Belgium, Bosnia-Herzegovina, Croatia, Cyprus, Ecuador, France, Italy, Libya, Niger, Portugal, and Slovenia.

Other Signatories
The United Kingdom was one of the early signatories to the Convention (10 October 1974). Even though the Convention has been incorporated into UK law by section 27 of the Administration of Justice Act 1982, the UK has not yet ratified the Convention and the section has not yet been proclaimed.

The other early signatories, namely the Holy See (2 November 1973), Iran (27 October 1973), Laos (30 October 1973), the USSR—now the Russian Federation (17 December 1974), Sierra Leone (27 October 1973), and the USA (27 October 1973), also have not yet ratified the Convention.

The Republic of China—now Taiwan, was also an early signatory (27 October 1973), but did not ratify the Convention; The Peoples’ Republic of China has not sought to be a party.

Czechoslovakia signed the Convention on 30 December 1974 but did not ratify it. Czechoslovakia ceased to exist in 1993 and separated into two states, the Czech Republic and the Slovak Republic; neither has ratified the Convention.

Canada
Although Canada acceded to the Convention on 24 January 1977, it will enter into force in Canada generally only once all provinces and territories have enacted necessary legislation. Quebec, the Northwest Territories, Nunavut, and Yukon have yet to do so.

The Convention in BC Law
The Convention was incorporated into BC Law by virtue of section 83 of the Wills, Estates and Succession Act (“the Act”). It will come into effect in BC 6 months after the date the Canadian Government formally advises the Convention Depository in Washington, DC, that the Convention has entered into force generally in Canada.

That advice necessarily confirms that the Convention extends to British Columbia, which is the trigger specified in section 83 of the Act.

The Act incorporates the Annex to the Convention (“the Annex”) that sets out the procedure for the making of an International Will (“the Uniform Law”) and prescribes the form of a certificate to be appended to the Will that evidences the “obligations of [the] law have been complied with.”

Purpose of the Convention
Despite its rather grand title, the purpose of the Convention is actually quite limited. It is not directed toward harmonizing testamentary formalities as between Contracting States.
Those formalities are unaffected. It aims only to establish
an additional form of Will that, if employed, would dispense
to some extent with the search for the applicable law.

As put by the Convention’s rapporteur, Jean-Pierre Plantard in his Explanatory Report:

[The Convention] simply proposes, alongside and in addition to the traditional forms, another form which it is hoped practice will bring into use mainly but not exclusively when in the circumstances a will has some international characteristics.

The principal “international characteristics” are

- a Will being made in a foreign jurisdiction that is not the testator’s country of nationality, domicile, or ordinary residence;
- all or some of the testator’s real and personal property being located in one or more jurisdictions outside the country where the Will is made; and
- some or all of the beneficiaries being nationals of, or domiciled in, countries other than the country where the Will is made and/or the jurisdiction(s) where assets are located.

It should also be noted that

- the International Will, when used, will not replace any existing form of Will in British Columbia;
- the Convention will have no effect on BC laws governing
  - succession;
  - the construction and interpretation of Wills; and
  - the revocation of Wills; and
- compliance with the Uniform Law will not absolve Notaries or lawyers from professional responsibilities or liability arising out of the preparation of Wills relating to real and personal property abroad.

It should also be noted that the invalidity of a Will as an International Will does not affect its formal validity as a Will under the Act.

Witnesses are involved in the making of an International Will. Article V of the Convention makes it clear that the rules relating to witnesses are the ordinary rules applicable to witnesses in British Columbia.
Essentially, an International Will consists of two documents,
• the Will itself; and
• a certificate by a so-called “authorized person” in the form or substantially in the form prescribed by the *Uniform Law*.

### The Authorized Person

Article II of the Convention introduces the concept of a person “authorized to act in connection with international wills” (an “authorized person”) being a person designated for the purposes of the *Uniform Law* to
• oversee the formalities of the making of an International Will; and
• prepare and complete the required certificate that is attached to the Will itself.

In the civil law countries that are party to the Convention, Notaries are invariably the only authorized persons designated. Notaries are authorized persons in British Columbia as well but in BC, because Wills are also prepared by lawyers, BC lawyers have also been designated as authorized persons.

### The Procedure

The *Uniform Law* as set out in the Annex prescribes the procedure for the making of an International Will.

The Will itself may be prepared by the testator personally or by someone else on his or her behalf—in British Columbia, usually a Notary or a lawyer. The Will may or may not be handwritten and may be prepared in any language.

As the first step in the process, the testator declares to the authorized person and to two witnesses, all present at the same time, that the document contains the testator’s Will and that he or she knows its contents. The testator need not prove knowledge by telling the authorized person or the witnesses about the contents nor is the testator obliged to let them read the Will.

The Will is then signed at its foot by the testator in the presence of the authorized person and the witnesses.

If for some reason the Will has been previously signed by the testator, then the testator must acknowledge his or her signature in the presence of the authorized person and the witnesses.

If the testator is unable to sign the Will, the authorized person must note the fact and the reason on the Will. If, as is the case in British Columbia, local law allows some other person in the presence of and at the direction of the testator, then the Will may be signed by that other person.

If the Will consists of several sheets, each sheet must be signed by the testator and each sheet must be individually numbered. In British Columbia, each sheet must also be signed at its foot by the witnesses.

The date of the Will is the date of its signature by the authorized person who is required to note the date at the end of the Will.

Absent any mandatory rules in British Columbia relating to the safekeeping of Wills, the authorized person must ask the testator if he or she wishes to make a declaration as to the safekeeping of the Will. The testator must make either a positive or negative declaration, the terms of which must be included in the authorized person’s certificate.

### The Authorized Person’s Certificate

To complete the International Will, the authorized person must prepare a certificate in the form or substantially in the form of the certificate set out in Article 10 of the *Uniform Law* and must attach it to the Will. In the absence of evidence to the contrary, that certificate is conclusive as to the formal validity of the Will under the *Uniform Law*.

The authorized person must keep a copy of the certificate and must deliver another copy to the testator.

**A precedent certificate for a Notary based on the prescribed form follows. ▲**

**Professor Peter Zablud, AM, RFD, is an Australian Lawyer and Notary and the Director of Notarial Studies, Victoria University, Melbourne, Australia.**
CERTIFICATE OF AUTHORIZED PERSON
pursuant to
THE UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL
(Convention of October 26, 1973)

I, [name], Notary Public, practising at [address] in the Province of British Columbia, Canada, being a person authorized to act in connection with international Wills, CERTIFY that on [date] at [place]:

(a) the testator [name, address, occupation, date and place of birth] in my presence and in the presence of the witnesses:
   (i) [1st witness' name, address, occupation, date and place of birth]; and
   (ii) [2nd witness' name, address, occupation, date and place of birth]
   declared that the attached document is his Will and that he knows its content;

(b) in my presence and in the presence of the witnesses, the testator signed the Will and then the witnesses and I signed the Will in the presence of the testator;
   OR
   (if applicable)
   (b) in my presence and in the presence of the witnesses, the testator acknowledged his signature on the Will previously affixed and then the witnesses and I signed the Will in the presence of the testator;
   OR
   (if applicable)
   (b) in my presence and in the presence of the witnesses, the testator declared that he was unable to sign his Will for the following reason, namely [set out the reason] and I made a note of that declaration on the Will and at the direction of the testator and in the presence of the testator the Will was then signed on behalf of the testator by [signatory's name, address, occupation, date and place of birth] and the witnesses and I then signed the Will in the presence of the testator and [name of the person signing the Will on the testator's behalf];
   OR
   (if applicable)
   (c) the Will comprises one page;
   OR
   (if applicable)
   (c) the Will comprises [number] pages and each page has been numbered and signed by the testator;
   OR
   (if applicable)
   (c) the Will comprises [number] pages and each page has been numbered and signed by [name] being the person who signed the Will on the testator's behalf;

(d) I have satisfied myself as to the identities of the testator and the witnesses;

(e) the witnesses meet the conditions required to act as such according to the law under which I am acting;

(f) absent any mandatory rule in British Columbia pertaining to the safekeeping of the Will, I asked the testator whether he wished to make a declaration concerning the safekeeping of his Will to be included in this certificate, but the testator did not wish to do so.
   OR
   (if applicable)
   (f) absent any mandatory rule in British Columbia pertaining to the safekeeping of the Will, I asked the testator whether he wished to make a declaration concerning the safekeeping of his Will to be included in this certificate, and the testator requested me to include the following statement in this certificate concerning the safekeeping of his Will namely [set out the testator's requirements]

IN WITNESS of which I have subscribed my name and affixed my seal of office this ______ day of ________,
two thousand and ________

(Notary’s Signature) Notarial Seal

Notary Public
British Columbia, Canada
My appointment is not limited by time.
Another great issue! I really enjoyed this one and my clients love it, as well! All the very best to you in 2019!
Phyllis Simon, Notary, Vernon, BC

FYI, we are sharing Nigel Atkins’ delightful article from your Winter Scrivener on our blog post.
https://victoriafoundation.bc.ca/guest-blog-from-otters-to-others-art-into-philanthropy/
We also shared my two articles on our enews for professional advisors. http://archive.aweber.com/awlist3791365/93F0J/h/January_2019_new_staff_new.htm
All are featured on our social media and via our donor and charity enews.
Sara Neely, Director of Philanthropic Services, Victoria Foundation

I received the following email recently regarding the mobile home article I wrote. So nice to have feedback!
Kim McLandress, Notary, Chilliwack, BC
Dear Kim:
I have just read your excellent article, “Considering a Manufactured Home?” in The Scrivener. The MLA of a member of our organization shared it with our Board. Thank you for your clear and accurate picture of manufactured home ownership. It seems we see so much of the old stereotypes including a lot of misinformation; it is a breath of fresh air to see your information. Thank you for taking the time to make this available.
Best,
Janet Walker, Secretary
Manufactured Home Park Owners Alliance of BC

Want to commend you on an excellent magazine full of valuable information presented in an easily readable and understandable manner.
Thank you for including us in this very special issue. What an honour. It will be our pleasure to make this magazine available to our supporters and will bookmark the article on donating securities to charities when we share the magazine.
Chris Harris, Turtle Valley Donkey Refuge, BC

©iStockphoto.com/Poula Thorsen

There are business opportunities for Notaries in various communities throughout British Columbia.

Some of the Requisites for Becoming a BC Notary
- 5 years' related experience
- Strong entrepreneurial and people skills
- Highest degree of honesty and integrity
- Dedication to serving the public
- Undergrad degree: 3.0 GPA
- Fluency in English; other languages an asset
- Financial stability

For more information, please contact The Society of Notaries Public of BC 1-800-663-0343 or visit our website, www.notaries.bc.ca.
My superhero, cheerleader, and best friend is no longer a phone call away. He always said he would live past 100. He lived a life worthy of 100 years, compressed into a mere 67.

Painho, as I fondly called him, was a very interesting man. His unique journey can be traced back to many places, people, and associations; his life was full of changes and accomplishments. Dad’s journey on this planet was marked by great courage, integrity, and kindness.

Born and raised in northeast Brazil, Dad was health-conscious and took great care of his physical well-being. He was always involved in sports. While attending university, he played professional volleyball for his state team. He excelled at soccer (later coaching a junior soccer team in Burnaby), tennis, golf, snowboarding, skiing, and swimming, competing recently at the Annual BC Seniors Games and winning a number of medals! Dancing and travelling were his other passions.

He planned and participated in a long-haul bike ride from his hometown Maceio all the way to Rio de Janeiro, an unforgettable trip that lasted a few days and created beautiful memories. In the last few years, Dad rode in the Bike to Conquer Cancer as part of the BC Notaries Team to raise awareness of the very illness that took his late son, my big brother Daniel, back in 2008.

After a long, reputable career as a Civil Engineer in Brazil, Dad immigrated to Vancouver in 1999, first working at the Brazilian consulate, then opening Provisa Consulting when the consulate relocated to Toronto. Throughout the years, he also worked as an interpreter, translator, and immigration consultant.

Food was important to Dad. He enjoyed cooking . . . pasta was his favourite! An advocate for vegetarianism, he served as president for associations such as the Vegetarian Coop in Rio de Janeiro and the East-End Coop in Vancouver.

A great part of Dad’s life was spiritual; he practised yoga and meditated daily. Searching for meaning was a focal point for him. He studied various philosophies and religions and was most recently a Taoist.

In 2007, Dad achieved a career milestone when he was sworn in as a BC Notary. He was very proud to serve on the Board of The Society of Notaries for 3 years.

Dad will be remembered by his sense of humour and his jokes. Many of his clients have shared how they appreciated walking into his office and being received with a wide grin. Dad also had a great time preparing and delivering fun speeches at his Toastmaster’s Club.

Dad taught me many things in life. One was that a person can accomplish whatever she wants, as long as she sets her mind to it. He taught me words are sacred and that a promise is to be honoured. I will soon pass Dad’s wisdom along to his baby granddaughter Beatriz.

Dad’s presence is everywhere. His smile and laughter still echo in my heart and will continue to do so until we meet again.

Dad, I miss you dearly. Rest in peace, Painho. ▲

Marco was a frequent contributor to The Scrivener.

Juliana Mendes Castro
Job Fair

The BC Notary Association hosted a Notary Job Fair on Saturday, January 19, 2019, at the Metropolitan Hotel in Vancouver.

This year’s format allowed Notaries to host a booth to showcase their practice and the benefits the Notary could provide to a new member after graduation. Students from the 2019 and 2020 classes were invited to attend and made the rounds of the Notary booths while enjoying canapes and cocktails. Sixteen Notaries attended from communities around BC; 33 students were able to connect and network at the event.

More and more students are looking to work with experienced Notaries after they are commissioned. The Job Fair allows interested Notaries to put their best face forward and provide their new colleagues with a snapshot of what it might look like to work in their office. The Notaries who set up booths had prepared brochures and pictures of their office to show students.

The Association is hopeful that an event such as this assists in matching Notaries and graduates based on qualifications, preferences, and interest.

Introductions were made by BC Notary Association CEO Jacqui Mendes and The Society of Notaries Public Executive Director John Mayr. ▲

BC Notaries Fall Conference 2019

Save the Dates!

Friday, September 20, to Sunday, September 22

Delta Hotels by Marriott Grand Okanagan Resort

The BC Notaries Association is looking forward to welcoming Notaries, guests, presenters, and speakers to the Fall Conference 2019 in Kelowna.

The Conference opens Friday, September 20, with a day of fun and bonding for Notaries and their families.

Events include a golf tournament for all our keen Notary golfers. The Tower Ranch Golf Club was voted the 4th-best golf course in the world by Leisure + Travel Golf Magazine. The 18-hole championship course features spectacular 360-degree views and the rugged layout accommodates all levels of players. Nongolfers can choose the guided tour of Kelowna’s renowned wineries or a more get-up-and-go hiking/biking experience.

The Conference will open with a welcoming reception Friday evening. Education sessions and a Trade Show with our committed Notary sponsors will be offered on Saturday with a half day on Sunday.

All delegates will get together for Saturday evening’s Gala Dinner, the Annual General Meeting of The Society of Notaries Public of BC, and the first Annual General Meeting of the BC Notaries Association.

Save the Dates! ▲
even years ago, I had the honour of winning the prestigious Bernard W. Hoeter Award in recognition of attaining the highest marks on all the Notarial Statutory Examinations.

I reflect back with a smile and a chuckle. Writing my statutory exams, I was sick with a high fever and flu. Fortunately, my foundation of knowledge acquired through the Master of Arts in Applied Legal Studies (MA ALS) program at Simon Fraser University—that includes countless hours of studying, researching, and mentoring by BC Notaries—enabled me to achieve top results.

I attribute my academic success to the high standards I place on myself to excel, setting aspirational goals and working hard to achieve them. During 16 years as a competitive figure skater, I learned to challenge myself and developed a strong work ethic that enabled me to progress through the various levels of the sport, whether that meant passing the next test or achieving a higher ranking at a competition. I thrived in that environment and continuously worked toward improvement and excellence.

My background as an athlete strengthened me physically and mentally and has assisted my career as a BC Notary that comes with its own unique set of demands. My nature welcomes challenges and motivates me to reach the highest level I can.

Another key component to my success in life is family. The members of our small, close-knit group are always there to support and motivate one another to seek our greatest potential. My sister was also a competitive figure skater and we supported each other through the many highs and lows of the sport.

Our parents and grandparents taught us the importance of balancing sport with education and set good examples for us. We were able to excel in both those aspects of our lives and have chosen careers where we can support others and make a difference in their lives, myself as a BC Notary and my sister as a Psychologist.

Throughout my childhood as the winner of many family debates, I was often teased that I would make a good lawyer. Notary Public is the perfect career for me; it is a good fit with my educational background in business. It allows me to utilize my entrepreneurial skills and provides an outlet for helping others.

Looking back on the years I have served as a BC Notary, I cherish my interactions with individuals and families and am amazed by the unique stories and family history each client brings to my office. I help others, often through difficult and stressful times in their lives. I, too, have been thrown some curveballs in life. I am grateful for my family and friends and the determination that has carried me to where I am today.

My other passion in life is animals, particularly dogs. A proud dog owner, I am fortunate to be able to bring my mini Australian Shepherd Jersey to the office. He happily greets clients when he is not sleeping on the job. My lifelong dream is to open a no-kill dog rescue centre. I hope one day to make that dream a reality.

For the past 6 years, our community has voted our office their “Favourite Notary Public” in Maple Ridge and Pitt Meadows. I want to continue to grow as a Notary and spend many more years serving the public and sharing my knowledge and experience with new, upcoming Notaries as they enter this wonderful profession.
Five hundred mortgage broker delegates and exhibitors participated in the recent annual Canadian Mortgage Brokers Association (BC) conference at the JW Marriott Parc in Vancouver.

The BC Notaries Association booth was 1 of 50 set up for the exciting trade show. Our volunteers included BC Notaries Patricia Wright, Ken Ma, Akash Sablok, and myself.

Akash introduced the Expert Panel Session, “Assembling an Effective Transition Team”; he also announced the winner of the BC Notaries Association’s draw for an iPad Mini. The second prize was a pair of crystal champagne glasses and a bottle of Pol Roger champagne donated by Patricia Wright.

On behalf of the BC Notaries Association, President Daniel Boisvert accepted the MBA-BC Corporate Partner Award. Please see the sidebar for more information.

In talking to the various mortgage broker delegates, it was evident that the BC Notaries Association enjoys an excellent rapport and reputation with the mortgage broker community.

In talking to the various mortgage broker delegates, it was evident that the BC Notaries Association enjoys an excellent rapport and reputation with the mortgage broker community. It was a real pleasure to chat with the delegates about how we can work together to benefit our mutual clients here in British Columbia.

The BC Notaries Association was very honoured to receive the Canadian Mortgage Brokers Association of British Columbia’s Corporate Partner Award this year.

The award recognizes an organization that has collaborated closely with CMBA-BC on initiatives, projects, education, and events that benefit their members.

Congratulations to the BC Notaries Association members and BC Notaries throughout the province for this wonderful recognition by the mortgage broker community. Much effort and collaboration over the years have elevated the status of Notaries with various professional communities throughout BC. This is a prestigious moment all BC Notaries can enjoy.

The award was presented at the 2019 MB Awards Luncheon, February 26, as part of the CMBA-BC Fundamentals19 Conference & Trade Show, held at the Parq Hotel Vancouver, February 25 and 26, in 2019. BC Notaries were proud to be a CMBA-BC Conference Sponsor!
The 41st annual Bridge to S.U.C.C.E.S.S. Gala on March 16 was attended by over 800 people, including politicians from all three levels of government, consulate members, community leaders, and supporters of the organization.

The evening at the Westin Bayshore Hotel raised over $531,000, adding to the impressive $20 million raised by the event in the past 40 years. Funds raised will support S.U.C.C.E.S.S.’s programs and services that receive limited or no government funding.

The fundraising focus this year was on programs supporting children and youth such as the S.U.C.C.E.S.S. Multicultural Early Childhood Development and Youth Leadership Millennium programs.

The BC Notaries Association was a proud sponsor.

BC Notary Cheryl Kwok was 1 of the 3 co-Chairs. She believes children and youth are our future and that it’s extremely rewarding to contribute to these important S.U.C.C.E.S.S. programs that support their development.

Fun and Fundraising at the S.U.C.C.E.S.S. Gala!

The fundraising focus... was on programs supporting children and youth...

BC Notaries Association CEO Jacqui Mendes and BC Notaries Rimpy and Raman Sadhra

Cheryl with MP Jody Wilson-Raybould

MLA Michael Lee, Cheryl, and Michael’s wife Christina
The Board of Governors of The Notary Foundation of BC is comprised of:

- 8 members of the Board of Directors of The Society of Notaries Public of BC;
- 1 representative from the Attorney General’s Office in Victoria*;
- 2 Directors-at-Large, appointed by the Attorney General**; and
- the Executive Officer.

The members from The Society are elected by the Directors of The Society from among their ranks, for a 3-year period.

**The Foundation Governors**

Tammy Morin Nakashima, Chair  
Rhoda Witherly  
Jessie Vaid  
David Watts  
Akash Sablok  
Filip de Sagher

Linda Manning  
Kate Manvell  
* Lisa Nakamura  
** Deborah Nelson  
** Jas Rehal

G. W. Wayne Braid, Executive Officer of The Notary Foundation, is responsible for the administration of the office and staff and the diverse investment funds of The Foundation.

The Board of Governors meets quarterly to consider applications for funding from various organizations and to set policy, review The Foundation’s financial status, and provide direction for the administration of The Foundation.

The Governors of The Foundation have the responsibility of guiding The Foundation in its mandate to disperse the funds generated by interest on BC Notaries’ Trust Accounts.

The Notary Foundation funds are used for the following purposes.

1. Legal education
2. Legal research
3. Legal aid
4. Education and Continuing Education for BC Notaries and applicants who have enrolled to become BC Notaries
5. Establishment, operation, and maintenance of law libraries in BC
6. Contributions to the Special Fund established under the *Notaries Act of BC*
The “Report on Governance Issues for Stratas” is the third report published in BCLI’s ongoing Strata Property Law Project – Phase Two, funded in part by the BC Notary Foundation.

The report represents over 2 years of work by the British Columbia Law Institute’s Strata Property Law Project – Phase Two Committee at 23 committee meetings and consideration of 290 responses to the Consultation Paper on Governance Issues for Stratas.

With its Report on Governance Issues for Stratas, the British Columbia Law Institute’s Strata Property Law Project Committee is calling for reforms to the Strata Property Act, the Strata Property Regulation, and the Schedule of Standard Bylaws to enhance the governance of strata corporations.

The report contains a comprehensive examination of the legal framework that applies to decision-making in a strata corporation and recommends a series of improvements to five topics relating to strata-corporation governance.

1. Bylaws and rules
2. Statutory definitions
3. General meetings and strata-council meetings
4. Finances
5. Notices and communications

Implementing the report’s reforms will help strata owners in carrying out the job of governing their stratas by clarifying meeting procedures, modernizing provisions, enhancing accountability, and creating greater certainty.

The report contains 81 recommendations for reform. Among these recommendations are proposals regarding the following.

- Relocate 12 standard bylaws (or parts of standard bylaws) to the body of the Strata Property Act.
- Create statutory definitions for the often-contested terms rent and continuing contravention.
- Establish a mandatory form of proxy appointment.
- Set in place criteria that must be met by those who want to serve on a strata council.
- Create a special limitation period of 4 years for claims that may be the subject of a strata corporation’s lien.
- Update a host of fines and fees in light of current circumstances.

The report also features a draft bill that illustrates how the Legislative Assembly of British Columbia may implement the recommendations.

TWO NEW REPORTS ON STRATA PROPERTY LAW FROM BC LAW INSTITUTE

Governance Issues and Insurance Issues

Insurance is a top-of-mind issue for most homeowners. That point is true, whether the owner’s home is a single-family house or a unit in a strata property. But strata owners face some complex legal issues when it comes to their insurance arrangements. Managing those issues has led to the enactment of dedicated legislation on stratas and insurance in the Strata Property Act.

This legislation requires a strata corporation to have property insurance and liability insurance. It also permits a strata corporation to have other types of insurance and strata owners to have their own insurance.

The legislation’s main goal is to coordinate all these players in the insurance area for a strata in such a way as to guard against overcoverage and gaps in coverage. The legislation also aims to translate insurance concepts, such as deductibles and...
insurable interest, into the distinctive strata-property model of owning and managing property interests.

The British Columbia Law Institute’s Strata Property Law Project – Phase Two Committee has studied this legislation on strata properties and insurance. In their Report on Insurance Issues for Stratas, the Committee reviewed the current legal framework and made 11 recommendations for its reform.

The Committee’s recommendations are aimed at fine-tuning and enhancing the existing law. Among the report’s highlights are recommendations to

- require strata corporations to have Directors-and-officers insurance;
- create a new and more certain approach to dealing with liability to pay a strata corporation’s deductible in cases where an owner is responsible for a claim;
- enhance reporting and information-sharing; and
- give more study to adopting a legislatively defined standard unit, as a means to map the limits of a strata corporation’s required insurance vis-à-vis a strata-lot owner’s insurance.

The Report on Insurance Issues for Stratas, the fourth report in BCLI’s Strata Property Law Project – Phase Two, is the product of an extensive series of meetings involving a broadly based and expert project committee.

Early in this series, the Committee had the benefit of meeting with a range of insurance professionals who offered their insights into the current law and options for reform. The report was preceded by a consultation paper and 3-month public consultation that received 90 responses. The report contains draft legislation, showing how its recommendations may be implemented to make the law better serve strata-lot owners, strata corporations, and their insurers.

Kevin Zakreski is Staff Lawyer at British Columbia Law Institute.

www.bcli.org
As a workplace mediator, I talk with both sides in conflicts—the manager and employee, the peers, or the whole team.

My job is to help people move through impasses and hopefully reconcile.

I usually start with a private, one-on-one conversation with each individual involved. That setting can help people feel comfortable and safe enough to reveal some of the miscommunications, hurts, and damage that have accumulated over weeks, months, or even years. Fairly quickly, people start to tell me the truth of the situation as they see it.

Recently, a good friend said something to me at a book club event that sounded a bit harsh. Her comment was not a big deal. In fact, it was easy to think I was being oversensitive but I knew if I didn’t talk with her about that micromoment, it could affect our relationship. Sure enough, when I saw her do something else that bothered me, I found myself staying aloof from her and, on some level, she picked up on the shift in our dynamic.

That is precisely how a destructive conflict can start. One party experiences something he or she defines as “disrespectful.” When one or two other pinches take place, they start to be coded as additional examples of disrespect.

Let a few of those micromoments go by, throw in a conversation or two complaining to someone else about it, and we start to pick up steam!

I approached my friend to ask if we could talk about something small because I wanted to clear the air. She agreed. I shared my moment and her completely unintended consequence on me and then asked about her experience.

She received my perspective graciously, acknowledged she had also felt the tension, and shared what was happening for her at that time. Of course, it had little to do with me. We both took the time to speak about our experiences and that brought us closer together again. It turned the pinch into an opportunity.

I invite you to do a little experiment of your own. Think back to a serious conflict in your life...a toxic situation.

Can you think of any early signs that something was amiss? It may take some reflecting because it’s easy to decide to ignore those small moments.

What did you choose to do about the way you felt in that moment? What might have been the positive outcome if you had addressed that first little pinch? ▲

Julia Menard, MEd, is a Mediate BC Civil Roster mediator in Victoria, BC.
On April 1, 2019, the Civil Resolution Tribunal (CRT) began resolving many motor vehicle injury (MVI) disputes in British Columbia. Previously, the CRT’s jurisdiction was limited to small claims (up to $5000) and strata disputes. The amendments to the legislation that came into effect April 1, expanded the CRT’s jurisdiction to include the following categories of disputes relating to motor vehicle accidents.

- The entitlement to receive accident benefits
- The classification of an injury as a minor injury
- Liability and quantum decisions for motor vehicle injury claims up to $50,000

The new area of CRT jurisdiction applies only to motor vehicle accidents that happened on or after April 1, 2019.

- For the CRT to have jurisdiction over a dispute relating to a minor injury or a liability and quantum decision up to $50,000, the accident must occur in BC and the person must suffer a bodily injury.
- If there is no bodily injury, the CRT has jurisdiction over disputes relating to motor vehicle accidents under our small claims limit of $5000.
- For the CRT’s jurisdiction over accident benefit claims, the accident does not have to have happened in British Columbia.

What is a Minor Injury?
"Minor injury" is a defined term in the legislation and regulations. If the insurer tells a person that his or her injury was a minor injury and the person disagrees, the person can go to the CRT for a minor injury determination.

When an injury is a minor injury, the maximum amount the CRT or a Court can award for pain and suffering is limited to $5500. Additionally, if the CRT determines that the injury is a minor injury, the total damages are presumed to be under $50,000.

The definition of minor injury can be found in the Insurance (Vehicle) Act and the Minor Injury Regulation. A minor injury is a physical or mental injury that does not result in a serious impairment or permanent disfigurement, including the following.

- An abrasion, a contusion, a laceration, a sprain, or a strain
- A pain syndrome, including pain that is not resolved within 3 months
TABLE OF CONTENTS

- A psychological or psychiatric condition that does not result in an incapacity
- A concussion
- TMJ disorder (an injury that involves or surrounds the temporomandibular joint)
- Certain whiplash-associated disorders

What Has the CRT Been Doing to Prepare for MVI Disputes?
We’ve been working hard over the past year to prepare for this new area of CRT jurisdiction and asking for public feedback at each stage of our process design. These are some of the biggest changes we’ve made.

- Repealing and replacing the CRT rules
- Creating new Solution Explorer content for MVI disputes
- Building an online application form for MVI disputes
- Upgrading the CRT phone system
- Re-organizing our website and adding new features to it
- Hiring a Vice Chair of Motor Vehicle Injuries, a Vice Chair of Quality Assurance, and full-time tribunal members specializing in motor vehicle injury disputes
- Building a web portal for submission of arguments and evidence

More information about our MVI implementation work can be found on the CRT’s website, under our blog. We’ve been posting monthly implementation updates since last fall.

What is the CRT?
The CRT is Canada’s first online tribunal. The goal is to increase access to justice by bringing the justice system to people and building it around their lives. The CRT already provides timely, accessible, and inexpensive dispute resolution for strata property and small claims disputes. It’s handled more than 9500 disputes since 2016.

Lauryn Kerr is Legal Counsel for the CRT.

I have been a Notary for over 30 years and have used a variety of software solutions for my conveyancing practice. We switched to ProSuite and we have been extremely happy with the product. A great product and a great company to work with!

Patricia Wright, Notary Public

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Sleep Out
To Support Homeless Youth

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May 30, 2019: Women unite to spend one night sleeping on the street to raise funds to support homeless and at-risk youth at Covenant House Vancouver.

Join the Sleep Out movement: http://sleepoutvancouver.org/women
The Breath of The People: WSÁNEĆ Law and SENCÔFEN Language Revitalization

In September of 2018, the University of Victoria (UVic), Faculty of Law, launched the WSÁNEĆ law Field School alongside its new JD/JID program, the first of its kind in the world.

The 4-year JD/JID program grants students two professional degrees, allowing them to practise within Canadian common law and reason and act within Indigenous legal traditions. The WSÁNEĆ Field School served as a pilot project for the mandatory field courses students will take in their third and fourth years of the JD/JID program.

The WSÁNEĆ Field School was generously funded by the Victoria Foundation and the Sisters of Saint Ann, introduced to readers of The Scrivener by Sara Neely, Director of Philanthropic Services at the Victoria Foundation, in a previous issue (Vol. 27 No. 4 Winter 2018).

In her article, Sara points to the intimate connection between WSÁNEĆ SKÁLS (laws/beliefs), ÁLENENEC (homelands), and SENCÔFEN (the WSÁNEĆ language). The structure and approach to the WSÁNEĆ Field School were grounded in and shaped by the needs of the community. The same is true of the SENCÔFEN alphabet and language revitalization.

Sensing that commonly used tools and approaches were not suitable for the WSÁNEĆ community, Elliott Sr. purchased a used typewriter and devised his own alphabet. The SENCÔFEN alphabet uses a single letter to denote a corresponding sound, thereby greatly simplifying the process of recording and reading. Using letters from the English alphabet, Elliott Sr. modified several of them to represent SENCÔFEN sounds.

The SENCÔFEN alphabet is as follows.


Having created the alphabet, Elliott Sr. began to teach other language speakers how to use it and in 1984, the Saanich Indian School Board officially adopted the alphabet in its effort to preserve the SENCÔFEN language. As time passed, there was a decline in first language speakers and it became clear that more was needed to enable a younger generation to also learn and teach SENCÔFEN at the LÁU,WELNEW Tribal School.

In the confines of this article, it is not possible to relate the entire process of language revitalization. Some of the tools used to support this younger generation were a collaboration with linguists at the University of Victoria to create a database of various SENCÔFEN resources, the ÁLENENEC program where students learned SENCÔFEN...
on the land and, in connection with place, the STÁSEN TŦE SENĆOŦEN (SENĆOŦEN Springboard) language apprenticeship program to train future teachers, a partnership with UVic to create a Bachelor of Education in Indigenous Language Revitalization program, and a Master-Mentor Apprenticeship Program.

The LÁU,WELNEW Tribal School now has two streams for students—one in English with SENĆOŦEN as a second language, and a SENĆOŦEN immersion program.

The immersion program continues to gain capacity as new teachers are added and current teachers continue to gain greater language proficiency. The first SENĆOŦEN dictionary, after decades of work by Timothy Montler with SENĆOŦEN speakers, was launched in August 2018. Other new resources include a SENĆOŦEN font for Apple computers, as well as on phones for SENĆOŦEN text messages.

When Dave Elliott Sr. started his work, his objective was to create a SENĆOŦEN writing system accessible to his people and of use in language revitalization. COUNTLESS others have picked up and carried on the work of SENĆOŦEN language revitalization. While all would agree work remains to be done, the tireless effort of Dave Elliott Sr. has brought us a long way.

To finish, I want to take the opportunity to thank all the people who have dedicated themselves to work on and support SENĆOŦEN language revitalization. It is important and pressing work.

Robert Clifford is WSÁNEĆ, a member of the Tsawout First Nation, and a PhD candidate at Osgoode Hall Law School, York University.

My account of the history of the SENĆOŦEN alphabet and language revitalization was drawn from my personal knowledge as well as the WSÁNEĆ School Board webpage at https://wsanecschoolboard.ca/history-of-the-sencoten-language. Any mistakes or omissions are my own.
Travel Insurance: Paradoxes in Planning

While our home is our castle, we Canadians have itchy travelling feet.

Not counting an estimated 224 million\(^1\)\(^2\) interprovincial/territorial trips in 2017, Canadians made almost 55 million trips out of Canada of which 77 per cent were to the United States. In order of the number of trips, the top 6 states are Florida, New York, Washington, California, Nevada, and Michigan.

Other than the USA, in rank order the top five destinations for Canadians were Mexico, United Kingdom, France, Cuba, Germany, and Italy.

Of Canadians’ top 15 travel destinations other than China, where 52 per cent of travel was for “Business,” the overall reasons for travel were personal. Canadian studies cite vacation goals as an “escape” for “rest and relation,” to “get a break from their daily environment,” and “to have no fixed schedule.”

1. **Vacation is No Time to Worry.**
A 2018 Expedia study commented that 72 per cent of Canadians begin their travel bookings and preparations less than a month before departure.

2. **It Can’t Happen to Me!**
Many travellers assume deteriorating health is a nonissue when travelling. Vacations frequently present a host of activities with the risk of accident or injury. Never mind parasailing; it could be driving on the left side of the road or swimming in the surf. Even the duration or intensity of increased “walking” exposes risk.

3. **Already Have Some Type of Travel Insurance.**
There are two approaches to Travel Insurance: Group and Individual.

   - Individual travel insurance is a contract purchased directly by a traveller.
   - Group travel insurance is negotiated under the umbrella of an association, credit card company, employer, group insurance, or tour operator.

   With groups, traveller(s) are issued a “certificate” of coverage, not a formal contract between the traveller and the travel insurance company. The net result is that coverage awareness is based on a summary booklet, not the actual contract. The moment of the claim is not the time for the traveller to learn what insurance coverage he or she actually has.

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\(^1\) Unless otherwise noted, Statistics Canada is the source of all statistics.

\(^2\) While an event or pattern is observed, the actual percentages may vary depending on what other variables were factored into the analysis. This statistical probability phenomenon is known as the SIMPSON’S PARADOX (aka the “Yule-Simpson Effect”).
4. My Credit Card Will Cover Me.

A credit card company’s earnings are based on cardholder fees, merchant transaction fees, and interest from cardholders. As a marketing perk, various credit cards may offer some type of travel protection associated with their card.

The “Travel Medical Insurance Study” 2018 by the Canadian Association of Financial Institutions in Insurance (CAFII) found credit card companies were ranked 7th of the 9 purchase sources for travel insurance. . . travel insurers were 1st and airlines were 9th.

With credit card travel insurance, coverage breadth and limits are one-size-fits-all and often apply only to the person who has charged the trip on the credit card. Credit cards can have narrow and limited coverage. Travellers need to read their credit card’s fine print to ensure the coverage matches their needs.

Reading the credit card document will reveal such basic questions as the “pre-existing conditions” period, the maximum trip limits, and if non-card-holders whose trips were booked on the owner’s credit card have the same coverages as the owner of the card.

5. I Bought Travel Insurance.

In the “Travel Medical Insurance Study” 2018 by the Canadian Association of Financial Institutions in Insurance (CAFII), approximately 30 per cent of Canadians buy travel insurance each year. Of these, CAFII reported that some 9 per cent will file a claim. One travel insurer noted that 80 per cent of claims were for medical emergencies, 18 per cent were for trip cancellation, and 2 per cent were for baggage claims.

CAFII reported 89 per cent of those surveyed believed they had “at least reasonable knowledge of policy terms.” CAFII’s data might suggest some preparatory shortcomings, whether it be misunderstanding the conditions and scope of coverage or even incorrectly completing their application.

CAFFII’s data suggests travellers have a less than thorough practice of understanding their travel insurance as a “critical activity.”

<table>
<thead>
<tr>
<th>50%</th>
<th>Read the policy.</th>
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<tbody>
<tr>
<td>42%</td>
<td>Knew policy limitations and exclusions.</td>
</tr>
<tr>
<td>35%</td>
<td>Skimmed the policy.</td>
</tr>
<tr>
<td>12%</td>
<td>Selected sections to read.</td>
</tr>
<tr>
<td>2%</td>
<td>Didn’t read.</td>
</tr>
<tr>
<td>2%</td>
<td>None of the above</td>
</tr>
</tbody>
</table>

Accuracy, not ease or speed of completion, is critical when applying for travel insurance.

Before purchasing travel insurance and definitely before departing, travellers should make sure their coverage fits their trip’s risk profile and that they are aware of activity exclusions and destination limitations. If a person has changes to his or her health after purchasing the policy, that must be reported to the travel insurer who will be able to re-confirm their travel coverage, adjust their premiums, or advise against travelling.

6. I’m Travelling in Canada and Have My Provincial/Territorial Medical Coverage.

While Canadians assume the Canada Health Act will cover their emergency medical needs when travelling, each province/territory gets to define “medically necessary services.”

When presented with the medical bill for treating an accident or sickness while travelling to another province, territory, or country, Canadians are faced with the jurisdictional “comprehensive” differences in both the reimbursement value and services covered. While BC’s MSP pays CAN$75 per day toward emergency hospitalization, the Nova Scotia Health Authority charges $4350, excluding physician’s fees that are billed separately. Without travel insurance, the traveller is personally responsible for paying the difference.

Aware of such interjurisdictional gaps, the online information provided by many provincial/territorial medical plans recommends that residents purchase travel insurance.

7. I Quickly Completed My Travel Insurance Application.

Accuracy, not ease or speed of completion, is critical when applying for travel insurance.

The Travel Health Insurance Association of Canada (THIA) representing travel insurers, air ambulance companies, emergency assistance companies, re-insurers, underwriters, and allied services advises, “Remember, if you provide inaccurate or incomplete answers to the questions, your claim can be denied, even if the question that is answered incorrectly is not related to the cause of the claim.”

In spite of risk exposure, a THIA survey reported that 19 per cent of the respondents admitted intentionally providing inaccurate medical information; 11 per cent of them acknowledged that was to pay lower premiums.

• To avoid the risk of a claim being denied for “material misrepresentation,” care must be taken when completing a travel insurance application.

• If you are in doubt about the questions on the application, you should contact the travel insurer’s risk underwriter(s) and/or your physician.

8. I Have Travel Insurance and I’m Ready to Go.

Even after a policy is issued, unlike most insurance travel insurance has two requirements to maintain coverage for any particular trip.

Independent of a traveller’s medical profile at the time the travel insurance was issued, a “pre-existing conditions” period excludes coverage for medical conditions/ investigations/ treatment that arise in a specified period before the date of departure; the pre-trip timeframe varies travel insurer
to travel insurer, with age and prior history factored into it.

Up until their departure, travellers are to check the Government of Canada’s Travel Advisory site to ensure their destination is not under a current warning to “Avoid Non-essential” or “Avoid All” Travel. Such Travel Advisories generate current destination exclusions that can be triggered by civil and political unrest or even weather, such as a hurricane in Florida or a volcano in Hawaii.

If the traveller has fully disclosed his medical history on the application and the travel insurance plan covers his situation, the payout for the claim should be relatively smooth, but there are several requirements.

Travel insurers require travellers to maintain their provincial/territorial medical coverage. If there is an emergency, travel insurers require the traveller to contact the insurer’s 24/7 Emergency Assistance Centre for such reasons as confirming eligibility, enabling the travel insurer to oversee the medical services or even determining an appropriate evacuation plan. Within reason, failure to do so could trigger certain coverage limitations.

Also, some medical facilities and travel insurers require the claimant to pay all medical expenses on-site. Travellers should always have a relatively large available credit limit on their cards to cover that possibility. Upon return to the home jurisdiction, the travel insurer will then reimburse those expenses that are “reasonable and customary.”

10. What is the Best Plan?
At time of claim, there is only one “Best Plan”—the one that pays!

Most travel insurers use simple online “Yes–No” algorithms to determine eligibility + rate class + premium.

When a traveller utilizes a direct online application, he is effectively self-prescribing his eligibility and premium coverage, but without having reviewed the policy’s coverages. Doing it online may seem less expensive, but it could result in a mismatch between your circumstances and your travel plans.

Intermediaries such as a bank, a broker, or a travel company also use simple online “Yes–No” algorithms.

The late Dr. Thomas Stanley, author of the best-seller Millionaire Mind, found one central success practice—Successful people don’t spend time; they leverage it by utilizing knowledgeable people. Rather than relying on simple online “Yes–No” algorithms, people specializing in travel insurance assess the traveller and match that risk within the insurance marketplace.

Properly implemented, travel insurance is exceptionally economical, considering some travel insurers cover up to $10,000,000 per claim.

Ian Callaway, MA, MEd, RHU, BCFE, is an Insurance Benefits Analyst based in Vancouver.
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If you’re like me, you plan ahead for summer travel. I’m not talking about packing your shorts and flip-flops; I mean your travel tech.

Here are some items you may need for your next plane/train/automobile journey.

**Chargers/Adapters**

While most power adapters that come with a cellular phone are 110v/220v—meaning they will run on almost outlets in the world, connecting them to a wall outlet is where you will run into some hassles.

Multiplug adapters are available that allow you to plug the three-pin North American standard plug into one end of the adapter with the European or Asian style plug on the other side. Note: Those adapters do not convert the voltage so you won’t be able to plug your 120-volt curling iron into a 220-volt outlet in Italy and not have it blow up. To curl your hair with your favourite device, you need to carry a power transformer and ensure that the transformer can handle the wattage of your device. Most curling irons are about 50 to 100 watts. Hairdryers need 500 watts and up.

Alternatively, before your trip you can purchase a hair appliance that is already 220-volt; the downside is you cannot use it in Canada.

**Portable Backup Drives**

Travelling or just staying in town, you can never be without a backup drive for your data, photos, and of course media.

Apple iPhone and Android phones can be backed up easily with a portable drive that connects directly with your phone. For my iPhone, I used a Verbatim Store ‘n’ Go Lightening USB drive. To back up my photos and videos, I simply connected the drive to the lightening port of my iPhone and the included software booted up. A few simple clicks later, I had created a backup folder on the drive with all my media. At this point you can choose to leave your media on your phone or delete it to free up space so you can take more photos of the amazing plate of cannelloni in front of you.

www.verbatim.com

**Battery Backups**

Navigating the streets of an unfamiliar city using your cell phone can quickly drain its battery.

Some older cellular networks around the world still only run the 3G network that is harder on your battery than the newer LTE networks.

A USB battery-backup unit is essential to carry around in your backpack or purse. Newer packs are lightweight—200 grams or less, and hi-capacity—26,000+ mAh (milliampere hour), providing over five full charges of your cell phone.

Pricing starts at $10 for a low-capacity unit.

A hi-capacity power bank is in the $40 to $50 range.
Where the Tech Really Matters

They say you should never meet your heroes. I didn’t; I met his ghost . . . at the Lamborghini Museum and Factory in Sant’Agata, Bolognese, Italy.

Definitely a bucket-list item for me, it fulfilled all my expectations and more.

Family friendly and interesting for even nonautomotive types, the Lamborghini Museum and Factory Tour takes you through the only place in the world where you can see the Aventador, Huracan, and the new Urus SUV models being manufactured . . . every single one of them.

You walk through the actual factory lines, seeing the cars being hand-built, piece-by-piece, up close and personal.

Legend (and our tour guide) says Ferruccio Lamborghini went from producing tractors to exotic cars when the Ferrari he bought from his friend Enzo Ferrari experienced a problem with its clutch. Enzo told Ferruccio that the problem was not with the clutch but with the way he (Ferruccio) was driving.

Mr. Lamborghini, the ever-so-hard-working and proud man that he was, took that as a challenge and produced a car himself. I believe he did okay . . .

No video or photography is allowed in the factory lines so your memories are what you take with you.

Be sure to see the history row of classic Lambos in the Museum, particularly the last Countach ever produced, a silver 1990 edition.

A special thank you to Lamborghini Vancouver for providing details and making the arrangements for our family tour.

www.lamborghini.com
www.lamborghinivancouver.com

Akash Sablok is now a Life Member of the Board of Directors. He served as President of The Society from 2013 to 2015 and Chair of The Notary Foundation from 2015 to 2017.
Marco Marquito Castro
May 24, 1951, to January 18, 2019

Marco Castro, BC Notary and a Director of The Society of Notaries Public of BC, passed away January 18, 2019.

In his role as a Director, he was very proud to have the opportunity to contribute his experience, expertise, and unique point of view to the other Board members and to help make decisions on behalf of the organization. Marco saw it as a way of giving back for the professionalism and respect shown him as a BC Notary.

Please see page 59 for the lovely tribute article by his daughter Juliana.

Frederick Ngan
December 15, 1948, to March 3, 2019

Frederick Ngan was commissioned as a BC Notary in 1995 and retired in November 2017.

After a long and courageous battle with cancer since 2016, he passed away peacefully on March 3, 2019.

He was a very honest and hard working person. He loved to play badminton and table tennis, loved nature and was a member of the church choir.

Our thoughts are with Fred’s wife Irene and family at this difficult time.

Where in the World Has The Scrivener Been?

Mary-Ann and her husband Billy Hinds in Ha Long Bay, Vietnam

Photographer Gary Wildman, his wife Jinny Milligan, and The Scrivener skiing at Silver Star

Mary-Ann and her husband Billy Hinds in Ha Long Bay, Vietnam
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They are always available to answer questions about our products and coverage and to provide unique solutions for your more complex transactions. In addition, they will support your practice by training new staff on procedures and best practices; by providing in-office training on the ordering process; or by setting up and demonstrating our time-saving applications. They’ll also keep you up-to-date on new developments and provide materials to help educate your clients.

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