



THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch

October 31, 2017

## **Attorney General's B.C. Supreme Court Rules Committee**

By email to: [AGSupremeCourtRulesCommittee@gov.bc.ca](mailto:AGSupremeCourtRulesCommittee@gov.bc.ca)

Dear Sir/Madam:

### **RE: CONSULTATION FOR PART 25 (ESTATES) OF THE SUPREME COURT CIVIL RULES**

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Thank you for your request for submissions on 15 proposed changes to Part 25 (Estates) of the Supreme Court Civil Rules (B.C. Reg. 168/2009).

#### **INTRODUCTION**

The Canadian Bar Association (British Columbia Branch) (the "CBABC") has three Wills & Trusts Sections. These Sections are dedicated to all aspects of succession law and practice including wills, probate and administration, testamentary and inter vivos trusts, mental competency as it relates to succession, estate planning and adult guardianship, and necessary ancillary areas such as the *Income Tax Act* and the *Land Title Act*.

These Sections are:

1. Wills & Trusts – Okanagan;
2. Wills & Trusts – Vancouver; and
3. Wills & Trusts – Victoria.

#### **CBABC'S SUBMISSIONS ON PART 25 (ESTATES)**

The Sections have reviewed the Part 25 proposed changes and are generally supportive of them. The Sections have suggestions for Items 4 to 6 and Probate Forms.

#### **Item 4: Rule 25-2(10)(a)(ii) (Notice to Mentally Incompetent Person)**

Item 4 should also include an attorney acting under a power of attorney. Currently this Rule only handles committees. There are many more incompetent individuals who are served by attorneys than by committees. Perhaps it should be broadened to anyone meeting the definition of a "nominee" as defined by section 1 of the [Wills, Estates and Succession Act](#), S.B.C. 2009, c. 13 (WESA).

Section 1 of WESA provides:

"nominee" includes

(a) a person granted power over financial affairs under the [Patients Property Act](#),

(b) an attorney acting under an enduring power of attorney as described in Part 2 [Enduring Powers of Attorney] of the [Power of Attorney Act](#),

(c) a representative acting under a representation agreement made under section 7(1)(b) [standard provisions] of the [Representation Agreement Act](#), and

(d) a person appointed under section 51(2) [mentally incompetent Indians] of the [Indian Act](#) (Canada) or the Minister of Aboriginal Affairs and Northern Development;

**Item 5: Rule 25-3(6), Rule 25-6(2), Form P2 & P21 (Search for Wills Held by Law Society)**

Item 5 seems problematic, in that it is using the Rules to direct how a person should go about finding something. The example described should probably have been caught by the "diligent search" part of the affidavit. If the Rule is modified to include a search of the Law Society database, for the sake of efficiency, it should at least be qualified to situations where the applicant does not already possess a more recent will (i.e. where the missing will is older).

**Item 6: Rule 25-3(23)(Document Referred to in Will)**

Item 6 is curious. What is the mischief that Item 6 is intending to address? Surely it is not to assist executors with unusually generous fee agreements in concealing them from the beneficiaries. This document is properly part of the will, its production should not delay probate, and beneficiaries are entitled to see it.

**Probate Forms**

The Sections recommend that the Legislative Assembly of British Columbia also amend these Forms in Appendix A.1 (Probate Forms) P10, P11, P14, P15, P25 and P26 to change the title on the Exhibit "A" list of assets and liabilities to delete "and Distribution", so it should just read "Statement of Assets and Liabilities".

**CONCLUSION**

If you have questions, or if I can be of further assistance, please feel free to contact me.

Regards,

*H. William Veenstra*

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