

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) and the CLIENT FILE OPENING AND CLOSING (A-2) checklists. It covers matters to be discussed and information to be collected before the commencement of family law proceedings. It focuses on the initial interview with the client, but includes some follow-up from that interview.</p> <p>The lawyer should also refer, as appropriate, to the checklists for FAMILY LAW AGREEMENT PROCEDURE (D-2), SEPARATION AGREEMENT DRAFTING (D-3), MARRIAGE AGREEMENT DRAFTING (D-4), FAMILY LAW PROCEEDING (D-5), <i>CHILD, FAMILY AND COMMUNITY SERVICE ACT</i> PROCEDURE (D-6), POLYFAM AGREEMENT PROCEDURE (D-7) and POLYFAM AGREEMENT DRAFTING (D-8), and GENERAL LITIGATION PROCEDURE (E-2). This checklist is current to September 1, 2021.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Divorce Act amendments.</b> Amendments to the <i>Divorce Act</i>, R.S.C. 1985, c. 3 (2nd Supp.) under <i>An Act to Amend the Divorce Act</i>, S.C. 2019, c. 16 (“Bill C-78”) received Royal Assent on June 21, 2019, and came into force on March 1, 2021. The amended provisions on care of children are similar to the regime in the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (the “FLA”). Family law practitioners are advised to familiarize themselves with the amendments.</li> <li>• <b>COVID-19 pandemic.</b> The COVID-19 pandemic continues to have significant impacts on society, including families in British Columbia and the practice of family law: inability to attend, or aversion to, in-person meetings; possible delays at government agencies and public registries; border closures; unpredictable economic circumstances, etc. Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect family practice. Check the BC Courts website (bccourts.ca) to obtain up-to-date Practice Directions, Notices to the Profession, guides to remote proceedings, and announcements from all levels of court in response to the COVID-19 pandemic. Confirm procedures for case conferences, filing materials, in-person appearances, use of remote technology, and etiquette for video and telephone appearances.</li> </ul>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<ul style="list-style-type: none"> <li>• <b>New Provincial Court Family Rules.</b> On May 17, 2021, the Provincial Court Family Rules, B.C. Reg. 236/2020 (the “PCFR Rules”) came into force. These rules replace the previous Provincial Court (Family) Rules, B.C. Reg. 417/98 and apply to all matters filed in B.C. Provincial Court, whether before or after May 17, 2021. Key changes include:               <ul style="list-style-type: none"> <li>○ New forms: the Application to Obtain an Order, Application Respecting Existing Orders or Agreements, and Notice of Motion forms will no longer be used and have been replaced by new specific-use forms.</li> <li>○ Introduction of family needs assessment, consensual dispute resolution (“CDR”), and parenting education: in any family law matter, as defined by the PCFR Rules, parties may be required to engage in these processes before setting a first appearance date. The specific requirements vary by court registry.</li> <li>○ Streamlined court processes: the new PCFR Rules eliminate the family management conference, establish a picklist of standard terms for drafting consent orders, provide a framework for filing documents and setting dates electronically, and allow for the filing of unsworn affidavits.</li> </ul> </li>   <li>For more information about the new PCFR Rules, see <a href="#">“What You Need to Know about the New Provincial Court Family Rules”</a>.</li>   <li>• <b>Retroactive adjustment of child support.</b> It is possible in certain situations to vary child support retroactively, even when the children are no longer “children” for the purposes of support; see <i>Michel v. Graydon</i>, 2020 SCC 24.</li>   <li>• <b>Arbitration provisions in Family Law Act.</b> Division 4—Arbitration in Part 2 of the <i>FLA</i> came into force on September 1, 2020 (B.C. Reg. 160/2020). It is strongly recommended that practitioners review Division 4 before drafting or revising arbitration clauses in agreements or commencing any arbitration proceeding.</li>   <li>• <b>Land Owner Transparency Act.</b> The <i>Land Owner Transparency Act</i>, S.B.C. 2019, c. 23 (the “<i>LOTA</i>”) is in force as of November 30, 2020 (except for specified provisions that came into force on April 30, 2021) (B.C. Reg. 250/2020) and may affect the implementation of the division of real property in family law matters. The <i>LOTA</i> requires a transparency declaration to be filed in the new Land Owner Transparency Registry any time an application is made to register or transfer an interest in land under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250. A reporting body under the <i>LOTA</i>—which includes most corporations, trusts, and partnerships, subject to limited exemptions—will have to file a transparency report any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. For further information, see the <a href="#">Land Owner Transparency Registry website</a> and also the course presentation and materials by S. Carter, R. Danakody, and C.R. MacDonald, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry”, in <i>Residential Real Estate Conference 2020</i> (CLEBC, 2020), available through CLEBC Courses on Demand.</li> </ul>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<ul style="list-style-type: none"> <li>• <b>Transparency register.</b> The operative provisions of the <i>Business Corporations Amendment Act, 2019</i>, S.B.C. 2019, c. 15 came into force on October 1, 2020 (B.C. Reg. 77/2020). This may affect corporate matters in family law proceedings. The Act requires private companies incorporated under the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 to create and maintain a “transparency register” of information about “significant individuals”. The transparency register must contain the following information for each significant individual: full name, date of birth, and last known address; whether the individual is a Canadian citizen or permanent resident of Canada and, if not, a list of every country of which the individual is a citizen; whether the individual is a resident of Canada for tax purposes; the date on which the individual became or ceased to be a significant individual; a description of how the individual meets the definition of a significant individual; and any further information that may be required by regulation. For more information, see <a href="http://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-transparency-register">www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-transparency-register</a>.</li> <li>• <b>Remote Child Support Mediation.</b> In September 2020, Legal Aid BC launched a Remote Child Support Mediation service. The online program provides free mediation services to assist with child support issues. See <a href="http://www.mylawbc.com/remote-mediation/">www.mylawbc.com/remote-mediation/</a> for more information.</li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Aboriginal law.</b> If the client or the other party has ties to an Indigenous community, special considerations may apply (e.g., see items 1.13 and 2.18.6 in this FAMILY PRACTICE INTERVIEW (D-1) checklist). Note the requirements of <i>FLA</i>, Part 10, Division 3, which provide for standing and notice in cases concerning Nisga’a and treaty First Nations children and treaty lands. The <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>, S.C. 2013, c. 20, pertains to the ability of First Nations to make rules about family residences on reserve lands and how those homes will be used and occupied upon the breakdown of a spousal relationship. The Act applies to married and common-law spouses living on reserve land where at least one spouse is a First Nations member, as defined in the Act. Sections 13 to 52 apply to First Nations that have not enacted their own matrimonial real property laws. The Act provides separate regimes for matrimonial property division for member and non-member spouses on reserve and is very different from the provincial legislation. Consider whether a lawyer with Aboriginal law experience should be consulted. Further information on Aboriginal law issues is available on the “Aboriginal Law” page in the “Practice Areas” section of the CLEBC website (<a href="http://www.cle.bc.ca">www.cle.bc.ca</a>) and in other CLEBC publications.</li> <li>• <b>Additional resources.</b> For more detailed information about divorce and other family practice matters, refer to the <i>British Columbia Family Practice Manual</i>, 4th ed. (CLEBC, 2006–); <i>Family Law Sourcebook for British Columbia</i>, 3rd ed. (CLEBC, 2002–); <i>Family Law Agreements: Annotated Precedents</i>, 3rd ed. (CLEBC, 1998–); annual editions of <i>Annotated Family Practice</i> (CLEBC); and <i>Family Law Deskbook</i> (CLEBC, 2005–). See also JP Boyd on Family Law on Clicklaw, available at <a href="http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law">http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law</a>.</li> <li>• <b>Law Society of British Columbia.</b> For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). The Law Society’s resources related to procedures generally and issues arising from COVID-19 can be viewed at <a href="http://www.lawsociety.bc.ca/about-us/covid-recovery/">www.lawsociety.bc.ca/about-us/covid-recovery/</a>.</li> </ul>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Initial Interview</li> <li>3. After the Initial Interview</li> <li>4. Collect Information</li> <li>5. Collect Documents</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <p><b>1. INITIAL CONTACT</b></p> <p>1.1 Arrange the initial interview and ask the client to bring any relevant documents.</p> <p>1.2 Conduct a conflicts of interest check. Complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Do not act for opposing parties. In addressing potential conflicts, consider not only the spouses but also any third parties who may be involved in the case, including former or new partners, as well as relevant corporate entities or relatives who have made financial contributions to the spouses, if relief is sought from them. Even in drafting a marriage agreement or issuing a joint action for divorce, always refer one party for independent legal advice, and document having done so. Note that a lawyer, including one who has acted as a mediator for the spouses, may act for both spouses in a joint action for divorce if both parties have received independent legal advice in relation to the matter and all relief is by consent (Ethics Committee opinion in the March–April 2003 <i>Benchers’ Bulletin</i>). Notwithstanding this, it may be simpler to have only one party file for the divorce.</p> <p>1.3. Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).</p> <p>1.4 Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p> <p>1.5 Check for urgency or risk.</p> <ol style="list-style-type: none"> <li>.1 Assess whether property is at risk and the steps that need to be taken. Chapter 10 (Steps to Preserve Property in a Family Law Matter) of the <i>Family Law Deskbook</i> (CLEBC, 2005–) reviews measures for protecting assets.</li> </ol>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.2 Assess whether a person is at risk. If family violence is present, provide the client with a list of support resources. Give consideration as to appropriate dispute resolution options where there is family violence. Assess any need to report a child who may need protection (<i>Child, Family and Community Service Act</i>, R.S.B.C. 1996, c. 46, s. 14), and if considering this action, also review the <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), particularly s. 3.3. Exercise caution if it is necessary to contact the potential client prior to the meeting, particularly if the client is in a risky/potentially risky situation. Consider a note on the file regarding any restrictions to communications you understand to be appropriate. “Is Your Client Safe?” is available at <a href="http://www.lss.bc.ca/publications/pub/your-client-safe">www.lss.bc.ca/publications/pub/your-client-safe</a>.</p> <p>.3 Identify any imminent deadlines and the steps required to meet them.</p> <p>.4 Assess whether existing practice obligations permit you to take the case.</p> <p>1.6 Provide general legal information and preliminary advice to the client. Consider <i>Best Practice Guidelines for Lawyers Practising Family Law</i> (Family Law Task Force, Law Society of British Columbia (15 July 2011), available at <a href="http://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/guidelines_family.pdf">www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/guidelines_family.pdf</a>). Recommend steps to take in the short term, and explain what further information and documents you need before you can provide an opinion.</p> <p>1.7 Ask the client to bring to the meeting a summary of their financial situation and any information in relation to the opposing party’s financial circumstances. Be mindful of privacy issues and a lawyer’s duty in the event of inadvertent disclosure if a client brings documents belonging to an opposing party or third party (<i>BC Code</i>, rule 7.2-10). Consider asking the client to bring all relevant financial information. (See items 4 and 5: “Collect Information” and “Collect Documents”.) Consider providing an intake questionnaire to the client to complete before the initial meeting, to make better use of interview time.</p> <p>1.8 Consider asking the client to write out and bring to the first meeting a history of the relationship (including any family violence), the parties’ employment histories, and a list of the most pressing concerns, for use during the interview.</p> <p>1.9 Advise the client of the limitations on solicitor-client privilege in the event that they wish to have a third party attend at any meetings.</p> <p>1.10 Explain the duty to disclose (s. 5 of the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (the “FLA”)) and perform duties as required by <i>FLA</i>, s.8 (screen for family violence, being mindful of the definition of family violence in s. 1 of the <i>FLA</i>; present out-of-court resolution options; inform client that outcomes depend on the best interests of the child).</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>1.11 Determine the client’s general objectives and questions. Discuss the relief and options available. Canvass out-of-court resolution (<i>FLA</i>, s. 8), such as mediation or collaborative separation and divorce, even if that is outside the scope of your usual practice. Explain the need to make decisions as to decision-making, guardianship, and contact with children that are in the best interests of the children. In cases of separation or divorce, discuss the possibility of reconciliation (<i>Divorce Act</i>, R.S.C. 1985, c. 3 (2nd Supp.), s. 7.7(2)) and the availability of resources such as counselling, parenting support, or parenting coordinators. Consider recommending the free “Parenting After Separation” course. Note that parenting education programs are required in certain circumstances in the Provincial Court process (Part 7 of the PCFR Rules).</p> <p>1.12 Third-party interests or claims involved in the case should be considered and may affect the process. For example, cases involving intra-family loans, corporate entities, and trusts will require specific pleadings and often the involvement of independent counsel and other professionals. Note that the <i>FLA</i> promotes out-of-court resolution for all parties in a family law dispute.</p> <p>1.13 Indigenous clients: consider whether a lawyer with Aboriginal law experience should be consulted. Special considerations may apply, whether or not parties and property are situated on or off reserve. If the property is on a First Nation reserve consider the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>; also check if the First Nation has its own specific property legislation. Note the requirements of <i>FLA</i>, Part 10, Division 3, which provide for standing and notice in cases concerning Nisga’a and “treaty first nations children” and treaty lands.</p> <p>1.14 Assess the client’s emotional state and consider a referral to a professional counsellor or physician.</p> <p>1.15 Consider whether a Contingent Fee Agreement (“CFA”) is suitable. Fee arrangements through a CFA are uncommon in family law matters but there are circumstances when they may be appropriate. Their use is governed by ss. 64 to 68 of the <i>Legal Profession Act</i> and Part 8 of the Law Society Rules. A CFA “for services relating to a child guardianship or custody matter, or a matter respecting parenting time of, or contact with, a child, is void” (<i>Legal Profession Act</i>, s. 67(3)). A CFA for services relating to a matrimonial dispute is void unless it is approved by the court (s. 67(4) and (5)). For a full discussion of CFAs in family law, see the Fall 2018 <i>Benchers’ Bulletin</i>.</p> <p>1.16 Consider other methods to secure fees, such as an irrevocable assignment of proceeds or a mortgage against the client’s property (which would require independent legal advice; proceed with caution).</p>					
<p><b>2. INITIAL INTERVIEW</b></p> <p>2.1 Advise the client about whether an action should be commenced and the available alternatives to court resolution of the case, including negotiation, mediation, arbitration, or collaborative family law processes, as appropriate.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.1 Consider applicable limitation periods and requisite time periods: e.g., in regard to a support claim by a person in a marriage-like relationship, <i>FLA</i>, s. 3(1) defines “spouse” to include a person in a marriage-like relationship if the parties lived together for a continuous period of at least two years or had a child together; <i>FLA</i>, s. 147(4) sets a limitation period for bringing a claim against a stepparent for child support of one year from the last contribution the stepparent made to child support; and <i>FLA</i>, s. 198 sets out various time limits within which claims may be brought (two years post-separation or divorce is a frequent limitation period).</p> <p>2.2 If the client asks to assist in the collection of financial information, consider a limited scope retainer. Note that many financial institutions will not provide information to the lawyer without written authorization from the client, and, in the case of joint accounts, written authorization from both the client and the client’s spouse.</p> <p>2.3 If the client wants a divorce, outline the grounds for divorce:</p> <p>.1 Separation for not less than one year immediately preceding anticipated determination of divorce proceeding, and separation at commencement of proceeding. Note: parties can be separate and apart but living in the same residence. Divorce can be sought in the Notice of Family Claim prior to one year of living separate and apart having occurred.</p> <p>.2 Adultery of spouse.</p> <p>.3 Cruelty by spouse.</p> <p>2.4 Consider the possibility of divorce proceedings against the client, based on existing grounds. Advise regarding future conduct that would constitute grounds. Advise regarding the possibility of an award of costs against a co-defendant. Obtain from the client an original government-issued marriage certificate. Explain that an official translation will be required for court purposes if the marriage certificate is not in English.</p> <p>2.5 If the client wants a divorce, ensure that they understand the meaning and significance of collusion, connivance, and condonation:</p> <p>.1 Collusion (any agreement, understanding, or arrangement by a client or anyone else to fabricate, falsify, or suppress evidence in order to get a divorce);</p> <p>.2 Connivance (one spouse encouraging the other to commit adultery); and</p> <p>.3 Condonation (when the innocent spouse has forgiven the other spouse for the adultery, in the sense that they would take the adulterer back, to live together as spouses).</p> <p>2.6 Advise the client regarding the Spousal Support Advisory Guidelines and the Federal Child Support Guidelines, the determination of income, and the general entitlement or obligation of the client concerning support:</p> <p>.1 Consider running the software calculations for applicable support.</p> <p>.2 Explain the obligations regarding payment of child support in the “table amount” in addition to “special and extraordinary expenses”.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.3 If applicable, advise the client regarding the determination of support in “shared parenting” situations (where the non-primary residency parent has the children in their care more than 40% of the time).</p> <p>.4 If acting for the support recipient, ask if the client has requested financial information from the other parent, and consider seeking instructions to confirm any financial disclosure requests in writing.</p> <p>.5 Advise the client regarding the possibility of retroactive child support.</p> <p>.6 Determine whether the Family Maintenance Enforcement Program (“FMEP”) is involved.</p> <p>2.7 Advise that, when making a spousal support order, the court will consider any economic advantages or disadvantages to both spouses arising from the marriage or its breakdown. Discuss the concept of self-sufficiency. Discuss the grounds for entitlement: compensatory; non-compensatory; and contractual.</p> <p>2.8 Discuss any need to retain professional advisors for valuations, tax issues, pensions, or complex financial issues. Discuss the method of choosing experts, payment for services and additional retainer requirements. Confirm instructions on these issues in writing.</p> <p>2.9 Advise regarding the consequences of the separation date and obtain evidence to confirm the separation date. Advise on issues regarding acquisition and disposition of property during the period between separation and settlement.</p> <p>2.10 Advise the client to consider changing beneficiary designations.</p> <p>2.11 Advise on issues related to the management of joint accounts, joint debts, and joint credit cards during the period between separation and settlement.</p> <p>2.12 Advise the client to gather and secure relevant documents. Caution the client against appropriating private documents, mail, and email. Consider <i>BC Code</i>, rule 7.2-10 as to a lawyer’s duties regarding inadvertent access to documents of the opposing party. Advise the client to change their email passwords and password and privacy settings on their social media accounts.</p> <p>2.13 Advise the client of the child-focused foundation of the <i>FLA</i>, and review the provisions respecting guardianship and parenting on separation contained in <i>FLA</i>, Part 4. Consider the impact of the <i>FLA</i> on pre-existing agreements and orders concerning children. Advise clients of differences in terms regarding children under the <i>Divorce Act</i> (decision-making responsibility and parenting time) and the <i>FLA</i> (guardianship, parenting time, parental responsibility, and contact).</p> <p>2.14 Advise the client regarding any potential effect of interim parenting arrangements on the ability to obtain final parenting terms, including decision-making responsibility under the <i>Divorce Act</i>, if applicable. Advise regarding the impact of any decision-making responsibility or parenting arrangement on support issues (e.g., shared parenting time). Explain the guardianship provisions of the <i>FLA</i> and the parenting responsibilities that flow from guardianship under <i>FLA</i>, ss. 39 to 43.</p>					



LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>2.15 Advise the client regarding excluded property (<i>FLA</i>, Part 5) and the potential availability of tracing relief where family property has been acquired with the proceeds of excluded property. Explain the evidentiary burden in tracing claims. Note whether the transition provisions of the <i>FLA</i> require consideration of the previous property regime under the <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128 (the “<i>FRA</i>”). Claims filed before the <i>FLA</i> came into force are decided under the <i>FRA</i>, including property claims by unmarried spouses that involve the principles of resulting trust or the law of remedial constructive trust (see <i>Family Law Sourcebook for British Columbia</i>, 3rd ed. (CLEBC, 2002–), chapter 4). Review <i>FLA</i>, Part 13 for the transitional rules affecting family claims made before the <i>FLA</i> came into force.</p> <p>2.16 If an existing claim is based on the <i>FRA</i>, consider whether amendments to the pleadings may be available to advance claims under the <i>FLA</i>. Consider invoking the law of trusts (e.g., for division of property between spouses if a third party has made contributions to family property, or to obtain priority over creditors where a spouse is heavily indebted).</p> <p>2.17 Determine the tax implications of any proposed support and property division, and consider whether another arrangement might be more beneficial to the client. Consider seeking tax advice, including U.S. tax advice, if applicable.</p> <p>2.18 Note any special issues, such as:</p> <ol style="list-style-type: none"> <li>.1 Where a spouse may go bankrupt and the case has been commenced under the now-repealed <i>FRA</i>, consider getting an immediate <i>FRA</i>, s. 57 declaratory order of irreconcilability to preserve the client’s right to 50% of the family assets (bearing in mind that 50% of the client’s assets would be available to the trustee). Note that the only triggering event under the <i>FLA</i> is the separation of the parties. If a spouse is entitled to more than 50%, consider seeking an order for unequal division by use of Rule 10-10 or 10-11 of the Supreme Court Family Rules, B.C. Reg. 169/2009 (the “SCFR”).</li> <li>.2 Where an insolvent spouse is transferring property to the other spouse, avoid contravening the provisions of the <i>Bankruptcy and Insolvency Act</i>, R.S.C. 1985, c. B-3; <i>Fraudulent Conveyance Act</i>, R.S.B.C. 1996, c. 163; <i>Fraudulent Preference Act</i>, R.S.B.C. 1996, c. 164; and <i>Criminal Code</i>, R.S.C. 1985, c. C-46. Under Rule 3-109(1) and <i>BC Code</i>, rule 3.2-7, a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime, or fraud.</li> <li>.3 Where a client’s spouse is (or may be) dying, and assets are in their name, consider commencing an action immediately to preserve claims. (If a proceeding has been commenced under the now-repealed <i>FRA</i>, consider seeking an immediate <i>FRA</i>, s. 57 declaration to ensure that at least 50% of the assets do not fall into the estate of the deceased spouse.) Advise the client regarding consequent loss of any right to survivorship. Consider consulting with a wills and estates lawyer to see if the claim would best be brought under the <i>Wills, Estates and Succession Act</i>, S.B.C. 2009, c. 13, or the <i>FLA</i>.</li> <li>.4 If the client is dying and assets are in the client’s name, seek instructions as to the client’s wishes on death. Inquire as to whether the client has a will; consider referral to a lawyer practising wills and estates law.</li> </ol>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.5 If the client is a recent immigrant, or has language issues, consider whether advice should be sought from a lawyer who has appropriate experience and knowledge, or who speaks the client’s first language.</p> <p>.6 If the client or opposing party is Indigenous, consider whether a lawyer with experience in Indigenous matters should be consulted. Special considerations may apply, whether or not parties or property (or both) are situated on or off reserve. For example:</p> <p>(a) Property may belong to a band, or otherwise be subject to the <i>Indian Act</i>, R.S.C. 1985, c. I-5, or other legislation (e.g., the <i>Nisga’a Final Agreement Act</i>, S.B.C. 1999, c. 2, for Nisga’a citizens, or property law specific to that band). The <i>FLA</i> does not apply to the division of on-reserve matrimonial property. The law is not settled with respect to valuing on-reserve property for the purposes of including compensation to a spouse instead of an order for the division of such property. Note the requirements of <i>FLA</i>, s. 210 which provides for standing and notice in cases concerning treaty First Nations lands.</p> <p>The federal <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> applies to First Nations who have not enacted their own matrimonial real property laws. The Act applies to married and common-law spouses living on reserve land where at least one spouse is a First Nations member or an Indigenous person. It provides separate regimes for matrimonial property division for member and non-member spouses on reserve and is very different from the provincial legislation. Some First Nations have their own legislation regarding property specific to their nation.</p> <p>(b) A child’s Indigenous heritage is a factor that is considered in determining what parenting arrangement will be in the child’s best interests. Note the requirements of <i>FLA</i>, ss. 208 and 209, which provide for standing and notice in cases concerning Nisga’a and treaty First Nations children.</p> <p>(c) In calculating child support under the Child Support Guidelines, s. 19, or in calculating spousal support, amounts to be awarded must be adjusted if any party is exempt from federal and provincial income taxes.</p> <p>(d) In enforcing support payments, if the debtor is an Indigenous person who lives on a reserve, the debtor’s income and assets may be exempt from many enforcement proceedings (see <i>Indian Act</i>, s. 89). Generally, a creditor who does not fall under the definition of “Indian” under the <i>Indian Act</i> cannot seize, from an Indigenous person, moveable assets situated on-reserve.</p> <p>(e) For further information, see the articles published on the “Aboriginal Law” page in the “Practice Points” area of the CLEBC website (<a href="http://www.cle.bc.ca">www.cle.bc.ca</a>) and in chapter 22 (Indigenous Family Law Issues) of the <i>British Columbia Family Practice Manual</i>, 4th ed. (CLEBC, 2006–).</p> <p>.7 If the client or the spouse is a U.S. citizen, a dual citizen of the U.S., has ever held a green card, has been a “U.S. Resident” for U.S. income tax purposes, or has ever owned any assets in the U.S., consider whether advice should be sought from a lawyer who has appropriate experience and knowledge of U.S. tax law. There may be significant U.S. tax liabilities, which must be considered in any property settlement.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>Note that under the <i>FLA</i>, all debt incurred by either spouse over the relationship is “family debt,” including post-separation debt incurred to maintain family property, and is shared (<i>FLA</i>, s. 86).</p> <p>.8 Note the expanded definition of “family violence” in <i>FLA</i>, s. 1(1), and screen for the presence of family violence (<i>FLA</i>, s. 38). See also s. 16 of the <i>Divorce Act</i>. Consider what additional assistance may be required by the client and any children. If there is relationship violence, formulate a safety plan with the client and ask for instructions should they disappear. Consider <i>BC Code</i> rule 3.3-3, which allows for disclosure of confidential information if there is imminent risk of death or serious bodily harm. See also “Is Your Client Safe?” available at <a href="http://www.lss.bc.ca/publications/pub/your-client-safe">www.lss.bc.ca/publications/pub/your-client-safe</a>.</p> <p>2.19 Discuss the effect on an existing will of a separation (see <i>Wills, Estates and Succession Act</i>, s. 56, concerning nullity). Advise the client to review their will. If the client has no will, consider recommending the client make one.</p> <p>2.20 Discuss the potential effect of a divorce on the spouse’s entitlement to participate in the other spouse’s medical and dental benefits plan (if any).</p> <p>2.21 Inquire about any pension entitlements of either spouse. Consider consulting with a pension expert. Consider delivering notice of the client’s interest in a pension asset to the relevant pension plan administrator (see item 4.11.6(m) in this checklist). Advise the client about possible options to divide the pension (at source or alternatives). Consider obtaining an opinion as to the value of any pension to be divided, if the client wants to exchange a pension interest for other property, often assessed via an actuary. Discuss the survivor benefit aspects of the pension: who is the current survivor beneficiary and should that/could that change? Consider and advise the client of any timing concerns. See chapter 5 (Pension Division under the <i>Family Law Act</i>) in the <i>Family Law Sourcebook for British Columbia</i>, 3rd ed. (CLEBC, 2002–) for more information.</p> <p>2.22 Advise the client regarding the default division of earned credits in the Canada Pension Plan. Consider obtaining an opinion from CPP on the effect of equalization of benefits (send authorizations by both parties to the Income Security Program Branch). Consider an application to divide the parties’ CPP credits.</p> <p>2.23 Discuss and consider obtaining instructions to do any of the following that apply:</p> <ol style="list-style-type: none"> <li>.1 Write a letter to the opposing party advising of your engagement as counsel, requesting financial disclosure, and requesting the name of opposing counsel.</li> <li>.2 If the opposing party is represented, contact opposing counsel. Discuss consensual dispute resolution methods.</li> <li>.3 If the opposing party has not retained counsel, urge the party in writing to get independent legal representation. Make it clear that you are not protecting their interests and that you are acting exclusively in the interests of your client (see <i>BC Code</i>, rule 7.2-9). Also see <i>BC Code</i>, rule 5.1-1, commentary [6], regarding the enhanced duty of candour in without notice or uncontested matters.</li> </ol>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.4 Consider engaging a specialist to provide a parenting assessment under <i>FLA</i>, s. 211 or a “views of the child” or “voice of the child” report. Note the requirement of <i>FLA</i>, s. 37(2)(b) to consider the child’s views unless it would be inappropriate to do so.</p> <p>.5 Consider engaging an appraiser, accountant, business valuator, investigator, tax, or pension specialist. Note the requirements of SCFR Rule 13-3 concerning the appointment of joint experts.</p> <p>.6 Draft a marriage or cohabitation agreement (see the MARRIAGE AGREEMENT DRAFTING (D-4) checklist).</p> <p>.7 Draft a separation agreement (see the SEPARATION AGREEMENT DRAFTING (D-3) checklist).</p> <p>.8 Draft a polyamorous family agreement (see the POLYFAM AGREEMENT PROCEDURE (D-7) and POLYFAM AGREEMENT DRAFTING (D-8) checklists).</p> <p>.9 Commence proceedings, involving corollary relief such as decision-making responsibility, parenting time, and support under the <i>Divorce Act</i> (see the FAMILY LAW PROCEEDING (D-5) checklist) or relief including support, parenting arrangements, and property division under the <i>FLA</i> (see the FAMILY LAW PROCEEDING (D-5) checklist). Carefully consider which legislation to bring the claim under giving consideration to the doctrine of paramountcy.</p> <p>.10 Bring an application for interim relief, if required (see the FAMILY LAW PROCEEDING (D-5) checklist), taking into consideration the requirement of a judicial case conference prior to any court application, unless urgency can be established (SCFR, Rule 7-1).</p> <p>.11 Bring a variation proceeding, if required (see the FAMILY LAW PROCEEDING (D-5) checklist).</p> <p>.12 Consider claims based in trust law in addition to statutory property relief if there are unfairness issues under the <i>FLA</i> property regime or there are third parties who hold property to which your client may have a claim.</p> <p>.13 Apply for partition and sale of real property under the <i>Partition of Property Act</i>, R.S.B.C. 1996, c. 347.</p> <p>.14 Apply for an entry on title under the <i>Land (Spouse Protection) Act</i>, R.S.B.C. 1996, c. 246, or a caveat under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250, Part 19 if no action has been commenced.</p> <p>.15 If action has been commenced, file a certificate of pending litigation in the Land Title Office.</p> <p>.16 Apply for appointment of a receiver, if required.</p> <p>.17 Include a claim for a change of name in Schedule 5 of the notice of family claim or counterclaim. This claim is not required if the client is reverting to a birth name or a name used immediately prior to marriage.</p> <p>.18 Consider a declaration of parentage under <i>FLA</i>, Part 3. Carefully review the parentage rules.</p> <p>.19 Represent the client in proceedings under the <i>Child, Family and Community Service Act</i>, R.S.B.C. 1996, c. 46 (see the CHILD, FAMILY AND COMMUNITY SERVICE ACT PROCEDURE (D-6) checklist).</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>2.24 Consider advising the client to keep a diary noting contacts with the spouse and children, as well as financial information such as expenses related to the marriage breakdown, ongoing expenses, payments made by one spouse to the other, etc.</p> <p><b>3. AFTER THE INITIAL INTERVIEW</b></p> <p>3.1 If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society resource available at <a href="http://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf">www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf</a>).</p> <p>3.2 Send a letter to the client confirming the retainer and instructions, setting out the manner in which you will determine your fee for services, stating the conditions upon which you have agreed to act, and summarizing the points discussed, including follow up to be carried out by the client. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					
<p>3.3 Open the file. Place the checklist in the file and make entries in your diary and bring forward (“BF”) systems, noting relevant limitation periods, such as:</p> <ol style="list-style-type: none"> <li>.1 <i>FLA</i>, s. 147(4), deals with a stepparent’s liability to pay child support where the stepparent contributed to support and maintenance of child for one year and where proceedings are commenced within one year after the date that stepparent last contributed. But note the <i>FLA</i> criteria for parentage, including that a male person may be a “parent” if they lived in a marriage-like relationship with the birth mother within 300 days before, or on the day of, the child’s birth (<i>FLA</i>, s. 26(2)(d)).</li> <li>.2 <i>FLA</i>, s. 3, definition of “spouse”: carefully note the requirements to qualify as spouses.</li> <li>.3 <i>FLA</i>, s. 198 sets out the applicable limitation periods for bringing claims under Parts 5, 6, and 7. Note that the two-year limitation period does not apply to spousal support reviews under <i>FLA</i>, ss. 168 and 169 and that s. 198(5) suspends the running of the time limits during any period in which the parties are engaged in family dispute resolution with a family dispute resolution professional.</li> <li>.4 <i>Land (Spouse Protection) Act</i>, ss. 1 and 2: one spouse may only apply for an entry under this Act where the dwelling was occupied by the spouses as their residence within a period of one year immediately preceding the application. (Under s. 6, the Act ceases to apply when the spouses have separated and resolved ownership under the <i>FLA</i>.)</li> <li>.5 <i>Divorce Act</i>, s. 21(3), and <i>Court of Appeal Act</i>, R.S.B.C. 1996, c. 77, s. 14(1)(a): 30-day limitation period for appeals.</li> <li>.6 <i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8, ss. 55, 55.1, 55.2, 55.3: division of pension assets applies to a “common-law partnership” between two persons who cohabit in a conjugal relationship for at least one year. Consult a pensions expert as to other timing or limitation requirements; see also chapter 5 (Pension Division under the <i>Family Law Act</i>) in <i>Family Law Sourcebook for British Columbia</i>, 3rd ed. (CLEBC, 2002–).</li> <li>.7 <i>Land Title Act</i>, s. 293(1): a caveat expires after two months.</li> </ol>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.8 <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.), s. 56.1(3): tax relief is available only for spousal maintenance paid in the year in which an agreement is signed or a court order is made, and the preceding year (the Act applies as well to a “common-law partnership” between two persons who cohabit in a conjugal relationship for at least one year).</p> <p>.9 <i>Limitation Act</i>, S.B.C. 2012, c. 13: contains many limitation periods that may be applicable to family law proceedings, such as claims regarding contracts and debt collection (e.g., loans from family members). The basic limitation period is two years, and the ultimate limitation period is 15 years. Division 2 of the Act sets out rules regarding the discovery of claims. Review of this legislation is recommended.</p> <p>3.4 Obtain any urgent relief required, e.g., injunction preventing disposition under <i>FLA</i>, s. 91, personal protective orders under <i>FLA</i>, Part 9, or registration of a certificate of pending litigation against real property. Consider an application for an interim distribution of property to fund the proceeding (<i>FLA</i>, s. 89).</p> <p>3.5 Gather the necessary information.</p> <p>3.6 Implement initial instructions and continue preparation of case by consulting relevant legislation and checklists: FAMILY LAW AGREEMENT PROCEDURE (D-2), SEPARATION AGREEMENT DRAFTING (D-3), MARRIAGE AGREEMENT DRAFTING (D-4), FAMILY LAW PROCEEDING (D-5), <i>CHILD, FAMILY AND COMMUNITY SERVICE ACT</i> PROCEDURE (D-6), POLYFAM AGREEMENT PROCEDURE (D-7) and POLYFAM AGREEMENT DRAFTING (D-8), or GENERAL LITIGATION PROCEDURE (E-2).</p>					
<p><b>4. COLLECT INFORMATION</b></p> <p>4.1 Client:</p> <p>.1 Full name, occupation, home and business addresses and telephone numbers, email addresses, and social insurance number.</p> <p>.2 Birthdate and place of birth.</p> <p>.3 Employer/school, address, telephone, position, salary.</p> <p>.4 (If applicable) marital status prior to marriage.</p> <p>.5 Previous surnames.</p> <p>.6 Addresses for last 12 months.</p> <p>.7 Any mental, emotional, or physical problems or other vulnerabilities relevant to any of the issues in the proceedings. Any medications the client is using or has been prescribed.</p> <p>4.2 Client’s spouse (including unmarried spouse):</p> <p>.1 Name, address, telephone numbers, and social insurance number.</p> <p>.2 Birthdate and place of birth.</p> <p>.3 Employer/school, address, telephone, position, salary.</p> <p>.4 (If applicable) marital status prior to marriage.</p> <p>.5 Previous surnames.</p> <p>.6 Addresses for last 12 months.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.7 Any mental, emotional, or physical problems or other vulnerabilities relevant to any of the issues in the proceedings. Any medications the spouse is using or has been prescribed.</p> <p>4.3 Marriage or marriage-like relationship:</p> <p>.1 Marriage:</p> <p>(a) Place and date.</p> <p>(b) Whether it was a valid marriage.</p> <p>(c) Whether the parties lived together prior to marriage, and, if so, when they commenced cohabitation.</p> <p>.2 Marriage-like relationship: duration and other particulars of the relationship. These particulars determine if the parties qualify as “spouses” under the <i>FLA</i>—see item 3.3.2 in this checklist—which generally requires a marriage-like relationship for at least two years, except if the parties have a child together, in which case Parts 5 and 6 do not apply to the spouses. These particulars also determine whether they meet relevant definitions in other B.C. statutes and they are “common-law partners” under the <i>Income Tax Act</i>—which generally requires cohabitation in a conjugal relationship for at least one year—and other federal statutes.</p> <p>4.4 Whether there is any kind of written or verbal separation agreement, or any marriage or cohabitation agreement.</p> <p>4.5 Previous proceedings (e.g., details of when, where, terms, result), such as:</p> <p>.1 Divorce.</p> <p>.2 Decision-making responsibility, guardianship, or parenting order.</p> <p>.3 Support order.</p> <p>.4 Marriage, cohabitation, or separation agreement.</p> <p>.5 Orders regarding property division.</p> <p>4.6 Children:</p> <p>.1 Names, sexes, birthdates, birthplaces.</p> <p>.2 School or employment details.</p> <p>.3 Past, present, and proposed future arrangements for parenting, support, etc.</p> <p>.4 Physical, emotional, and educational needs, including special problems.</p> <p>.5 Where guardianship or decision-making responsibility is an issue:</p> <p>(a) Schools: grades, issues with attendance (if any), location (near home?).</p> <p>(b) Who has been involved in day-to-day care of children (e.g., feeding, childrearing, assistance with school work, discipline).</p> <p>(c) Hours of work of each spouse.</p> <p>(d) Regular time of each spouse away from home and children (e.g., evening recreation).</p> <p>(e) Involvement of each spouse in extracurricular activities of children (e.g., driving children to activities, attendance at games or recitals, participation in games).</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(f) Any unusual behaviour of either spouse toward children, and the negative impact it has (e.g., swearing, abuse of alcohol or drugs, sexual practices, derogatory remarks, physical abuse).</p> <p>(g) Involvement with family (e.g., grandparents, aunts, and uncles), friends, community activities, church, etc. in area of home.</p> <p>(h) Relationship of each child to each other child (including step-siblings and half-siblings) and to each spouse.</p> <p>(i) Whether there are medical or educational records relevant to the issue of decision-making or guardianship.</p> <p>(j) For an Indigenous child, particulars of the child’s Indigenous identity, upbringing, and heritage.</p> <p>(k) If the child has special needs, details of any medical practitioners and special educators involved with the child and any existing reports.</p> <p>.6 Where the client wants an order prohibiting the spouse (or another person) from interfering with children:</p> <p>(a) Incidents causing mental or physical harm to children.</p> <p>(b) Mental or physical problems the children are experiencing, including, if possible, any written corroborating reports from teachers or doctors.</p> <p>(c) Effect of behaviour on children (e.g., school work, sleep, play with other children, relationship with the client).</p> <p>(d) History of psychiatric problems, temper situations, or past physical or mental abuse.</p> <p>(e) Criminal record.</p> <p>.7 Where guardianship is sought by a non-parent, note the evidentiary requirements of <i>FLA</i>, s. 51, as well as SCFR Rule 15-2.1 or PCFR Rule 26, as required. Complete the forms for the required background checks and consents: Form 5 under the Family Law Act Regulation, B.C. Reg. 347/2012, s. 26.1 and SCFR Form F101 or PCFR Form 5.</p> <p>.8 Whether there are concerns that the children may be removed from the jurisdiction, or either spouse wishes to move out of the jurisdiction with the children, and the reasons for such a move (e.g., to enable the spouse to obtain better employment or be closer to family elsewhere). Note <i>FLA</i>, Part 4, Division 6 (Relocation) and advise a relocating client of the obligation of good faith (<i>FLA</i>, s. 69(4)(a)(i) and (6)).</p> <p>4.7 Separation:</p> <p>.1 Place and date.</p> <p>.2 Particulars, including events leading up to it. If the <i>Divorce Act</i> applies, find out whether there has been any adultery by either spouse, or whether either spouse might allege any physical or mental cruelty.</p> <p>(a) If adultery is alleged, determine whether the alleged acts took place before or after separation, details that are known (identity of third person, places, and times), and whether the client or spouse is willing to admit.</p>					



LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(b) If cruelty is alleged, collect details of behaviour and specific acts of cruelty and any physical manifestations, medical reports, police reports. (Even if a divorce can be sought on the grounds of adultery and/or cruelty, typically living separate and apart for one year is the ground used.)</p> <p>.3 Whether there have been attempts to reconcile and the dates.</p> <p>.4 Whether the client or spouse has received counselling.</p> <p>.5 Whether the spouses have lived together since separation and, if so, the dates and details.</p> <p>.6 Advise the client that spousal misconduct will generally not be taken into account by the court in making a spousal support order (<i>Divorce Act</i>, s. 15.2(5)), unless injuries sustained interfere with the victim’s ability to become self-sufficient (<i>Leskun v. Leskun</i>, 2006 SCC 25); under <i>FLA</i>, s. 166, misconduct that “arbitrarily or unreasonably ... causes, prolongs or aggravates the need for spousal support” or “affects the ability to provide spousal support” may be considered.</p> <p>4.8 New relationship:</p> <p>.1 Details of cohabitation (date, whose residence, discussions of marriage).</p> <p>.2 If not cohabiting, details of any plans to live together (timing, whose residence, discussions of marriage).</p> <p>.3 Details of children’s relationship with new partner.</p> <p>4.9 If the matter involves a polyamorous family or issues under the <i>Child, Family and Community Services Act</i>, refer also to the POLYFAM AGREEMENT PROCEDURE (D-7) checklist and CHILD, FAMILY AND COMMUNITY SERVICES ACT PROCEDURE (D-6) checklist.</p> <p>4.10 Contact information and details regarding any witnesses.</p> <p>4.11 Financial details. Consider having the client fill out a financial statement in Form F8 after the initial interview.</p> <p>.1 Income:</p> <p>(a) Client:</p> <p>(i) Amount and sources of income.</p> <p>(ii) Jobs held and income earned throughout relationship.</p> <p>(iii) Periods of unemployment and reasons.</p> <p>(iv) Any foreseeable change in job or income.</p> <p>(v) Whether the client worked as a homemaker and, if so, whether this was by agreement with spouse.</p> <p>(vi) Ability to earn income, including education, skills, qualifications, health.</p> <p>(vii) Future intentions regarding employment and retirement.</p> <p>(viii) If currently in school or training, what this will cost, and employment goals and probable earnings.</p> <p>(ix) Special needs of children (e.g., age, disability) that affect the client’s ability to work outside the home.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(x) General lifestyle and spending habits of the client before and after separation: characteristics of residence, number of cars, recreational activities, social activities, restaurants attended, clothing, holidays, and the functions performed by the client during cohabitation.</p> <p>(b) Client’s spouse:</p> <p>(i) Amount and sources of income.</p> <p>(ii) Jobs held and income earned throughout relationship.</p> <p>(iii) Periods of unemployment and reasons.</p> <p>(iv) Any foreseeable change in job or income.</p> <p>(v) Whether client’s spouse worked as a homemaker and, if so, whether this was by agreement with the client.</p> <p>(vi) Ability to earn income, including education, skills, qualifications, health.</p> <p>(vii) Future intentions regarding employment and retirement.</p> <p>(viii) If currently in school or training, what this will cost, and employment goals and probable earnings.</p> <p>(ix) Special needs of children (e.g., age, disability) that affect the client’s spouse’s ability to work outside the home.</p> <p>(x) General lifestyle and spending habits of the client’s spouse before and after separation: characteristics of residence, number of cars, recreational activities, social activities, restaurants attended, clothing, holidays, and the functions performed by client’s spouse during cohabitation.</p> <p>.2 Where child support is an issue: expenses, including any special or extraordinary expenses (e.g., health, education, extra-curricular activities).</p> <p>.3 Where spousal support is an issue: projected expenses needed to provide for self and to provide supervision of children. Collect information regarding employment and education history of the spouse requiring support.</p> <p>.4 Real property owned by either spouse at or since beginning of relationship:</p> <p>(a) Address and legal description.</p> <p>(b) Registered owner.</p> <p>(c) Acquisition: date, purchase price, source of original funds, mortgage amount, mortgage lender.</p> <p>(d) Any contribution by a third party? Obtain full details and documentary evidence, if any. Consider whether tracing might be available under <i>FLA</i>, s. 85(1)(g).</p> <p>(e) If acquired before the relationship began: market value at date the relationship began, whether an appraisal is available, mortgage owing when the relationship began.</p> <p>(f) If the mortgage was paid off during relationship: when, what funds were used, whether both spouses contributed, amount paid.</p> <p>(g) If sold during the relationship: when, selling price, net sale proceeds, use of proceeds.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(h) If re-mortgaged during the relationship: when, with whom, who signed the mortgage, terms of the mortgage, what funds have been used to make payments, what was done with the mortgage proceeds.</p> <p>(i) Current state of the mortgage, if it was not paid off during relationship, or, if the property was re-mortgaged: balance owing, defaults, late payments.</p> <p>(j) If still owned: present fair market value, whether appraisal or real estate evaluation available, current details of possession and use.</p> <p>(k) Contributions of each spouse to maintenance and improvement of the property during relationship.</p> <p>(l) If owned by the other spouse: what the property was being used for at beginning of the relationship; whether the client contributed to property before the relationship (e.g., cash, co-signing loan or mortgage, business acumen, physical labour, homemaker); whether the client contributed to the property after the relationship; whether the property was used during the relationship for benefit of the family; whether the spouses considered it to be for benefit of the family; what contribution the spouse expected of the client regarding the property.</p> <p>(m) If title was transferred during the relationship (e.g., from sole ownership to joint title).</p> <p>.5 Mobile home(s) owned by either spouse at or since the beginning of their relationship. Collect the same information as required for real property.</p> <p>.6 Personal property owned by either spouse at or since the beginning of their relationship. Collect information on all types: cash, bank accounts, term deposits, bonds, stocks, options, commodities, debentures, mortgages/agreements for sale, motor vehicles, recreational vehicles, farm or other machinery/equipment, boats, aircraft, art objects, furnishings and household goods, jewellery, club memberships, bullion, coins, RRSPs, RRIFs, RESPs, pensions, life insurance, medical, dental, and disability insurance, promissory notes, judgments. Obtain the information that is relevant for each item, such as:</p> <p>(a) Description.</p> <p>(b) Owner.</p> <p>(c) Location of property. Consider <i>FLA</i>, s. 109 re any extraprovincial property.</p> <p>(d) Acquisition: date, price/value, who acquired the property, source of funds (gift or inheritance), financing. Consider whether property is excluded under <i>FLA</i>, s. 85.</p> <p>(e) Any contribution(s) by a third party? Obtain full details and documentary evidence if any. Consider whether tracing might be available under <i>FLA</i>, s. 85(1)(g).</p> <p>(f) History of ownership: in whose name, who has made payments, amount of payments, amount owing, use, details of any sale, use of sale proceeds.</p> <p>(g) Value at date of separation and current value, any appraisals, maturity dates and values, whether RRSPs, insurance policies, etc. can be cashed in at present time.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(h) For bank or credit union accounts: all financial institutions used by client or spouse; account locations, types, numbers, and balances. Determine whether accounts are joint or sole.</p> <p>(i) For stocks: number of shares, options, class of stock, encumbrances, restrictions on transfer.</p> <p>(j) For insurance policies: beneficiary, whether policy has been borrowed against and details of this, cash surrender value, if any.</p> <p>(k) For promissory notes: from whom, amount owing, interest rate, payments, due date.</p> <p>(l) For outstanding judgments: against whom, date, amount, whether collectable.</p> <p>(m) For pensions: beneficiary, plan name, contributions, owner, details of plan. Have the client execute a Form P1 under the Division of Pensions Regulation, B.C. Reg. 348/2012 under the <i>FLA</i> (or Form 1 in B.C. Reg. 77/95 under the <i>FRA</i>, if applicable) to allow you to communicate with the pension plan administrator and to notify the plan of the client's interest in the pension.</p> <p>.7 Businesses, partnerships, and joint ventures owned by either spouse at or since the beginning of the relationship:</p> <p>(a) Whether incorporated or unincorporated.</p> <p>(b) Name and address of the business and of principals or participants.</p> <p>(c) If incorporated: registered and records offices, directors, shareholders.</p> <p>(d) Type of business.</p> <p>(e) Nature of interest: number and ownership of shares.</p> <p>(f) Acquisition: date, price/value, who acquired the property, source of funds, financing, how much capital introduced into the business.</p> <p>(g) Value: estimated market value and book value at the date of acquisition, date of beginning of marriage/marriage-like relationship, date of separation, and current date; whether anyone has tried to purchase the business in the past year, and on what terms.</p> <p>(h) If sold: when sold, selling price, net proceeds, use of proceeds.</p> <p>(i) If still owned: liabilities each spouse is responsible for, including co-signed loans and guarantees.</p> <p>.8 Livestock and related equipment.</p> <p>.9 Pets.</p> <p>.10 Licences and quotas of significant value issued or granted by any government agency, government department, or regulatory body.</p> <p>.11 Real or personal property sold or given away by the client or spouse in the past two years:</p> <p>(a) Name and address of the trustee, if applicable.</p> <p>(b) Date of disposal.</p> <p>(c) Price: whether an appraisal was done first, fair market value, proceeds, whether transfer was for market value and, if not, why not.</p> <p>(d) Whether the spouse approved of transfer.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(e) Use of proceeds.</p> <p>.12 Debts and liabilities of the client and spouse at beginning of their relationship, date of separation, and current date:</p> <p>(a) Description (e.g., mortgages, agreements for sale, credit cards, bank loans, personal loans, business loans, tax liabilities (including contingent tax liabilities)).</p> <p>(b) When incurred.</p> <p>(c) Why incurred.</p> <p>(d) Whether the spouse approved of the transfer.</p> <p>(e) What security was given.</p> <p>(f) Amount: original amount, interest rate, payment history, present status (including amount outstanding, defaults, and demand for payment).</p> <p>.13 Personal guarantees given by the client or spouse.</p> <p>.14 With respect to any asset in question, review reasons why assets should be considered family or excluded property (if the <i>FLA</i> applies) or family assets (if the <i>FRA</i> applies):</p> <p>(a) Property in question (consider tracing from prior property).</p> <p>(b) Owner.</p> <p>(c) Physical or monetary contribution made to acquisition, preservation, or maintenance.</p> <p>(d) Housekeeping and child-rearing roles.</p> <p>(e) Opportunities for employment or advancement given up to assist in acquisition.</p> <p>(f) Consider whether the <i>FLA</i> property regime is significantly unfair to the client, requiring unequal division or trust claim.</p> <p>.15 Determine whether the client or spouse received or is about to receive:</p> <p>(a) An inheritance: who received it, when, how much, what was done with it.</p> <p>(b) A windfall (e.g., lottery winnings, prizes, gift from family): who received it, when, how much, what was done with it.</p> <p>(c) An award for personal injuries, including workers' compensation benefits: who received it, when, how much, what was done with it.</p> <p>(d) Proceeds of an insurance policy (and if so, whether it was in respect of property or related to some other matter): who received it, when, how much, what was done with it.</p> <p>(e) A gift from their spouse: who received it, when, market value, what was done with it.</p> <p>(f) A bonus relating to past services (e.g., severance pay).</p> <p>.16 Advise client on the importance of keeping these items/funds in the client's sole name.</p> <p>.17 Determine whether there is any reason to suspect that client's spouse intends to dispose of any assets or remove them from British Columbia.</p> <p>.18 Determine whether the client or spouse wants specific items of property.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>4.12 Where the client wants exclusive occupancy of the family residence or an order restraining the spouse (including unmarried spouse) from entering the family residence, gather the following information:</p> <ul style="list-style-type: none"> <li>.1 Description of the dwelling.</li> <li>.2 Location with respect to schools.</li> <li>.3 Reasons for wanting the spouse removed:               <ul style="list-style-type: none"> <li>(a) Violence.</li> <li>(b) Abuse of alcohol, drugs.</li> <li>(c) Effect of behaviour on the mental or physical health of the client or the children, including, if possible, medical reports.</li> <li>(d) Any criminal charges previously laid against the spouse.</li> <li>(e) Alternate accommodation available to the spouse.</li> <li>(f) Financial impact of moving/selling.</li> <li>(g) Reasons why it is impossible to continue cohabitation.</li> <li>(h) Proposed parenting plan if exclusive occupancy allowed.</li> </ul> </li> </ul> <p>4.13 Where the client wants exclusive use of chattels, gather the following information:</p> <ul style="list-style-type: none"> <li>.1 Clear description of the chattels.</li> <li>.2 Who used them prior to separation.</li> <li>.3 Reason that client needs them now (e.g., need car for work or to drive the children to school or to recreational activities).</li> <li>.4 Similar chattels available to the spouse.</li> </ul> <p>4.14 Where the client wants an order restraining disposition of assets, gather the following information:</p> <ul style="list-style-type: none"> <li>.1 Clear description of the assets, including the exact name(s) in which they are held.</li> <li>.2 Present location of the assets.</li> <li>.3 Ownership of the assets.</li> <li>.4 Previous use of the assets.</li> <li>.5 Actions or statements of the spouse that indicate they might dispose of the assets.</li> <li>.6 Reasons why the assets are to be considered family property (see item 4.11.14).</li> </ul> <p>4.15 Clarify citizenship and immigration issues:</p> <ul style="list-style-type: none"> <li>.1 Citizenship of the client and the spouse.</li> <li>.2 Status of any outstanding immigration matters.</li> <li>.3 Is the client or spouse a U.S. citizen or dual U.S. citizen.</li> <li>.4 Was the client or spouse ever a U.S. resident for U.S. tax purposes or ever issued a U.S. green card.</li> <li>.5 Did the client or spouse ever own any property in the U.S., including U.S. bank account(s).</li> </ul>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
.6 Does any child of the parties have U.S. or dual U.S. citizenship, or is such child working or attending school in the U.S.					
<p><b>5. COLLECT DOCUMENTS</b></p>					
<p>5.1 Request copies of all relevant documentation. If relying on the client’s information regarding income and assets and debts, consider limiting the scope of your retainer. Relevant documents will include at least the following:</p>					
.1 Original marriage certificate (long form) or certificate of registration of marriage.					
.2 Photograph of the spouse (for service purposes) if a divorce is sought.					
.3 Income tax returns (including attachments) and notices of assessment of the client and spouse for past three years (both personal returns and corporate returns if any incorporated businesses are involved), as well as the financial statements for any businesses operated by either party.					
.4 Financial records: bank or credit union statements, investment accounts, paystubs, credit card statements, etc.					
.5 Records relating to family property: land title searches, mortgage statements, loan agreements, loan applications, and sale or disposition documents.					
.6 Records relating to the value of family property, including appraisals and British Columbia property assessment statements, purchase and sale agreements, and statements of adjustment.					
.7 Records relating to pension plans, insurance policies, RRSPs, RRIFs, RESPs.					
.8 Marriage, separation, or property distribution agreements between the spouses and between each spouse and any prior spouses.					
.9 Related court documents, including court orders between the spouses and between each spouse and any prior spouses.					
.10 Certified copy of divorce order, if one spouse was previously divorced.					
.11 Medical and legal reports.					
.12 Child and parenting assessments.					
.13 Conduct any relevant searches (e.g., in the land title office, corporate registry, vehicle records department at ICBC, or personal property registry).					
.14 Copies of any agreements made between the parties themselves, and between them and any relevant third parties.					
.15 Statements relating to stocks, bonds, and securities.					
.16 Appraisals of jewellery, furniture, china, art, and valuable items.					

LEGEND — <b>NA</b> = Not applicable <b>L</b> = Lawyer <b>LA</b> = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
.17 If the client is a beneficiary or a trustee, the trust settlement documents.					