

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 for use with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) and the CLIENT FILE OPENING AND CLOSING (A-2) checklists. It deals with divorce and all other relief in a family law proceeding under the <i>Divorce Act</i>, R.S.C. 1985, c. 3 (2nd Supp.) and the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (the “FLA”) (or, in some cases where the FLA does not apply, the now repealed <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128 (the “FRA”). It should be used in conjunction with other relevant practice checklists.</p> <p>The first step in a proceeding under the <i>Divorce Act</i> and the FLA (or the FRA) should be the completion of the FAMILY PRACTICE INTERVIEW (D-1) checklist. Also, practitioners should consider the option of mediation or collaborative separation and divorce (FLA, s. 8(2)). This checklist is current to September 1, 2023.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Supreme Court Family Rules, B.C. Reg. 169/2009 (the “SCFR”).</b> Amendments to the SCFR came into effect on September 1, 2023 (B.C. Reg. 176/2023). The changes are primarily focussed on trial management conferences, case planning conferences, trial briefs, and trial certificates. See Supreme Court Family <a href="#">Practice Direction PD-63—Trial Management Conferences, Trial Briefs and Trial Certificates – Transitional Guidance</a> for transitional guidance on the changes. Note that if available, an email address for service is required of counsel and unrepresented parties alike.</li> <li>• <b>FLA.</b> Amendments to the FLA received Royal Assent on May 1, 2023, including amendments to: rules applying to the presumption of advancement or presumption of resulting trust (s. 81.1); exclusions applying to excluded property (ss. 85(3) and 96); designations of limited members (s. 113(2)); disability benefits (s. 122); and calculation of a limited member’s proportionate share on death of a member prior to pension commencement (s. 124). The applicability of certain amendments may depend on whether the family law proceeding is a “pre-existing proceeding”, meaning a proceeding under the FLA respecting property division or to set aside or replace an agreement respecting property division, commenced before May 11, 2023. Amendments that will come into force at a later date by regulation pertain to: pets as “companion animals” (s. 97); commuted value transfer options (s. 113(2)(b)); Locked-in Retirement Accounts and Life Income Funds (s. 117.1); annuities (s. 118.1); survivor benefits payable under pension plans (s. 126.1); and administrative fees relating to pension division (s. 140).</li> <li>• <b>Divorce Act.</b> Amendments to the <i>Divorce Act</i> came into force on March 1, 2021. The amended provisions on care of children are similar to the regime in FLA. Family law practitioners are advised to familiarize themselves with the amendments.</li> <li>• <b>Provincial Court Family Rules, B.C. Reg. 120/2020 (“PCFR”).</b> On May 16, 2022 new Rules 123.1 to 130 of the PCFR became effective and set out the procedure for an “informal trial” as part of a pilot project between the Ministry of Attorney General and Provincial Court of British Columbia. The “informal trial” pilot project is taking place in Kamloops, and more information can be found at: <a href="http://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/divorce/family/options/court/informal-trial/informal-trial-explainer.pdf">www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/divorce/family/options/court/informal-trial/informal-trial-explainer.pdf</a></li> </ul>					

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<ul style="list-style-type: none"> <li>• <b>Updated practice directions for sealing orders and applications to commence proceedings anonymously in Supreme Court.</b> Litigants seeking a sealing order in a civil or family law proceeding must follow the guidelines as set out in Supreme Court Family <a href="#">Practice Direction PD-58</a>—Sealing Orders in Civil and Family Proceedings. For the procedure to commence proceedings using initials or a pseudonym in civil or family law proceedings, see Supreme Court Family <a href="#">Practice Direction PD-61</a>—Applications to Commence Proceedings Anonymously. Practice Directions 58 and 61 were updated on August 1, 2023.</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 (<i>Michel v. Graydon</i>, 2020 SCC 24; <i>Colucci v. Colucci</i>, 2021 SCC 24).</li> <li>• <b>Land Owner Transparency Act, S.B.C. 2019, c. 23.</b> The <i>Land Owner Transparency Act</i> may affect the implementation of the division of real property in family law matters.</li> <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), which may affect corporate matters in family law proceedings.</li> <li>• <b>Forms of address.</b> The Supreme Court of British Columbia provided direction on how parties and counsel are to address a justice in a courtroom (see Supreme Court Family <a href="#">Practice Direction PD-60</a>—Form of Address) and provided clarification on how to introduce themselves in proceedings (see Supreme Court Family <a href="#">Practice Direction PD-59</a>—Forms of Address for Parties and Counsel in Proceedings).</li> <li>• <b>Communicating with the Court.</b> Supreme Court Family <a href="#">Practice Direction PD-27</a>—Communicating with the Court was updated on February 10, 2023, which sets out the guidelines for appropriate communications with the court for the limited circumstances in which it is permitted.</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 the FAMILY PRACTICE INTERVIEW (D-1) checklist). Note the requirements of Part 10, Division 3 of the <i>FLA</i>, which sets out 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, (the “<i>FHRMIRA</i>”) applies to married couples or common-law partners living on-reserve lands, where at least one spouse is a First Nation member. The <i>FHRMIRA</i> provides mechanisms for First Nations to create laws pertaining to matrimonial real property, and also sets out provisional federal rules for use until First Nations establish their own laws. Consider seeking the advice of a lawyer with experience in Aboriginal law. 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> </ul>					

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<ul style="list-style-type: none"> <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–); the <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); <i>Financial Issues in Family Law</i>, 2nd ed. (CLEBC, 2006–); <i>Family Law Deskbook</i> (CLEBC, 2005–); <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">www.lawsociety.bc.ca</a>; and the JP Boyd on Family Law page 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).</li> </ul> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Preliminary Matters</li> <li>2. Commencement of Family Law Case—Supreme Court</li> <li>3. Response to Family Claim and Counterclaim</li> <li>4. Discovery Procedures</li> <li>5. Judicial Case Conference</li> <li>6. Interim Relief and Other Pre-trial Proceedings</li> <li>7. Application for Desk Order Divorce</li> <li>8. Trial</li> <li>9. After Judgment</li> <li>10. Variation Proceeding</li> <li>11. Proceedings in Provincial Court</li> <li>12. Closing the File</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <ol style="list-style-type: none"> <li><b>1. PRELIMINARY MATTERS</b> <ol style="list-style-type: none"> <li>1.1 Conduct a conflicts of interest check. Complete the CLIENT FILE OPENING AND CLOSING (A-2) and FAMILY PRACTICE INTERVIEW (D-1) checklists.</li> <li>1.2 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).</li> <li>1.3 Comply with duties in s. 8 of the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (the “FLA”): screen for family violence; discuss out-of-court resolution options; and inform the client that some agreements or orders must serve the best interests of the child (<i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), rule 5.1-1, commentary [4]). Also explain the FLA, s. 5 duty of disclosure. Discuss the various family dispute resolution processes available to resolve the matter (FLA, s. 8(2)).</li> </ol> </li> </ol>					

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<p>1.4 If the opposing party has not retained counsel, remember your obligations under <i>BC Code</i>, rule 7.2-9 regarding dealing with unrepresented parties. Document this advice. Also consider <i>BC Code</i>, rule 5.1-1, commentary [6], regarding without notice or uncontested matters and the enhanced obligation of candour.</p> <p>1.5 Consider choice of law provisions in <i>FLA</i>, s. 108. If responding to a claim, consider whether a jurisdictional response (Rule 18-2, Form F78 of the Supreme Court Family Rules, B.C. Reg. 169/2009 (the “SCFR Rules”)) should be filed.</p> <p>1.6 If the parties have a written agreement, consider whether there are provisions in the agreement that require attendance at mediation or some other alternative dispute resolution procedure before a claim can be commenced.</p> <p>1.7 If seeking a divorce:</p> <ul style="list-style-type: none"> <li>.1 Consider whether the British Columbia Supreme Court has jurisdiction to grant a divorce (<i>Divorce Act</i>, R.S.C. 1985, c. 3 (2nd Supp.), s. 3).</li> <li>.2 Comply with the <i>Divorce Act</i> regarding negotiation and mediation (s. 7.3) and reconciliation and counselling (s. 10(1)).</li> <li>.3 Determine whether the divorce is likely to be contested.</li> <li>.4 Obtain the original government-issued marriage certificate. If the original is not in English, obtain an official translation.</li> <li>.5 Consider obtaining a photograph of the respondent(s) for purposes of service (see item 2.6 in this checklist).</li> <li>.6 Consider whether any third parties should be included in the proceedings (e.g., relevant corporations, related parties against whom relief is or should be sought). Note that the discovery rights of parties and non-parties vary.</li> </ul> <p>1.8 Determine types of relief to be sought.</p> <ul style="list-style-type: none"> <li>.1 Consider whether relief should be sought under the <i>Divorce Act</i> or the <i>FLA</i>, or both, where permissible and appropriate (see <i>Divorce Act</i>, ss. 3 and 4, and <i>FLA</i>, s. 192). <ul style="list-style-type: none"> <li>(a) Support for children (<i>Divorce Act</i>, s. 15.1, <i>FLA</i>, Part 7, Division 2, and the Family Law Act Regulation, B.C. Reg. 347/2012, Part 4 (Child Support Guidelines) that adopt and modify the Federal Child Support Guidelines, SOR/97-175, under the <i>Divorce Act</i>).</li> <li>(b) Support for spouse (<i>Divorce Act</i>, s. 15.2, and <i>FLA</i>, Part 7, Division 4).</li> <li>(c) Parenting of children (<i>Divorce Act</i>, s. 16.1 (decision-making responsibility and parenting time), and <i>FLA</i>, Part 4 (Care of and Time with Children)).</li> <li>(d) Guardianship of children (<i>FLA</i>, Part 4, Division 3 regarding guardianship, and <i>FLA</i>, Part 8 regarding children’s property). To prepare a guardianship affidavit and a consent to the requisite background checks, use SCFR Rules, Form F101 or PCFR Rules, Form 5, and Family Law Act Regulation, s. 26.1, Form 5. Use SCFR Rules, Form F101 for the Guardianship Affidavit in Supreme Court. Note SCFR Rule 15-2.1(4) and (5) with respect to the currency of the information in the affidavit.</li> </ul> </li> </ul>					

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<p>(e) Determination of family property and debts, ownership, possession, or division of property (<i>FLA</i>, Parts 5 and 6).</p> <p>(i) Enforcement of a spouse’s interest in property, under any prior agreement or any claim to set aside a prior agreement.</p> <p>(ii) Order reapportioning property division on the basis of significant unfairness (<i>FLA</i>, s. 95).</p> <p>(iii) Declaration of ownership (<i>FLA</i>, s. 97(2)(a)).</p> <p>(iv) Declaration of right of possession (<i>FLA</i>, s. 97(2)(a)).</p> <p>(v) Order that, upon division of property, title be transferred to, held in trust for, or vested in a spouse absolutely, for life, or for a term of years (<i>FLA</i>, s. 97(2)(b)).</p> <p>(vi) Order that one spouse pay compensation to the other where property has been disposed of, or for the purpose of adjusting the division (<i>FLA</i>, s. 97(2)(c)).</p> <p>(vii) Order for partition or sale of property and payment out of the proceeds to one or both spouses in specified proportions or amounts (<i>FLA</i>, s. 97(2)(d)).</p> <p>(viii) Order that property forming all or part of the share of either or both spouses be transferred to, or held in trust for, or vested in, a child (<i>FLA</i>, s. 97(2)(e)).</p> <p>(ix) Order that a spouse give security for the performance of an obligation (<i>FLA</i>, s. 97(2)(f)).</p> <p>(x) Waiver or release by a spouse in writing of any right, benefit or protection given by the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359, s. 58 or 67, and related legislation (<i>FLA</i>, s. 97(2)(g)).</p> <p>(xi) Declaration that one spouse is responsible for payment of a family debt and indemnification of the other spouse (<i>FLA</i>, s. 97(2)(h)), subject to the rights of third parties (<i>FLA</i>, s. 97(3)).</p> <p>(xii) Sale of property for the purposes of paying family debt (<i>FLA</i>, s. 97(2)(i)).</p> <p>(xiii) Transfer of property to a spouse (<i>FLA</i>, s. 97(2)(j)).</p> <p>(f) Temporary orders respecting the family residence, including exclusive occupancy, and specified personal property (<i>FLA</i>, s. 90).</p> <p>(g) Protection orders (<i>FLA</i>, s. 183).</p> <p>(h) Interim distribution of property (e.g., advance on capital to fund litigation (<i>FLA</i>, s. 89)).</p> <p>.2 Relief under other statutes and against other persons where the claim is related to or connected with any relief sought in the family law proceeding (SCFR Rules 3-1(5) and 21-3(1)).</p> <p>.3 Variation or rescission (note the two-year limitation period in <i>FLA</i>, s. 198(3) and the suspension of the running of time under <i>FLA</i>, s. 198(5) while the spouses are pursuing “family dispute resolution” with a “family dispute resolution professional” as defined in <i>FLA</i>, s. 1):</p> <p>(a) Of a support order or parenting order under the <i>Divorce Act</i>, s. 16.1 or under <i>FLA</i>, s. 47, 152, or 167. See also SCFR Rule 10-5.</p> <p>(b) Of a provision of a written agreement filed under <i>FRA</i>, s. 121(4), or <i>FLA</i>, ss. 44(3) and 148(2).</p>					

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<p>(c) Of the division of property covered by an agreement (see <i>FLA</i>, s. 93).</p> <p>.4 Name change (<i>Name Act</i>, R.S.B.C. 1996, c. 328, s. 5).</p> <p>1.9 Assess any need to obtain urgent interim relief to protect a person or property. Consider seeking a protection order under <i>FLA</i>, s. 183; filing a certificate of pending litigation, caveat, or charge under the <i>Land (Spouse Protection) Act</i>, R.S.B.C. 1996, c. 246, in the Land Title Office; seeking an interim distribution of property (e.g., advance on capital to fund litigation (<i>FLA</i>, s. 89)); or seeking an order restraining the disposition of property under s. 91 of the <i>FLA</i>. Be aware of a limitation period for filing a charge under the <i>Land (Spouse Protection) Act</i>. There is a requirement that the spouse requesting entry of the charge has resided in the property within the past year.</p> <p>1.10 Indigenous clients: consider whether a lawyer with experience with Indigenous matters should be consulted. Special considerations may apply, whether the parties or property (or both) are situated on or off reserve. For example:</p> <p>.1 The child’s Indigenous heritage is a factor in determining parenting arrangements 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 when applying for guardianship.</p> <p>.2 In calculating child support under Federal Child Support Guidelines, s. 19(b), or in calculating spousal support, prospective awards must be adjusted if any party is exempt from federal and provincial income taxes.</p> <p>.3 Property may belong to a First Nation, 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). 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 making 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 Nation lands. Consider whether a party belongs to a First Nation that has enacted their own matrimonial property laws. Review the federal <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>, S.C. 2013, c. 20, which applies to First Nations that have not enacted their own matrimonial 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.</p> <p>.4 In enforcing support payments, if the debtor is an Indigenous person who lives on a reserve, the debtor’s assets or income 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 moveable assets located on reserve from an Indigenous person.</p>					

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<p>.5 Further information on Aboriginal law issues is available on the “Aboriginal law” page of the CLEBC website (<a href="http://www.cle.bc.ca">www.cle.bc.ca</a>) under “Practice Areas” and in chapter 22 (Indigenous Family Law Issues) of the <i>British Columbia Family Practice Manual</i>.</p> <p>1.11 Determine the ages of all parties and, if one party is an infant, consider matters of capacity (see <i>BC Code</i>, rule 3.2-9 and commentary):</p> <ol style="list-style-type: none"> <li>.1 If any party is under 16 years, ensure that the action or defence is conducted with a litigation guardian</li> <li>.2 If an infant over 16 years is not conducting the action or defence with a litigation guardian, decide whether to apply for the appointment of a litigation guardian (SCFR Rule 20-2(2)). See also <i>FLA</i>, s. 201.</li> <li>.3 If the client is an infant who wants to appoint a litigation guardian, file the litigation guardian’s consent (SCFR Rule 20-3(7)), and a certificate of fitness with required particulars (SCFR Rule 20-3(8)).</li> <li>.4 Diarize the date on which any minor child reaches age of majority in regard to applicable limitation periods.</li> </ol> <p>1.12 Consider and advise client on:</p> <ol style="list-style-type: none"> <li>.1 Bank account ownership changes, including changes to lines of credit.</li> <li>.2 Any outstanding personal guarantees.</li> <li>.3 Credit card changes.</li> <li>.4 Joint credit facilities.</li> <li>.5 Obtaining their own medical insurance.</li> <li>.6 Client’s will and the effect of the <i>Wills, Estates and Succession Act</i>, S.B.C. 2009, c. 13 (“<i>WESA</i>”), noting s. 56(2) and the effect of separation. Refer the client to a wills and estates lawyer to draft a new will, or if you are a wills and estates lawyer, draft a new will, if instructed.</li> <li>.7 Powers of attorney and representation agreements. See <i>Power of Attorney Act</i>, R.S.B.C. 1996, c. 370, s. 29 and <i>Representation Agreement Act</i>, R.S.B.C. 1996, c. 405, s. 29, which provide for termination of powers of attorney or representation agreements upon separation of spouses if a spouse is, respectively, an attorney or a representative.</li> <li>.8 Change of beneficiary on insurance policies.</li> <li>.9 Change of beneficiary on RRSPs and pensions, if not restricted from doing so.</li> <li>.10 Filing of forms in relation to a claim against the other spouse’s pension.</li> <li>.11 Safeguarding of documents and valuables. Caution the client against appropriating private documents, mail and email. Consider <i>BC Code</i>, rule 7.2-10 regarding a lawyer’s duties when inadvertently obtaining documents of the opposing party.</li> <li>.12 Other agreements or documents and their effect (e.g., shareholders’ agreements, marriage agreement, trusts).</li> <li>.13 Any corporate/commercial issues raised by or against a spouse who operates a business.</li> <li>.14 Change email passwords and password and privacy settings on social media accounts.</li> </ol>					

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<p>1.13 If the family law case has already commenced, and there has been no judgment and no steps have been taken in a year, then a notice of intention to proceed in Form F48 must be filed and served before taking any further steps in the courts per SCFR Rule 21-2(4).</p>					
<p><b>2. COMMENCEMENT OF FAMILY LAW CASE—SUPREME COURT</b></p>					
<p>2.1 Prepare a notice of family claim in Form F3 (SCFR Rule 4-1(1)) with all parties and children properly named with correct birthdates. Include all known aliases and alternative spellings of the parties’ names so that orders will match any variation of a party’s name on various assets. Consider whether any corporate entity needs to be named individually as a party. SCFR Rule 2-2.1 provides the procedure for a divorce under the <i>Civil Marriage Act</i>, S.C. 2005, c. 33 (use Form F1.1 in that case). Current forms are available at <a href="http://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/sup-family-forms">www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/sup-family-forms</a>.</p>					
<p>2.2 Consider a joint family law case where the parties seek a divorce and consent to all other relief (SCFR Rule 2-2(1) and (2), and Form F1). The Law Society’s Ethics Committee reviewed its advice that members should not act for both spouses in bringing a joint action. The Ethics Committee advised that the prohibition does not apply to a lawyer, including one who acted as a mediator for the spouses, where all relief sought is by consent, and both parties received independent legal advice (see the March–April 2003 <i>Benchers’ Bulletin</i>).</p>					
<p>2.3 If seeking a divorce:</p> <ul style="list-style-type: none"> <li>.1 Ensure that you have an original marriage certificate (translated officially into English as necessary) or certified copy of registration of marriage. If unable to obtain it, see SCFR Rule 4-5(2).</li> <li>.2 Consider the grounds for divorce (one year separate and apart, adultery, or cruelty) and ensure that you have supporting evidence (<i>Divorce Act</i>, s. 8(2)). Consider pleading one year separate and apart as alternate grounds in a claim based on adultery or cruelty.</li> <li>.3 Ensure there are no bars to the divorce (<i>Divorce Act</i>, s. 11).</li> <li>.4 Name as the respondent(s) the spouse and any other person against whom a claim for relief is made (e.g., name a corporation owned by a spouse if relief is sought against the company; name a person who holds assets or debts for a spouse; name a third-party parent from whom contribution to child support is sought, etc.). Where adultery is alleged, the person alleged to have committed adultery with a spouse is not to be set out in the pleading unless that person is made a party to the proceeding (SCFR Rule 4-5(1)).</li> <li>.5 Ensure that particulars of marriage in the notice of family claim conform to particulars shown in the marriage certificate.</li> <li>.6 Set out all claims for relief (see item 1.8 of this checklist).</li> <li>.7 Review the notice of family claim with the client. Either the client or the lawyer may sign it.</li> <li>.8 Sign the lawyer’s certificates, required under <i>FLA</i>, ss. 8(2) and 197(1) and <i>Divorce Act</i>, s. 7.7 at the bottom of the appropriate SCFR form (F1, F3, F4, or F5). Have the client acknowledge in writing that there is no possibility of reconciliation.</li> </ul>					



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<p>.9 If spouses are separately represented in a joint family law case, ensure that the other spouse’s lawyer also signs the lawyer’s certificates.</p> <p>2.4 If seeking to protect an interest in real property (registered in the name of the client, spouse, or another party):</p> <p>.1 Include in the notice of family claim a claim for a certificate of pending litigation (“CPL”).</p> <p>.2 Prepare and register the CPL with (or immediately after filing) the notice of family claim. The claim can be filed without filing an original marriage certificate where a divorce is sought in an urgent situation, although the marriage certificate must be filed before seeking an order for divorce (SCFR Rule 4-5(2)). Note the CPL must be filed in the Supreme Court and in the Land Title Office.</p> <p>2.5 File the original notice of family claim (with copies) in the registry along with payment of the filing fee, if any. (Note SCFR Rules, Appendix C, Schedule 1, s. 2(2). Complete Form F100 to waive fees if the parties attended mediation prior to filing.) File the Government of Canada “Registration of Divorce Proceeding” form (the schedule in the Central Registry of Divorce Proceedings Regulations, SOR/86-600 under the <i>Divorce Act</i>) and the marriage certificate or certified copy of registration of marriage (if unable to obtain either of the latter items, see SCFR Rule 4-5(2)).</p> <p>2.6 Serve notice of family claim (if not a joint family law case):</p> <p>.1 Serve every respondent personally by leaving a filed copy of the notice of family claim, as issued, with them (SCFR Rules 4-1(2) and 6-3(2)); this applies where the party is a minor of 16 or over who is acting without a litigation guardian (SCFR Rule 20-2(1)). For infants under 16, see SCFR Rule 6-3(2)(f). For mentally incompetent persons, see SCFR Rule 6-3(2)(g).</p> <p>.2 The claimant must not serve the notice of family claim (SCFR Rule 6-3(2)(a)).</p> <p>.3 Ensure that an affidavit of personal service is completed (SCFR Rule 6-6(1) and Form F15) and shows the means by which the affiant identified the person served (note that service is deemed if the respondent files a response to family claim; see SCFR Rule 6-6(1)(a)(ii)). If the affidavit of personal service does not have a photograph as an exhibit, it is insufficient for the server to affirm that the person admitted to being the proper person. There must be something further, such as production of a driver’s licence, although personal knowledge can be sufficient. If relying on a photograph, a second affidavit may be required providing evidence of personal knowledge of the identity of the individual in the photograph.</p> <p>.4 Where personal service cannot be effected, seek an order for alternative service under SCFR Rule 6-4. Note that service must be completed within one year, or an extension must be sought (SCFR Rule 4-2).</p> <p>.5 Diarize limitation period for response: 30 days after service of the notice of family claim (SCFR Rule 4-3(1)).</p> <p>.6 Diarize date for providing financial statement in Form F8, if applicable: 30 days from service of Form F3 (SCFR Rule 5-1(11)).</p> <p>.7 Diarize date for providing list of documents in Form F20: 35 days after service of Form F4 (SCFR Rule 9-1(1)).</p>					

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<p>2.7 Notice of an agreement between spouses that relates to land (or a notice cancelling or postponing it) may be filed in the Land Title Office under <i>FLA</i>, s. 99:</p> <ul style="list-style-type: none"> <li>.1 Prepare a notice in the prescribed form and set out the full name and last known address of each spouse who is a party to the agreement, a description of the land to which the agreement relates, and the provisions of the agreement that relate to the land. File the notice in the Land Title Office for the district in which the land described in the notice is located.</li> <li>.2 If seeking to cancel or postpone a notice, and the spouse or former spouse cannot be found after a reasonable search, unreasonably refuses to sign or file a cancellation notice, or is mentally incompetent, apply to the court (<i>FLA</i>, s. 101).</li> </ul> <p>2.8 A financing statement may be registered in the personal property registry (or registration may be discharged, or postponed) where a provision in an agreement between spouses relates to a manufactured home (<i>FLA</i>, s. 100):</p> <ul style="list-style-type: none"> <li>.1 Prepare a financing statement (or, if seeking to discharge or postpone a previous registration, prepare a financing change statement) in the prescribed form under the <i>Personal Property Security Act</i> (<i>FLA</i>, s. 100(3)), and submit it for registration at the personal property registry with the prescribed fees (<i>Personal Property Security Act</i>, s. 43).</li> <li>.2 If seeking to change a registration, and the spouse or former spouse cannot be found after a reasonable search, unreasonably refuses to register a change statement, or is mentally incompetent, apply to the court (<i>FLA</i>, s. 101).</li> </ul> <p>2.9 If applying to enforce orders for decision-making responsibility, parenting time, or parenting arrangements, set out in a written agreement pursuant to <i>FLA</i>, s. 44(3) or 148(2), file with the court signed copies of the written agreement (using Form F17.2 under SCFR Rule 2-1.1(3)) and, if required, consents, before making the application to enforce.</p> <p>2.10 Consider whether expert evidence will be required (see item 6.15 of this checklist). Review the requirements of SCFR Rules, Part 13. Diarize dates.</p>					
<p><b>3. RESPONSE TO FAMILY CLAIM AND COUNTERCLAIM</b></p>					
<p>3.1 Consider contents of response to family claim and counterclaim.</p> <ul style="list-style-type: none"> <li>.1 If opposing the notice of family claim, file a response to family claim in Form F4 and serve a copy on the claimant or claimant’s lawyer within 30 days (SCFR Rule 4-3(1)). Service may be by ordinary service pursuant to SCFR Rule 6-2(1).</li> <li>.2 If the respondent is seeking an order that the Supreme Court of B.C. does not have jurisdiction over the respondent or matters set out in the notice of family claim, the respondent may file a jurisdictional response in Form F78 and proceed in accordance with SCFR Rule 18-2.</li> <li>.3 If seeking relief other than dismissal of the proceeding and costs, file a response to family claim and a counterclaim in Forms F4 and F5 and serve copies on the claimant or the claimant’s lawyer within the time period set out in SCFR Rules 4-3(1) and 4-4(2). Note that the respondent may seek relief under the <i>FLA</i> or the <i>Divorce Act</i> in a counterclaim, even if the claimant did not seek the same relief.</li> </ul>					

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<p>.4 If seeking relief against the claimant and a person (corporation or other party) who is not already a party to the action, join that person as a respondent to counterclaim (SCFR Rule 4-4(3)). The respondent by counterclaim must be served with a copy of the counterclaim and with a copy of the notice of family claim in accordance with SCFR Rule 4-4(4).</p> <p>3.2 If opposing a counterclaim, the claimant (respondent by counterclaim) must file a response to counterclaim in Form F6, within 30 days after being served with the counterclaim (SCFR Rule 4-4(5)).</p> <p>3.3 If the notice of family claim needs to be amended, ensure compliance with SCFR Rule 8-1 regarding leave, service, and response.</p> <p>3.4 Diarize the limitation period for receiving a response to counterclaim from the claimant and any other party named as a respondent to the counterclaim; it must be filed and served within 30 days after service of counterclaim (SCFR Rule 4-4(5)).</p> <p>3.5 Diarize the date for providing a financial statement in Form F8: for most proceedings, within 30 days of service of notice of family claim (see SCFR Rule 5-1(11)).</p> <p>3.6 Diarize the date for providing a list of documents: within 35 days of service of the applicable response under SCFR Rule 9-1(1).</p>					
<p><b>4. DISCOVERY PROCEDURES</b></p>					
<p>4.1 Prepare, file, and serve a financial statement in Form F8, if required (SCFR Rule 5-1(2) to (7) and (10)), and obtain applicable income documents from the client (SCFR Rule 5-1(9)). The claimant must file and serve a Form F8 and any applicable income documents within 30 days of serving the claim (SCFR Rule 5-1(11)(a)). Alternatively, if the parties are in agreement, prepare and file an agreement on income in Form F9 (SCFR Rule 5-1(8)). Review it carefully with the client before service.</p> <p>.1 Note that if a judicial case conference (“JCC”) is set, the parties must comply with the time limits specified in SCFR Rule 7-1(8) to (11); see item 5.4 in this checklist.</p> <p>4.2 Information in the Form F8 financial statement must be kept current (SCFR Rule 5-1(15)) and may need to be updated in advance of a trial or a hearing (SCFR Rule 5-1(18)).</p> <p>4.3 If the other party’s financial statement in Form F8 is not served, refer to SCFR Rule 5-1(28) for options for relief.</p> <p>4.4 Consider demanding particulars of a Form F8 (SCFR Rule 5-1(13)).</p> <p>4.5 Consider applying for an order to have the financial statement sealed (SCFR Rule 5-1(30)). Consider the requirement to maintain confidentiality even without an order (SCFR Rule 5-1(29)).</p> <p>4.6 Consider conducting a pre-trial examination of a witness under SCFR Rule 9-4 or an examination for discovery of a party under SCFR Rule 9-2(1).</p> <p>4.7 Serve a list of documents using Form F20 within 35 days of receiving a response to notice of family claim (SCFR Rule 9-1(1)).</p> <p>.1 A respondent must provide a list of documents as well, 35 days from service of the response (SCFR Rule 9-1(1)).</p>					

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<p>.2 Consider demands for additional documents from the other party (SCFR Rule 9-1(7) and (8)), and non-parties (SCFR Rule 9-1(15)).</p> <p>.3 If the other party’s list of documents appears incomplete or omits documents, consider demanding an amended list or, failing that, seeking a court order (see SCFR Rule 9-1(7), (8), and (10)).</p> <p>4.8 Consider conducting examinations for discovery.</p> <p>.1 Obtain instructions for setting dates convenient to opposing counsel.</p> <p>.2 Serve appointment in Form F21 at least seven days before the date for examinations for discovery and pay witness fees (see Appendix C, Schedule 3).</p> <p>.3 Note the restriction of discoveries to five hours except by consent or court order (SCFR Rule 9-2(2)).</p> <p>.4 Follow SCFR Rule 9-2(10) regarding the location of the examinations for discovery.</p> <p>.5 Ensure all relevant documents have been listed and that the lists are served prior to the examinations for discovery. See also SCFR Rule 9-2(15) regarding production.</p> <p>4.9 Consider interrogatories (SCFR Rule 9-3 and Form F22). Note interrogatories are now available only by consent or court order.</p> <p>4.10 Consider SCFR Rule 5-1(19) to (27) and the procedure for obtaining information from a business interest.</p>					
<p><b>5. JUDICIAL CASE CONFERENCE</b></p>					
<p>5.1 Consider whether a JCC is required and if so schedule the conference with court scheduling and file a Notice in Form F19 requesting a JCC (SCFR Rule 7-1(1) and (7)).</p> <p>5.2 If interim relief is required, consider whether application can be brought without a JCC (SCFR Rule 7-1(3)) if it:</p> <p>.1 Seeks interim relief for protection of property (<i>FLA</i>, s. 91);</p> <p>.2 Is by consent;</p> <p>.3 Is brought without notice (i.e., for matters of urgency);</p> <p>.4 Is an application to change a final order or an agreement; or</p> <p>.5 Is an application to change determination of a parenting coordinator.</p> <p>5.3 Consider whether to bring an application to seek interim relief without having a JCC (SCFR Rule 7-1(4) and (5)). The application is made by filing a requisition in Form F17 and a letter (SCFR Rule 7-1(5)).</p> <p>5.4 If a party has requested a JCC, the requesting party must give at least 30 days’ notice of the JCC to the other parties, together with the Form F8 financial statement and any other applicable income documents (SCFR Rule 7-1(8)).</p> <p>5.5 A party who has been served notice of a JCC must file and serve Form F8 at least seven days before the JCC (SCFR Rule 7-1(10) and (11)).</p> <p>5.6 Consider seeking consent orders or procedural directions at the JCC. Consider preparing a draft court order containing the relief sought. Explain to the client what can and cannot be done at a JCC (see SCFR Rule 7-1(15)).</p>					

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<ul style="list-style-type: none"> <li>.1 Be prepared to set a trial management conference date, trial date, and other dates, if necessary.</li> <li>.2 Obtain orders for further disclosure by a specified date.</li> </ul>					
<p><b>6. INTERIM RELIEF AND OTHER PRE-TRIAL PROCEEDINGS</b></p>					
<p>6.1 Consider an interim application for the following non-final orders and declarations:</p>					
<ul style="list-style-type: none"> <li>.1 Granting exclusive occupancy of the family residence (<i>FLA</i>, s. 90(2)(a)) or changing an order granting exclusive occupancy (<i>FLA</i>, s. 90(4)(b));</li> </ul>					
<ul style="list-style-type: none"> <li>.2 Granting exclusive use of all or part of the personal property at the family residence (<i>FLA</i>, s. 90(2)(b));</li> </ul>					
<ul style="list-style-type: none"> <li>.3 Postponing the rights of a spouse to apply for partition and sale, or to sell or otherwise dispose of or encumber property that is subject to a right of exclusive occupancy granted under s. 90(2) (<i>FLA</i>, s. 90(4)(a));</li> </ul>					
<ul style="list-style-type: none"> <li>.4 Preserving or delivering family assets or other property at issue (<i>FLA</i>, s. 91). Note the low threshold for obtaining such an order;</li> </ul>					
<ul style="list-style-type: none"> <li>.5 Preventing a spouse from entering premises while they are occupied by the other spouse or a child in the custody of that other spouse, where there is a risk of violence (<i>FLA</i>, s. 183(2) and (3)(a)(ii), and SCFR Rule 15-1(1)(d.1) and (2)). Note that under SCFR Rule 15-1(16.1), a protection order under <i>FLA</i>, s. 183 or a change of a protection order under s. 187 must be drawn up by the registrar unless the court otherwise orders;</li> </ul>					
<ul style="list-style-type: none"> <li>.6 Limiting or prohibiting communication between spouses (<i>FLA</i>, s. 183(3)(b), and SCFR Rule 15-1(1)(d.1) and (2)). Note that under SCFR Rule 15-1(16.1) such orders must be drawn up by the registrar unless the court otherwise orders;</li> </ul>					
<ul style="list-style-type: none"> <li>.7 Specifying parenting arrangements or restrictions (<i>FLA</i>, s. 45, 216, or 217, or <i>Divorce Act</i>, s. 16(2));</li> </ul>					
<ul style="list-style-type: none"> <li>.8 Providing child or spousal support (<i>FLA</i>, s. 149, 165, 216, or 217, or <i>Divorce Act</i>, ss. 15.1(2) and 15.2(2));</li> </ul>					
<ul style="list-style-type: none"> <li>.9 Preventing removal of the child from a geographical area (<i>FLA</i>, s. 64(1)), or from B.C. when there is concern that the other spouse might leave with the child (<i>FLA</i>, s. 64(2));</li> </ul>					
<ul style="list-style-type: none"> <li>.10 Investigating a matter of concern (e.g., <i>FLA</i>, s. 211) (assessment of the needs of a child, views of a child, or ability and willingness of a party to satisfy the needs of a child; recommendations for guardianship and parenting arrangements; or, if claiming under the <i>Divorce Act</i>, a report on decision-making responsibility and parenting time);</li> </ul>					
<ul style="list-style-type: none"> <li>.11 Interim distribution of property to fund family dispute resolution, proceedings under the <i>FLA</i>, or obtaining of evidence (including expert reports) (<i>FLA</i>, s. 89); or</li> </ul>					
<ul style="list-style-type: none"> <li>.12 Selling property (SCFR Rule 15-8, and <i>FLA</i>, s. 97(2)(d)).</li> </ul>					
<p>6.2 Prepare the notice of application and affidavit evidence (see SCFR Rules 10-4 and 10-5). Under SCFR Rule 10-6(3), the notice of application must:</p>					
<ul style="list-style-type: none"> <li>.1 Not exceed 10 pages in length (not including any draft order attached to it);</li> </ul>					
<ul style="list-style-type: none"> <li>.2 Set out the orders sought (or attach the draft);</li> </ul>					

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<p>.3 Briefly summarize the factual basis of the application;</p> <p>.4 Set out authority and argument in support of the orders sought;</p> <p>.5 List the affidavits and other documents to be relied upon;</p> <p>.6 Provide the applicant’s time estimate (if more than two hours, the date and time is fixed by the registrar (SCFR Rule 10-6(5)). Note: different court registries may have different practices for booking longer chambers applications. Check the Scheduling tab of the court website at <a href="http://www.bccourts.ca/supreme_court/scheduling">www.bccourts.ca/supreme_court/scheduling</a>);</p> <p>.7 Set out the date and time of the hearing;</p> <p>.8 Set out the place for hearing; and</p> <p>.9 Provide the data required in the appendix to the form.</p> <p>6.3 Serve each of the parties and persons who may be affected (SCFR Rule 10-6(6)):</p> <p>.1 Serve a copy of the filed notice of application.</p> <p>.2 Serve a copy of the filed version of each of the affidavits and documents referred to in the notice of application that have not already been served.</p> <p>.3 In a summary trial under SCFR Rule 11-3, serve any notice required under SCFR Rule 11-3(9) (SCFR Rule 10-6(6)(c)).</p> <p>6.4 Comply with the timelines in SCFR Rule 10-6 and prepare an application record in accordance with SCFR Rule 10-6(14).</p> <p>6.5 A desk order may be sought as an alternative if notice of the application is not required, or if the parties are seeking a consent order. Prepare a requisition, a draft order, and affidavit evidence in support of the application (see SCFR Rules 10-7 and 10-8).</p> <p>6.6 If making an application for interim support, ensure that a financial statement (Form F8) and attachments have been filed and served (and updated, if necessary; see SCFR Rule 5-1(18)).</p> <p>6.7 For an urgent matter, consider whether to seek short leave to have the application heard pursuant to SCFR Rule 10-9, using Form F17. Include an application under SCFR Rule 7-1(4) to be relieved of JCC requirement, if applicable. For an urgent matter or where there is good reason not to serve the other party in advance, consider making an application without notice (see SCFR Rule 10-9(6) to (8) and Form F75). Consider <i>BC Code</i> rule 5.1-1, commentary [6].</p> <p>6.8 If the court directs an inquiry to the registrar under SCFR Rule 18-1(1):</p> <p>.1 Take out an appointment with the registrar (Form F55), first checking that the proposed date is available to all parties, counsel, and the registrar. If a date can be agreed to by all parties, get the appointment stamped and serve it on all parties (SCFR Rule 18-1(6)). Diarize the date.</p> <p>.2 Arrange for a court reporter, if desired.</p> <p>.3 Prepare financial documentation.</p> <p>.4 Consider use of and subpoenas for witnesses.</p> <p>.5 Apply to court for confirmation or variation of the report and its recommendations (SCFR Rule 18-1(4)).</p>					

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<p>.6 If the court directed that the result of an inquiry be certified, request a certificate and file it, making the result binding on the parties (SCFR Rule 18-1(2), (8), and (9)).</p> <p>6.9 If the client needs immediate financial assistance pending the registrar’s hearing and confirmation of the registrar’s recommendations, consider bringing an application for “interim-interim” support by notice of application with an affidavit in support and a Form F8 financial statement, giving complete financial information about the applicant and any information respecting the financial circumstances of the opposing party.</p> <p>6.10 Consider whether to appeal an interim order.</p> <p>.1 Note the 14-day limitation period for filing notice of appeal in Form F98 from orders of a master, registrar, or special referee (SCFR Rules 18-3 and 22-7(8) to (11)), and the 30-day limitation period for appealing an order of a judge under <i>Divorce Act</i>, s. 21(3) or the <i>FLA</i> (see s. 14(1)(a) of the <i>Court of Appeal Act</i>, S.B.C. 2021, c. 6, and Court of Appeal Rules, B.C. Reg. 120/2022). An appeal from a Provincial Court order must be made within 40 days (<i>FLA</i>, s. 233).</p> <p>.2 Note that there is no stay pending appeal of custody, guardianship, time with children, or support orders under SCFR Rule 22-1(7), and orders generally under <i>FLA</i>, s. 234.</p> <p>.3 Leave to appeal will be required if the order is a limited appeal order, which includes interim orders and orders under <i>FLA</i>, s. 211 (<i>Court of Appeal Act</i>, ss. 15 and 31 and Court of Appeal Rules, s. 11).</p> <p>6.11 Unless a court otherwise orders, set a trial management conference at least 28 days before the trial date. Masters may conduct trial management conferences SCFR Rule 14-3(2)). Prepare (and file a trial brief in Form F45 at least seven days prior to the trial management conference, unless the court otherwise orders. Serve the trial brief on other parties. Attendance by parties and counsel is mandatory, subject to SCFR Rule 14-3(6). See also item 8.3.2 in this checklist.</p> <p>6.12 Consider seeking a judicial settlement conference, where appropriate (SCFR Rule 7-2).</p> <p>6.13 Make or respond to any offer(s) to settle (SCFR Rule 11-1):</p> <p>.1 Serve offer (see SCFR Rule 11-1(1)) before trial to trigger the application of SCFR Rule 11-1(4) and (5) to costs.</p> <p>.2 Consider whether to withdraw the offer before acceptance.</p> <p>.3 If in receipt of an offer, consider whether to accept.</p> <p>.4 Consider SCFR Rule 11-1(4), (5), and (6) regarding costs on acceptance of offer.</p> <p>.5 Where accepted, consider whether the court should be asked to incorporate an accepted offer into an order or to take it into account in determining costs (see SCFR Rule 11-1(6) for factors the court considers).</p> <p>.6 Where the offer is not accepted, do not disclose the offer to the court until judgment (SCFR Rule 11-1(2)); then consider whether the court should be asked to take it into account in determining costs (SCFR Rule 11-1(4), (5), and (6)).</p>					

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<p>6.14 Apply for a consent order, where appropriate, with the written consent of the person against whom the order is made (<i>FLA</i>, s. 219) with appropriate evidence in support (see SCFR Rules 15-1(11) and 10-7(2)).</p> <p>6.15 If relying on expert evidence at trial, comply with SCFR Rules 13-6 and 13-7. Diarize dates.</p> <p>.1 Consider whether expert evidence is required, well in advance of the trial and possibly at the outset of a family action, as orders may be made at a JCC, a trial management conference, or an interim application.</p> <p>.2 An expert report that is to be introduced at trial must be served on all parties at least 84 days before the trial date, along with a written notice that it is served pursuant to SCFR Rule 13-6. An expert report must include the certification required by SCFR Rule 13-2(2) and set out the information required in SCFR Rule 13-6(1).</p> <p>.3 A responding (i.e., rebuttal) report, if any, must be served at least 42 days before trial (SCFR Rule 13-6(4)) with a written notice that it is served under SCFR Rule 13-6. A responding report must include the certification required by SCFR Rule 13-2(2) and set out the information required in SCFR Rule 13-6(1).</p> <p>.4 Consider objecting to the other party’s expert report. An objection must be made at least 21 days before trial or the date of the trial management conference, whichever is earlier (SCFR Rule 13-6(10)).</p> <p>.5 An expert may attend and give evidence at trial if a demand to cross-examine the expert was made (SCFR Rule 13-7(3)). SCFR Rule 13-7(5) sets out further restrictions on expert testimony and SCFR Rule 13-7(6) sets out the court’s jurisdiction to dispense with the requirements of the Rule.</p> <p>.6 If an expert’s opinion changes in a material way, a supplementary report of an expert may be prepared as soon as practicable and served on other parties pursuant to SCFR Rule 13-6(5) and (6).</p> <p>.7 A person who is appointed by the court to prepare a parenting assessment under <i>FLA</i>, s. 211 must file a copy with the court and serve a filed copy on all parties at least 42 days before trial (SCFR Rule 13-1(1)(b)). That person does not attend at trial unless a party serves a notice to cross-examine in Form F43 on that person and all parties at least 28 days before the trial date (SCFR Rule 13-1(2)).</p> <p>.8 SCFR Rules 13-3 and 13-4 address jointly appointed experts and what parties must agree upon for the retainer of a joint expert. A joint expert report is mandatory if a party wishes to introduce certain expert evidence: (1) on any matter arising out of <i>FLA</i>, Parts 5 or 6; (2) on a claim for an interest in property based on unjust enrichment or trust claims; or (3) on a claim for compensation based on unjust enrichment (SCFR Rule 13-3(1)). For other non-financial issues, parties have a choice of retaining an expert solely or jointly (SCFR Rule 13-3(3)).</p> <p>.9 The parties must have a written joint retainer agreement with an expert who is jointly retained (see SCFR Rule 13-4(1) and (2)).</p>					



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<p>.10 If the parties cannot agree as to the terms of the joint retainer in SCFR Rule 13-4(1), either party may apply to court for an order (SCFR Rules 10-5 and 13-4(3)). It appears that this option is available at a JCC as well (SCFR Rule 7-1(15)(n), referring to SCFR Rule 14-3(9)). SCFR Rule 13-5 addresses the court’s ability to appoint an expert itself, if appropriate in light of considerations in SCFR Rule 13-5(5).</p> <p>.11 If a party wishes to introduce expert evidence on a financial issue as defined in SCFR Rule 13-3(1), and does not wish to rely on a joint expert, the party may apply to court for leave (see SCFR Rule 13-4(6) to (8)).</p> <p>.12 Advise the client to cooperate fully and make full and timely disclosure of all relevant information to the joint expert (SCFR Rule 13-4(9)).</p> <p>6.16 Consider the need for either (or both) a report on parenting or the views of the child, and apply for an order if the parties do not consent (<i>FLA</i>, ss. 37(2)(b) and 211).</p> <p>6.17 Keep financial information, including the financial statement, up to date (SCFR Rule 5-1(15) to (18)), and make ongoing production of documents (SCFR Rule 9-1). Document efforts to get timely disclosure from client.</p> <p>6.18 Deliver a notice to produce at least two days before trial (SCFR Rule 14-7(8)).</p> <p>6.19 Set the matter down for trial, filing the notice of trial, trial record, trial certificate, etc. Diarize relevant dates, including those set at a JCC.</p> <p>6.20 Consider delivery of notice to mediate, 90 days after the filing of the first response to family claim. Review Notice to Mediate (Family) Regulation, B.C. Reg. 296/2007; comply with requirements and diarize dates. The notice may be used up to 90 days before the trial date, unless otherwise ordered by the court.</p>					
<p><b>7. APPLICATION FOR DESK ORDER DIVORCE</b></p>					
<p>7.1 If bringing a joint family law case, or if the family claim is undefended, prepare documents for application for judgment (SCFR Rules 1-1(1) and 10-10(1) to (5)) and file the following:</p> <p>.1 Requisition setting out the nature of the relief sought (SCFR Rule 10-10(2)(a), Form F35).</p> <p>.2 Draft of the proposed order (SCFR Rule 10-10(2)(b); Form F52).</p> <p>.3 Proof of service of notice of family claim or counterclaim (not necessary if SCFR Rule 10-10(3) applies) (SCFR Rule 10-10(2)(e)).</p> <p>.4 Proof that the action is undefended (SCFR Rule 10-10(2)(c)).</p> <p>.5 Registrar’s certificate that pleadings and proceedings are in order (SCFR Rule 10-10(2)(d); Form F36).</p> <p>.6 Affidavit in Form F38 (SCFR Rule 10-10(2)(g)), including:</p> <p>(a) Proof that will enable the court to comply with the <i>Divorce Act</i>, ss. 10 and 11 (SCFR Rule 10-10(4)):</p> <p>(i) A statement that there is no prospect of reconciliation; and</p>					

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<p>(ii) A statement that there is no child of the marriage (or, if there is a child of the marriage, proof that reasonable arrangements have been made for support of the child and that those arrangements comply with the Federal Child Support Guidelines. If there is a written agreement for support, consider attaching the agreement as an exhibit to this affidavit or the child support affidavit (Form F37)).</p> <p>(b) Proof of the ground for divorce. Where the proceeding is based on adultery, questions on interrogatories or discovery should include:</p> <p>(i) Whether the allegations of fact set out in the notice of family claim (and repeated to the respondent during discovery or in the interrogatories) are correct.</p> <p>(ii) Whether the respondent understands that adultery means sexual intercourse with another person who is not their spouse.</p> <p>(c) Whether, to the respondent’s knowledge, there has been collusion, connivance, or condonation (explained in plain language; see item 2.5 in the FAMILY PRACTICE INTERVIEW (D-1) checklist) in the presentation of the action.</p> <p>.7 Where an affidavit of a witness is relied on in corroboration or proof of an allegation of adultery or cruelty, it must be sworn on direct knowledge. Indicate the relationship of the deponent to the claimant, and describe the facts in the same detail as would be expected in <i>viva voce</i> evidence.</p> <p>.8 Child support affidavit, if appropriate, in Form F37 (SCFR Rule 10-10(2)(f)). If guardianship is being sought an affidavit in Form F101.</p> <p>7.2 Advise the client that the court may direct them to appear before the court, or direct that oral or further evidence be presented before making an order for divorce (SCFR Rule 10-10(5)).</p> <p>7.3 On obtaining the signed order, if being signed by opposing party or their counsel, submit it promptly for entry.</p> <p>7.4 Serve a copy of the entered order on the other party at the address for delivery or, if no address for delivery, mail a copy to the party’s last known address as soon as possible (SCFR Rule 15-2(4)).</p> <p>7.5 Send the client a copy of the order.</p> <p>7.6 Send the client Canada Pension Plan division information (see the Service Canada website at <a href="http://www.servicecanada.gc.ca">www.servicecanada.gc.ca</a>), unless there will be no division by agreement. Note that if there is to be no division of CPP credits, there is very specific wording required pursuant to the <i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8, s. 55.2(3).</p> <p>7.7 Advise the client that they cannot re-marry until the effective date of the divorce as set out in the <i>Divorce Act</i>, s. 12 (where no appeal, 31 days after judgment).</p> <p>7.8 Advise the client of the effect of dissolution of a spousal relationship on a will (<i>WESA</i>, s. 56(2)).</p> <p>7.9 Diarize and advise client of the 30-day limitation period for appeal (<i>Divorce Act</i>, s. 21(3), <i>Court of Appeal Act</i>, s. 15).</p> <p>7.10 Determine whether an appeal is desirable, and advise the client of possible outcomes. If so instructed, bring the appeal within 30 days of the order (<i>Divorce Act</i>, s. 21(3)). Refer to <i>Court of Appeal Act</i> and <i>Court of Appeal Rules (Divorce Act</i>, s. 21(6)).</p>					

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<p>7.11 Prepare certificate of divorce in Form F56 (<i>Divorce Act</i>, s. 12(7); SCFR Rule 15-2(3)). In the case of a divorce under s. 9 of the <i>Civil Marriage Act</i>, use Form F1.2 (SCFR Rule 2-2.1). Submit it for entry after the 31 days from the date the final order for divorce was made, and obtain the original certificate of divorce for the client.</p>					
<p><b>8. TRIAL</b></p>					
<p>8.1 Consider whether a summary trial (SCFR Rule 11-3) is appropriate. A summary trial application must be heard at least 42 days before the scheduled trial date. Comply with the requirements for evidence, notice of evidence, and service in SCFR Rule 11-3.</p>					
<p>8.2 Review pleadings to ensure no amendments are required. Parties have the right to one amendment without consent from the opposing party or the court prior to a trial date being set.</p>					
<p>8.3 Set the family law case for trial:</p>					
<p>.1 Obtain trial date from registry, first checking that the proposed date is available for all parties and counsel (SCFR Rule 14-2(2) and (3)). The trial date may also be set at the judicial case conference.</p>					
<p>.2 Attend a trial management conference at least 28 days before the trial date (SCFR Rule 14-3). A trial management conference is mandatory unless otherwise ordered (SCFR Rule 14-3(1)). Trial briefs must be filed at least seven days in advance of the conference (SCFR Rule 14-3(3)). Masters may conduct trial conferences (SCFR Rule 14-3(2)). Consider seeking orders under SCFR Rule 14-3(9).</p>					
<p>.3 Prepare and file the notice of trial in Form F44, the trial record (not more than 28 days and not less than 14 days before trial date), and the certificate (formerly registrar’s certificate of pleadings) in Form F36, if required (SCFR Rules 14-2(3) and 14-4(1), (3), and (5)).</p>					
<p>.4 Prepare any notice to admit and deliver to other parties of record (see Form F24 and SCFR Rule 9-6).</p>					
<p>.5 Serve copies of the notice of trial promptly after filing (SCFR Rule 14-2(5)) on all other parties of record. A party must object within 21 days if the party wishes the trial to be rescheduled (SCFR Rule 14-2(6)).</p>					
<p>.6 The party who files a notice of trial must prepare and file the trial record in accordance with SCFR Rule 14-4(1) at least 14 days but not more than 28 days before trial (SCFR Rule 14-4(3)) and serve it promptly on other parties of record.</p>					
<p>.7 Each party should prepare a trial certificate in Form F46 (SCFR Rule 14-5(1)) and file it at least 14 days but not more than 28 days before the scheduled trial date (SCFR Rule 14-5(1) and (2)). Serve the trial certificate promptly on the other parties of record (SCFR Rule 14-5(4)).</p>					
<p>.8 Update and serve the client’s financial statement (Form F8) between 28 and 63 days before trial and request an updated Form F8 from the other party (SCFR Rule 5-1(18)).</p>					
<p>8.4 Prepare the client for trial by discussing:</p>					
<p>.1 Who will attend and what will happen in the courtroom.</p>					

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<p>.2 The judge’s obligation to inquire into the prospect of reconciliation (<i>Divorce Act</i>, s. 10(1)) if a divorce is being sought.</p> <p>.3 Your direct examination of your client (including an explanation of terms such as collusion, connivance, and condonation, if a divorce is being sought), and questions on issues of corollary relief and all areas at issue in the proceedings.</p> <p>.4 Possible areas of cross-examination, with sample questions.</p> <p>.5 Discuss costs and obtain a retainer for preparation and trial. Confirm in writing that the engagement does not cover any appeal.</p> <p>8.5 Prepare other witnesses for trial. Consider obtaining signed witness statements.</p> <p>8.6 Trial.</p> <p>See also <i>British Columbia Civil Trial Handbook</i>, 6th ed. (CLEBC, 2021).</p> <p>.1 For a divorce:</p> <p>(a) Ensure that the judge’s obligation to inquire into the prospect of reconciliation (<i>Divorce Act</i>, s. 10(1)) has been met through testimony.</p> <p>(b) Produce a photograph of the respondent (attached to the affidavit of personal service), have the claimant identify it, and have it entered as an exhibit. If the matter was contested or a response to family claim or counterclaim was filed, this should not be required.</p> <p>(c) Conduct examination in chief, going through the notice of family claim and being sure to cover the grounds for divorce. For a divorce, be aware of the court’s duties under <i>Divorce Act</i>, s. 11, and SCFR Rule 15-2(1) to satisfy itself of certain things and to refuse an order in certain circumstances.</p> <p>(d) In appropriate circumstances, request that the divorce take effect before the expiry of the 31-day period (<i>Divorce Act</i>, s. 12(2)):</p> <p>(i) Show that it is in the public interest (e.g., pregnancy).</p> <p>(ii) Get an undertaking that there will be no appeal.</p> <p>(e) Have the client confirm the accuracy of the particulars of marriage set out in the marriage certificate.</p> <p>.2 For all other relief:</p> <p>(a) Lead evidence through witnesses and documents to support all claims.</p> <p>(b) Tender expert report where appropriate (custody issues, valuation).</p>					
<p><b>9. AFTER JUDGMENT</b></p> <p>The following is subject to the terms of any order or agreement:</p> <p>9.1 Prepare draft order for entry.</p> <p>9.2 Arrange for discharge of any mortgages and removal of any liens.</p> <p>9.3 Have the client sign a listing agreement for real property, if appropriate, and diarize its expiry date.</p> <p>9.4 If not already done, either handle or advise client regarding:</p> <p>.1 Transfer of real property/timing of release of CPL.</p>					

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<p>.2 Transfer of automobile.</p> <p>.3 Stock transfers/RRSP transfers/pension division or waiver forms and administration fees.</p> <p>.4 Bank account changes.</p> <p>.5 Credit card changes.</p> <p>.6 Insurance, RRSP, or pension beneficiary changes.</p> <p>.7 Assignment of interest in limited partnership or other company, corporate resolutions, etc.</p> <p>.8 Obtaining client’s own medical insurance.</p> <p>.9 Share transfers with resignations as an officer or director, as appropriate.</p> <p>.10 Name change (pursuant to the <i>Name Act</i>, s. 5) (unless it was already sought as part of the divorce order).</p> <p>.11 Implementation of parenting arrangements, including appointment of parenting coordinator, if applicable.</p> <p>.12 Implementation of arrangements for paying support (e.g., Family Maintenance Enforcement Program).</p> <p>9.5 Make necessary arrangement for payments through court registry, if so instructed.</p> <p>9.6 Advise regarding the client’s will, particularly the effect of <i>WESA</i>, s. 56(2). Also consider powers of attorney and representation agreements. Refer the client to a wills and estates lawyer to draft a new will, or if you are a wills and estates lawyer, draft a new will, if instructed.</p> <p>9.7 Consider enforcement. Note that the <i>FLA</i> significantly changes the methods of enforcement. The <i>Offence Act</i>, ss. 4 and 5 is inapplicable to the <i>FLA</i> (see <i>FLA</i>, s. 232). Some orders have specified enforcement mechanisms. If no specific enforcement mechanisms are provided, the general mechanism in <i>FLA</i>, s. 230 applies. Extraordinary remedies under <i>FLA</i>, s. 231 are available for all orders except protection orders, the remedies for which are under the <i>Criminal Code</i> (<i>FLA</i>, ss. 188 and 189).</p> <p>.1 General enforcement under the <i>FLA</i> is available where no other provision of the <i>FLA</i> is applicable to enforce an order (<i>FLA</i>, s. 230(1)):</p> <p>(a) Security may be required, in any form (<i>FLA</i>, s. 230(2)(a));</p> <p>(b) A party may be ordered to pay the other party’s expenses that were reasonably incurred from the party’s non-compliance (<i>FLA</i>, s. 230(2)(b)(i)); or</p> <p>(c) A party may be ordered to pay up to \$5,000 to another party, spouse, or child affected by the party’s non-compliance (<i>FLA</i>, s. 230(2)(b)(ii)).</p> <p>(d) A party may be ordered to pay a fine not exceeding \$5,000 (<i>FLA</i>, s. 230(2)(b)(iii)).</p> <p>.2 Extraordinary enforcement under the <i>FLA</i> includes imprisonment for up to 30 days (<i>FLA</i>, s. 231((2)), but:</p> <p>(a) the court must be satisfied that no other remedy will secure compliance (<i>FLA</i>, s. 231(1)(b));</p>					

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<p>(b) the party must be given an opportunity to explain their non-compliance (<i>FLA</i>, s. 231(3)(a)); and</p> <p>(c) imprisonment does not discharge an obligation existing under the breached order (<i>FLA</i>, s. 231(3)(c)).</p> <p>.3 Advise the client regarding methods of enforcement, such as:</p> <p>(a) Enforcement of a maintenance order through the <i>Family Maintenance Enforcement Act</i>, R.S.B.C. 1996, c. 127 (“<i>FMEA</i>”), which may include the use of a payment conference (<i>FMEA</i>, s. 12.1), a notice of attachment (<i>FMEA</i>, s. 15), garnishment (<i>FMEA</i>, s. 18), a default hearing (<i>FMEA</i>, s. 21), committal hearing (<i>FMEA</i>, s. 23), registration in the Land Title Office (<i>FMEA</i>, s. 26), a lien registered against the debtor’s personal property (<i>FMEA</i>, s. 26.1), a warrant of execution (<i>FMEA</i>, s. 27), a notice to ICBC to not issue or renew the debtor’s driver’s licence (<i>FMEA</i>, s. 29.1), a restraining order (<i>FMEA</i>, s. 30), an order requiring security (<i>FMEA</i>, s. 30.1), or arrest of the absconding debtor (<i>FMEA</i>, s. 31).</p> <p>(b) Enforcement of parenting orders in reciprocating jurisdictions.</p> <p>(c) Enforcement of decision-making or parenting time orders through Provincial Court (<i>FLA</i>, s. 195; PCFR Rule 134(b)).</p> <p>(d) Enforcement of an order where parenting time or contact has been wrongfully denied through apprehension of the child (<i>FLA</i>, s. 231(4) and (5)).</p> <p>(e) Enforcement of parenting orders pursuant to the <i>Hague Convention on the Civil Aspects of International Child Abduction</i> (<i>FLA</i>, s. 80).</p>					
<p><b>10. VARIATION PROCEEDING</b></p> <p>10.1 Ensure that the B.C. Supreme Court has jurisdiction (<i>Divorce Act</i>, s. 5, <i>FLA</i>, ss. 60, 192, and 215). With respect to support, see the <i>Interjurisdictional Support Orders Act</i>, S.B.C. 2002, c. 29.</p> <p>10.2 Determine the types of variation to be sought:</p> <p>.1 Support for a former spouse or children of the marriage (<i>Divorce Act</i>, s. 17(1)(a); <i>FLA</i>, ss. 152 and 167).</p> <p>.2 Decision-making or parenting time (<i>Divorce Act</i>, s. 17(1)(b)); parenting arrangements and contact (<i>FLA</i>, ss. 47 and 60).</p> <p>10.3 Where variation of a decision-making order made under the <i>Divorce Act</i> is sought by a person other than a former spouse, obtain leave to bring application (<i>Divorce Act</i>, s. 17(2); see SCFR Rule 3-1(2.2) and (3) for procedure).</p> <p>10.4 Ensure there are grounds for variation (<i>Divorce Act</i>, s. 17(4), (4.1), (5) and (10); <i>FLA</i>, ss. 47, 60, 152, and 167; Federal Child Support Guidelines, s. 14, as adopted and amended by the Family Law Act Regulation, Part 4).</p> <p>10.5 Draft documents:</p> <p>.1 If there is no existing family law case in B.C. Supreme Court, consider procedural options: filing an agreement (<i>FLA</i>, ss. 44(3) and 148(2)); filing a charge (<i>FLA</i>, s. 99 and 100); starting a proceeding (SCFR Rules 3-1(1) to (4), and 4-1(1)); petition under SCFR Rule 17-1(2); <i>Interjurisdictional Support Orders Act</i>.</p>					

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<p>.2 Where an order was made by the British Columbia Supreme Court, prepare a notice of application in that proceeding (SCFR Rule 3-1(4)).</p> <p>.3 Prepare the applicant’s affidavit and other affidavits in support, taking account of factors the court must consider under the <i>Divorce Act</i>, s. 17(4) to (10); <i>FLA</i>, ss. 47, 60, 152 and 167; and the Child Support Guidelines, s. 14).</p> <p>.4 Review affidavits with affiants, and have them sworn or affirmed.</p> <p>.5 Have client complete the financial statement (Form F8).</p> <p>.6 Comply with the requirements of SCFR Rules 10-5 and 10-6 (i.e., serve notice of application in Form F31, application record, affidavits in support, etc.).</p> <p>10.6 File documents in court, along with filing fee, if required.</p> <p>10.7 Serve a copy of the notice of application or petition, together with copies of affidavits in support. The court may make a provisional variation order in respect of a support order without notice to, and in the absence of, a respondent who is ordinarily resident in another province (<i>Divorce Act</i>, s. 18(2); SCFR Rule 15-3(1)); see the <i>Interjurisdictional Support Orders Act</i> for registration of support orders made under provincial jurisdiction.</p> <p>10.8 Attend the hearing and advise the client of the outcome. Have the client attend the hearing, if possible. If the court directs an inquiry to the registrar under SCFR Rule 18-1, see item 6.8 of this checklist.</p> <p>10.9 Draft and enter the order (SCFR Rule 15-1).</p> <p>10.10 Send the client a copy of the entered order and serve it on other parties.</p> <p>10.11 If a provisional order has been remitted back to British Columbia for further evidence, prepare and submit such further evidence (<i>Divorce Act</i>, s. 18(5) and (6)).</p>					
<p><b>11. PROCEEDINGS IN PROVINCIAL COURT</b></p>					
<p>11.1 Consider the jurisdiction of the Provincial Court under <i>FLA</i>, ss. 193, 194, and 195.</p>					
<p>11.2 Prepare application (PCFR Rule 24 and Form 3). Ensure that all claims for relief are set out, and review the application with the client. Note the requirements for filing in early resolution registries.</p>					
<p>11.3 Prepare a financial statement in Form 4 and supporting material, if required (PCFR Rule 25).</p>					
<p>11.4 Serve the application on the respondent personally as set out in PCFR Rule 27. Service must be by an adult person other than the applicant.</p>					
<p>11.5 The respondent must file a reply in Form 6, and, if applicable, a financial statement in Form 4, and supporting material (PCFR Rule 28). In the reply, the respondent may include a counterapplication (PCFR Rule 30).</p>					
<p>11.6 If in a family justice registry (as defined in PCFR, Rule 1(2)), obtain referral to a family justice counsellor before setting a date for a first appearance before a judge. Consider whether to seek an exemption from the referral in urgent and special circumstances (PCFR Rule 5(8)). After meeting with a family justice counsellor, ask to appear before a judge (PCFR Rule 5(5)) and complete a referral request in Form 6.</p>					

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<p>11.7 If planning to file an application in an early resolution registry (Surrey and Victoria), an applicant must file and provide a copy to each party a notice to resolve in Form 1, participate in a needs assessment under PCFR Rule 16, complete a parenting education program under PCFR Rule 17, and participate in at least one consensual dispute resolution session under PCFR Rule 18 (PCFR Rule 10). Before filing a reply under PCFR Rule 28, these requirements also apply (PCFR Rule 11). PCFR Rules 12 and 13 contain exemptions from these requirements.</p> <p>11.8 Before attending a family management conference in a family justice registry (defined in PCFR Rule 6(b) as Kelowna, Nanaimo, and Vancouver (Robson Square)), each party must participate in a needs assessment under PCFR Rule 93 and complete a parenting education program under PCFR Rule 94 (PCFR Rule 89). In a parenting education program registry (defined in PCFR Rule 6(c) as all registries, except early resolution registries and family justice registries), each party must complete a parenting education program, unless exempted (PCFR Rule 100).</p> <p>11.9 Schedule and prepare for family management conference (PCFR Rules, Part 4). Consider any interim orders or consent orders to seek (PCFR Rule 51).</p> <p>11.10 Consider seeking case management orders under PCFR Rule 62 or 63. An application for a case management order and any supporting evidence or documents must be filed and served at least seven days before the court appearance (PCFR Rule 64).</p> <p>11.11 If making applications for protection orders, orders about priority parenting matters, orders about relocation, or orders by consent without a hearing, follow the procedures set out in PCFR Rules, Part 5.</p> <p>11.12 File and serve a trial readiness statement in Form 22 at least seven days before the trial preparation conference, if one is scheduled, and attend the conference (PCFR Rules 110 and 111).</p> <p>11.13 Prepare for trial and follow trial process requirements set out in PCFR Rules, Part 9.</p>					
<p><b>12. CLOSING THE FILE</b></p>					
<p>12.1 Prepare a reporting letter and account as soon as practicable after closing. Advise the client of any relevant limitation periods, such as for division of credits under the Canada Pension Plan. File notice of intention to act in person (SCFR Rule 21-4(1); Form F88), if appropriate in the circumstances.</p> <p>12.2 Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist and Practice Resources entitled “Closed Files: Retention and Disposition” and “Ownership of Documents in a Client’s File” at <a href="http://www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/">www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/</a>.</p>					