



# BRITISH COLUMBIA LAW INSTITUTE

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## PROJECT ON POTENTIAL UNDUE INFLUENCE: RECOMMENDED PRACTICES FOR WILLS PRACTITIONERS

### MEDIA RELEASE

## BCLI RELEASES RECOMMENDED PRACTICES GUIDE FOR LAWYERS AND NOTARIES CONCERNING UNDUE INFLUENCE RELATING TO WILLS

*for immediate release*

**Vancouver, 20 January 2012** — The British Columbia Law Institute (BCLI) has just published *Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide*. This guidebook helps lawyers and notaries recognize “red flags” suggesting undue influence when receiving instructions to prepare a will, and in preventing later challenges that could lead to a will being invalidated.

There are checklists, a flowchart, and an in depth review of the law of undue influence. The medical and psychological aspects of undue influence are also discussed.

“Undue influence” refers to a situation in which someone is forced into making a will or carrying out a property transaction against their own wishes.

A will is invalid if it results from undue influence. Proving undue influence is usually extremely difficult because the will-maker -now deceased, and the influencer are usually the only ones who are present when the influence happens. Section 52 of the B.C. *Wills, Estates and Succession Act*, which was passed in 2009 and is expected to come into force in the near future, will change the present law. If the will-maker is dependent on the influencer and a gift to the influencer is challenged, undue influence will be presumed. The influencer will then have to disprove undue influence. The new law will apply to the wills of anyone dying after Section 52 comes into force whenever the will was signed.

“The Guide is a very timely and useful resource for notaries and lawyers, who now more than ever before will need to be vigilant towards the possibility that their clients’ real intentions and wishes may have been overwhelmed by undue influence. Following the recommended practices in the Guide will enable lawyers and notaries to deal with potential undue influence situation tactfully, effectively, and ethically,” said Peter Ramsay, Q.C., Chair of the BCLI Board of Directors and of the interdisciplinary committee that developed the Guide. Ramsay emphasizes that while the Guide focuses on wills, the

recommended practices set out in it are also relevant when preparing powers of attorney, representation agreements, and other personal planning or property – related documents.

Development of the Guide by BCLI was made possible by financial support from the Notary Foundation and the Lawyers Insurance Fund.

The Guide can be found on the BCLI website at <http://www.bcli.org>.

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