

Navigating the jurisdictional, legal complexities of B.C. cross-border estate disputes

By **Paul Harden**

Law360 Canada (October 23, 2025, 12:02 PM EDT) -- In an increasingly global society, it is no longer uncommon for an individual to pass away owning property or financial assets or maintaining family ties across multiple countries. When a person's estate spans multiple jurisdictions, the administration and distribution process quickly becomes fraught with complexity.

Cross-border estate disputes are among the most challenging matters British Columbia estate litigators handle. They require resolving fundamental questions regarding jurisdiction, conflicts of law, probate recognition and the validity of foreign testamentary instruments. Successfully managing these cases demands a technical legal analysis grounded in B.C. law and careful coordination between counsel in different jurisdictions to achieve an efficient and equitable resolution.



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The growing reality of international estates in British Columbia



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British Columbia's diverse population and strong economic ties to global business mean that international estates are a common feature of contemporary practice. Many B.C. residents own vacation properties in the United States, investment accounts in Europe or real property interests in their country of origin. Upon death, each of these cross-border links can trigger legal processes in more than one jurisdiction.

A will may need to be probated in multiple countries, or local courts may be required to formally recognize a foreign grant of probate before asset transfer can occur. Further, disputes often arise when heirs in one country challenge the distribution of assets located in another, alleging lack of capacity, undue influence or a breach of fiduciary duty by an executor or estate administrator.

Determining jurisdiction and the doctrine of *lex situs*

The starting point in any cross-border estate matter is establishing which court possesses the

necessary jurisdiction over the deceased's assets. In B.C., this determination largely depends on where the deceased was "domiciled" at the time of death and the type of property involved.

The established conflicts of law principles maintain a crucial distinction:

- Immovable property (real estate) is typically governed by the law of the place where the property is physically situated, a doctrine known as *lex situs*.
- Movable property (bank accounts, investments, personal effects) is usually governed by the law of the deceased's domicile: the country they intended to be their permanent home.

This foundational distinction dictates that two or more sets of laws may govern a single estate, introducing a layer of complexity that must be addressed before the merits of any dispute can be considered.

Recognizing foreign grants and the use of resealing

When a testator dies, leaving a valid will that has already been probated in another country, the B.C.-based executor may seek to have that foreign grant "resealed" in B.C. Resealing gives the foreign executor the authority to manage and distribute local assets without requiring a new, full probate application.

Pursuant to Rule 25-6 of the *Supreme Court Civil Rules*, the Supreme Court of British Columbia has the discretion to reseal probate grants from certain recognized jurisdictions. However, a new probate application must be filed where the original grant was issued in a country not recognized by statute. This process typically requires the foreign executor to retain local counsel and provide certified copies of the foreign will, death certificate, probate documents and affidavits verifying the testator's domicile and the authenticity of the foreign proceedings.

Managing the risks of multiple wills

It has become increasingly common for individuals with international assets to execute multiple wills, each explicitly limited to governing property located in a specific jurisdiction (e.g., one for Canadian assets and another for assets in a foreign state). While this approach can simplify the administration process by potentially avoiding the need for resealing, it introduces new risks.

If the wills are not meticulously drafted, they may inadvertently revoke or override one another. Conflicting language, inconsistent asset lists or differing executor appointments can lead to overlapping authority and result in court challenges focused on determining which document constitutes the valid testamentary instrument. When such disputes arise, B.C. courts will interpret the wills according to local law, paying particular attention to the testator's intent and established domicile. This underscores the critical necessity of obtaining legal advice from practitioners familiar with the laws of each relevant jurisdiction when preparing or litigating multiple-will estates.

Cross-border wills variation claims under WESA

British Columbia's *Wills, Estates and Succession Act* (WESA) provides a statutory mechanism under s. 60 for spouses and children to challenge the distribution of an estate where the will fails to make adequate provision for their proper maintenance and support. When a will includes assets in multiple jurisdictions, the B.C. court's authority to vary the will is generally limited to the extent that the variation affects property located within B.C. Assets held abroad are governed by the succession law of the country where they are situated, creating a jurisdictional carve-out that must be carefully assessed.

Conflicts of law and the doctrine of comity

Cross-border estate disputes frequently require courts to determine which country's law should govern substantive issues, such as the will's validity, the testator's capacity and inheritance rights. B.C. courts apply established conflicts of law principles, guided by the tenets of fairness, predictability and international comity (mutual deference). The latter refers to the respect one jurisdiction grants

to the laws and judicial decisions of another.

B.C. courts will often recognize and enforce foreign judgments, provided they are consistent with natural justice, were rendered by a competent court and do not violate B.C. public policy. However, a court may refuse to recognize a foreign order if there is evidence of fraud, a lack of jurisdiction or procedural unfairness.

This process highlights the requirement to understand each country's distinct legal framework. A will validly executed in one country may fail to meet the formal requirements of another, and succession laws concerning forced heirship or community property may differ significantly from Canadian common law principles.

Common sources of cross-border litigation

Several recurring scenarios frequently give rise to litigation involving international estates:

Disputes over domicile: The question of a person's domicile at death is foundational, as it dictates which court has authority and which laws apply. Disagreements commonly arise when individuals divide their time between countries, maintain dual citizenship or relocate late in life without clearly abandoning a former residence.

Foreign assets and tax obligations: Even where asset ownership is undisputed, international estates are complicated by tax issues. Executors must navigate complex reporting obligations under various treaties, such as the Canada-U.S. tax treaty, especially since some countries impose inheritance or estate taxes that do not exist in Canada. Missteps can lead to double taxation or significant penalties.

Undue influence and misconduct: An executor appointed in one jurisdiction may have limited or no authority over assets in another country. Claims of misconduct or breach of fiduciary duty often surface when executors fail to disclose foreign holdings or act inconsistently with local court orders, prompting beneficiaries to seek their removal or replacement through the B.C. Supreme Court. Furthermore, when vulnerable testators have family connections abroad, cross-border relationships can heighten the risk of undue influence or financial manipulation.

Mitigating risk through proactive estate planning

While some conflicts may be unavoidable, many cross-border disputes can be prevented through comprehensive and proactive estate planning. A well-drafted plan should anticipate the implications of owning property or maintaining family ties in multiple countries.

Individuals with international connections must obtain legal advice in each relevant jurisdiction before preparing or signing a will. They should carefully assess whether multiple wills are appropriate, ensuring each document expressly limits its scope to assets within a specific country to prevent conflicts. It is also essential to confirm that appointed executors are capable of acting internationally and that detailed records of asset locations and title documents are maintained to assist with future administration.

By addressing these steps early, individuals can significantly reduce the risk of disputes and alleviate the burden on their loved ones. However, when disagreements or challenges arise, consulting early with an experienced estate litigator is paramount to coordinating proceedings and ensuring compliance with procedural requirements on both sides.

Paul Harden is a principal at Meridian Law Group in Vancouver and has extensive experience representing parties in estate litigation matters, including will challenges, variations and complex cross-border administration disputes. He also practises in the areas of general civil litigation, insurance law and personal injury law.

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