



## Emily L. Clough, TEP

Partner, Clark Wilson LLP

900 - 885 West Georgia St.  
Vancouver, BC, V6C 3H1, Canada

604 643 3164 | [eclough@cwilson.com](mailto:eclough@cwilson.com)

### Professional Profile and Curriculum Vitae

Emily Clough is a Partner in Clark Wilson LLP's Estates & Trusts group. Emily is the key contact for the Clark Wilson Elder Law practice. In 2020, Emily received the designation of TEP, as an experienced practitioner from the Society of Trust and Estate Practitioners. The TEP designation is internationally recognized and demonstrates expertise in the field of trusts and estates.

Emily advocates for clients as they deal with any type of incapacity or estate matter. She assists clients in preparing estate and personal plans, in administering the estates of a deceased, and in litigating any matter regarding estates and trusts.

Emily prepares both simple and complex estate planning documents for clients, including wills, powers of attorney, representation agreements, advance directives, trusts, alter ego trusts, joint partner trusts, and disability trusts.

Emily advocates on behalf of older adults and adults with cognitive impairment. She frequently acts as counsel in matters regarding adult guardianship, the *Patients Property Act*, the *Adult Guardianship Act*, and the *Mental Health Act*. She assists clients in navigating issues of elder abuse, including dealing with the Public Guardian and Trustee, the health authorities, the police, and the courts.

Emily assists executors and administrators in addressing all matters that may arise regarding the administration of an estate. She advises and represents clients in applying for probate, passing of accounts, seeking remuneration, and any other litigation matters that may arise.

In her litigation work, Emily has been lead counsel on cases at all levels of Court in British Columbia regarding

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estates, variations of wills, trustee duties, power of attorney duties and removal, elder abuse, and other related matters. She acted as counsel in cases that have set new law and precedents in British Columbia, including on wills variation and the incapacity to marry. Her cases have received national coverage by the Globe & Mail and the CBC.

Emily is the Chair of the Pro Bono Committee at Clark Wilson, coordinating the pro bono efforts of 90+ lawyers. She is a member of the Ethics Committee at Clark Wilson, providing lawyers at her firm with guidance on their obligations under the British Columbia Law Society Code of Professional Conduct.

Emily is a regular contributor and volunteer regarding estates, trusts and incapacity matters. She provides educational seminars to other lawyers for Continuing Legal Education British Columbia (CLEBC), the Trial Lawyers Association of British Columbia (TLABC), the Canadian Association of Gift Planners (CAGP), and other organizations. She volunteers to prepare estate planning documents for older adults on a pro bono basis. She regularly provides educational seminars to the staff and clients of the Alzheimer Society of British Columbia, including training their staff regarding estate planning matters.

Emily was nominated for the 2019 YWCA Women of Distinction Awards, recognizing that she is a leading elder law lawyer, has been counsel in landmark cases, and advocates for the rights and dignity of vulnerable adults. Emily has provided expert evidence in Australia regarding the British Columbia laws on estates.

In 2018, Emily was appointed by the Attorney General of British Columbia to the Board of Directors of the British Columbia Law Institute (BCLI). The BCLI carries out scholarly research, writing and analysis for law reform as the independent law reform agency in British Columbia. The BCLI is the parent body for the Canadian Centre for Elder Law, a national non-profit body dedicated to exploring the particular legal issues that affect older Canadians. In 2020, the Attorney General of British Columbia re-appointed Emily to the BCLI for a further 4-year term. Emily currently serves on the Executive Committee for the BCLI, and is a committee member on the Inclusive Investing project.

In 2020, Emily was appointed as the first President of Health Justice, a not-for-profit Society in British Columbia. Health Justice uses research, education, and advocacy to improve the laws and policies that govern coercive health care in BC. The current priority of Health Justice is to better support human rights in involuntary mental health and substance use care by reforming the British Columbia Mental Health

Emily strives towards constant education. She received the award as the top student in the Honours Program in her senior undergraduate year at Gonzaga University. At law school at the University of Victoria, she earned the prize in legal research and writing, published an article in a scholarly journal, and was an editor-in-chief of the scholarly legal review journal of the University of Victoria law school. She regularly attends conferences and educational seminars in British Columbia and globally, attending the Society of Trust and Estate Practitioners Global conferences in Amsterdam (2016) and in Vancouver (2018).

Prior to joining Clark Wilson, Emily was a partner at a regional downtown Vancouver law firm. She clerked at the British Columbia Supreme Court after completing law school at the University of Victoria.

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## Education and Call to Bar

- > Call to Bar: British Columbia, 2009
- > Judicial Law Clerk – Supreme Court of British Columbia, 2007-2008
- > Juris Doctor, University of Victoria, 2007. Award for Legal Research and Writing.
- > Bachelor of Arts (with Honours), Gonzaga University, 2001, *summa cum laude*

## Practice Areas

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Elder Law

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Estate Administration

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Estate & Trust Litigation

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Committeeship/Adult Guardianship

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Estate Planning

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## Reported Litigation Decisions

- > *Lougheed v Lougheed*, 2019 BCSC 290
- > *Winstanley v. Winstanley*, 2017 BCCA 265
- > *Dunn v. TD Canada Trust*, 2017 BCCA 90
- > *Devore-Thompson v. Poulain*, 2017 BCSC 1289
- > *Serban v. Serban*, 2016 BCSC 2419 and 2018 BCCA 166
- > *Windsor Gold Mining and Exploration Inc. v. Laprise*, 2015 BCSC 1843
- > *Sabey v. Rommel*, 2014 BCCA 360, leave to appeal to the Supreme Court of Canada refused, 2015 CanLII 16734
- > *Wilson v. Lougheed*, 2009 BCSC 1841, 2010 BCSC 1868, 2012 BCSC 1166
- > *Arpeg Holdings Ltd. v. Mathisen*, 2012 BCSC 1812
- > *McIntyre v. Richardson Estate*, 2012 BCSC 1347

## Involvement in Legal Community

- > BC Law Institute, Board of Directors, 2018 - present
- > Canadian Bar Association, Member

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- > Wills and Trusts section of the Canadian Bar Association, Member
- > Canadian Association of Gift Planners, Vancouver Roundtable Board, Former Member
- > Moot Court Judge, UBC Law School 1L moot, 2012-2019
- > Moot Court Judge, TRU Law School 1L moot, 2017
- > Seminar, Legal Research and Writing, TRU Law School, 2017

## Community Commitments

- > Inclusive Investing: Respecting the Rights of Vulnerable Investors through Supported Decision Making, Project by Canadian Centre for Elder Law, Committee Member (2018-2019)
- > Health Care Consent, Aging and Dementia: Mapping Law and Practice in British Columbia, Project by Canadian Centre for Elder Law, Contributor (2018)
- > Access Pro Bono Wills Clinic Project, Volunteer (2012-2019)
- > Educational programs of the Alzheimer Society of British Columbia, including public presentations and education for staff regarding personal and estate planning, Regular Contributor
- > Legal and Ethical Framework Advisory Committee, Law Foundation of British Columbia and Alzheimer Society of British Columbia, Advisory Committee Member
- > Prepared and revised written training manuals for the Alzheimer Society of British Columbia, training their staff regarding estate and personal planning
- > "Great Debate", fundraiser for the BCLI, Volunteer Debater (and two-time winner) (2010-2012)
- > Chronic Disease Self-Management 6-week course, University of Victoria, Program Leader and Trainer of the Leaders, <https://www.selfmanagementbc.ca/>
- > Victoria Crisis Line, Volunteer

## Seminars, Presentations, Papers

- > "Provincial Learning Event: Predatory Marriage", BCCRN (TELECAST) (April 21, 2020)
- > "The Use of Joint Tenancies and Beneficiary Designations in Estate Planning" (seminar presented at CLEBC 2-day course *Basics of Wills and Estates Planning*, June 21, 2019)
- > "Elder Abuse in Today's World" (seminar presented at Collaborative Divorce Vancouver 2-day course *Older and Wiser: The Phenomenon of Grey Divorce, A Multi-Disciplinary Conference*, May 24, 2019)
- > "Working though the Dementia Journey: A Practical and Legal Toolkit" (seminar presented to Odum Brown, at the request of the Alzheimer Society of British Columbia, May 22, 2018)
- > "Children's issues in estates" (seminar presented for Canadian Bar Association British Columbia, Wills & Estates subsection, March 27, 2018)

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- > "Keeping the Litigators Out: Drafting Robust Family Law Agreements and Estate Plans" (seminar presented at TLABC Joint Family & Estates seminar: *Dysfunctional Families*, February 23, 2018)
- > "The Past, Present and Future of Common Law Test for Capacity to Marry" (seminar presented at Canadian Elder Law Conference – Day 2, November 3, 2017)
- > "FAQs on Wills and Estates" (seminar presented for Nidus Personal Planning Resource Centre and Registry, October 26, 2017)
- > "Contested Committeeships" (seminar presented to Fraser Valley Estate Planners Council, September 19, 2017)
- > "How to Develop a Wills and Estates Practice" (seminar presented at CLEBC course *Basics of Wills and Estate Planning 2017*, May 18, 2017)
- > "The Use of Joint Tenancies and Beneficiary Designations in Estate Planning" (seminar presented at CLEBC course *Basics of Wills and Estate Planning 2017*, May 18, 2017)
- > "Contested Committeeships – How Does the Court Determine What (or Who) is in the Patient's "Best Interests"?" (seminar presented for TLABC course *Essentials in Estate Litigation*, April 7, 2017)
- > "Estate Planning Considerations of Your Charitable Gift" (seminar presented to CAGP Vancouver branch, February 16, 2017)
- > Presentations to the Alzheimer Society of British Columbia on personal and estate planning (2010 – 2017)
- > "New Law, New Issues: End of life planning in a changing legal landscape" (seminar presented to Canadian Bar Association British Columbia Elder Law Subsection, regarding new federal legislation on Medical Assistance in Dying, August 30, 2016)
- > "End of Life issues" (CISL 650, July 5, 2016)
- > "Issues in Estate Planning" (seminar presented to Vancouver Foundation, April 27, 2016)
- > "Section 58 & 59 of WESA: A Practical Guide to Curing Deficiencies and Rectifying Mistakes" (seminar presented at CLEBC course *Estate Litigation Basics*, February 26, 2016)
- > "How to Develop a Wills and Estates Practice" (seminar presented at CLEBC course *Basics of Wills and Estate Planning*, January 19, 2015)
- > "Be Careful What You Wish For: End of Life Planning in a Shifting Legal Landscape (seminar presented for Canadian Bar Association British Columbia, July 18, 2015)
- > "Your Client Has Dementia – Now What? Ethics and Practice Tips to Minimize Risk" (seminar written, developed and taught for CLE-TV and the Alzheimer Society of British Columbia, June 23, 2015)
- > "*Wills, Estates and Succession Act*" (seminar presented to CAGP Vancouver branch, October 16, 2014)
- > "The Incapable Spouse" (seminar presented at CLEBC course WESA for *Family Law Lawyers*, October 17, 2014)
- > "Making your Workplace Dementia Friendly – information for Legal Professionals" (prepared and presented for Alzheimer Society of British Columbia, 2014)
- > "The Wills Variation Act – Update of Reported Decisions" (Estate Litigation – 2011 Update, CLEBC, November 2011)

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> "A Critique of Advance Directives and Advance Directives Legislation" (Appeal: Review of Current Law and Law Reform, Vol 11, 2006 CanLIIDocs 114, 2006)

## **Author/Editor**

- > *British Columbia Estate Planning & Wealth Preservation Practice Manual* (Contributing author, Chapter 7: Part IV Estate Planning and Family Law, CLEBC, 2018-present)
- > *Annotated Estates Practice* (Contributing author, CLEBC):
  - *Fraudulent Conveyance Act* annotations (2017 – present);
  - *Public Guardian and Trustee Act* annotations (2017 – present);
  - *Representation Agreement Act* annotations (2017 – present);
  - *Power of Attorney Act* (2014-2016)
  - *Civil Rules* (2014-2016)
- > *British Columbia Probate and Estate Administration Practice Manual* (Contributing author, CLEBC, 2011, 2019)
- > *Appeal: Review of Current Law and Law Reform* (Academic Journal, Editor-in Chief, University of Victoria Faculty of Law, 2007-2008)

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