

Uncertain Assets?

Contingent Assets under Matrimonial Property Law in Alberta

Prepared For: Legal Education Society of Alberta

Matrimonial Property Issues

Presented by:

Robert Harvie QC

Huckvale Wilde Harvie MacLennan LLP

Lethbridge, Alberta

For Presentation In:

Edmonton – November 14, 2013

Calgary – November 20, 2013

Uncertain Assets?

Contingent Assets under Matrimonial Property Law in Alberta

1. Introduction

What can one “*know*” about Family Law, other than it’s impossible to “*know*”?

No other area of law is more subjective in its application, nor more subject to change, both at the behest of the legislature and the judiciary, than is that of Family Law.

It is this variability which makes our job interesting – while at the same time, making it virtually impossible to “know”. Do you know what the law is regarding spousal support? Well, we thought we did with Pelech, Richardson and Caron didn’t we? I mean, damn, those decisions came from the big dogs, the Supreme Court of Canada themselves – once you read those cases, well, you “knew” spousal support law, didn’t you?

Until Moge, Bracklow, and Miglin came along.

Thus, to “know” Family Law, one would have to be a fortune teller. The best we can do is to explain where we are at today, and make some best estimates of where the law will be next week – because while family law generally is a somewhat nebulous beast – the law regarding the treatment of contingent assets is even more so.

Consider the “contingent asset”. What can we “know” about the contingent asset:

- a) We don’t know whether it will actually exist;
- b) We don’t know, if it does exist, when it will come into existence;
- c) Taking into account items (a) and (b) we have no clear ability to give it a value.

So, how, possibly, can the courts deal with that asset?

Well – our courts, particularly in the area of family law, rely heavily on concepts of equity – and as such, where they see potential value, there is a strong urge on the part of the courts to assure that such value does not escape due consideration.

And this paper will attempt to discuss and provide some guidance on how those equitable considerations may or may not come to bear upon the issue of **contingent assets**.

Keeping in mind that this area of law is in flux, and is still evolving, and as such, my comments and my guidance might be the stuff of Fortune Tellers, to some degree.

So.

With that said, I will take out my Ouija board, lay down my tarot cards, and then prognosticate – to the best of my ability, how a lawyer, in 2013, should treat the issue of contingent asset claims under the Matrimonial Property Act of Alberta.

2. What is a Contingent Asset?

First things first. What is a “**Contingent Asset**”?