

Case Law Review and Comments Re: Claims by Adult Interdependent Partners or Common-Law Spouses Against Estates

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CASE LAW REVIEW AND COMMENTS RE: CLAIMS BY ADULT INTERDEPENDENT PARTNERS OR COMMON-LAW SPOUSES AGAINST ESTATES

INTRODUCTION – “MY ADULT INTERDEPENDENT PARTNER HAS DIED: NOW WHAT?”

Prior to 1994, we estate lawyers often viewed our area of practice as separate and distinct from that of our colleagues practicing in family law. Then along came the *Tataryn v. Tataryn Estate* decision [1994] 2 S.C.R. 807. This Supreme Court of Canada decision set a new framework for assessing maintenance and support claims against an estate, under what we in Alberta used to know as the *Family Relief Act*, then the *Dependants Relief Act*, and what are now the Maintenance and Support provisions of the *Wills and Succession Act* (“WASA”).

Tataryn Estate tells us to look at the legal obligations that the deceased owed a claimant prior to death, and takes into account matrimonial property rights, if the deceased and the claimant were married, and spousal support, and asks what a claimant would have been entitled to had the parties separated prior to death. *Tataryn Estate* then examines the deceased’s moral obligations to the claimant, after assessing the legal obligations.

After *Tataryn Estate*, we as estate lawyers could no longer choose to remain blind to many family law issues. Instead, we have to understand matrimonial property claims, spousal support, and also support under the *Family Law Act*. With the proclamation of the *Adult Interdependent Relationships Act* of Alberta in 2003, and inclusion of adult interdependent partners as eligible claimants for maintenance and support under the WASA, we now also try to determine whether or not an individual and the deceased were adult interdependent partners. We deal with situations where one of the best witnesses has died, which poses its own challenges.

The following comments review recent Alberta claims against estates by adult interdependent partners or common-law spouses, with a view to what is unique in an estate context.

POSSIBLE CLAIMS AGAINST AN ESTATE BY AN ADULT INTERDEPENDENT PARTNER

Are you an Adult Interdependent Partner?

In the estate context, there is a very significant difference in the rights that an adult interdependent partner (“AIP”) has against their deceased partner’s estate versus a surviving partner who is a common-law spouse but has not met the criteria to be an AIP. This is because section 72 of the WASA includes an adult interdependent partner as one of the eligible “family members” who has a right to bring a claim for maintenance and support, if they are not left all of their deceased partner’s