

Family Maintenance and Support Claims

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Presented by:

Barbara Stratton QC

Bennett Jones LLP

Edmonton, Alberta

Prepared by:

Barbara Stratton QC, Renee M. Gagnon and Sarah J. Huot

Bennett Jones LLP

Edmonton, Alberta

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FAMILY MAINTENANCE AND SUPPORT CLAIMS

INTRODUCTION

This paper provides a review of family maintenance and support ("FMS") claims. In particular, this paper begins by reviewing the legislative framework for FMS claims and the leading cases that establish the key principles relevant to FMS claims. This paper then reviews the more recent cases in Alberta with respect to FMS claims and identifies any unique practice points that emerge from these cases.

OVERVIEW OF FAMILY MAINTENANCE AND SUPPORT

Why FMS

The purpose of FMS is to ensure that the family members of a deceased to whom the deceased owes a duty are adequately provided for by the deceased's estate.¹ FMS claims may be brought by qualifying family members of a deceased when they are of the view that the deceased did not adequately provide for them in his or her will or otherwise. One rationale for FMS is to prevent family members from becoming a charge on the state when they should be provided for by the deceased.²

The Applicable Legislation

Family Maintenance and Support Legislation

In Alberta, FMS legislation has existed in one form or another since 1910.³ The current *Wills and Succession Act* (the "WSA") applies to all cases wherein the deceased died on or after February 1, 2012.⁴

Section 88 of the WSA provides the Court with authority to make orders for proper maintenance and support:

88(1) If a person

(a) dies testate without making adequate provision in the person's will for the proper maintenance and support of a family member, or

¹ *Soule v Johansen Estate*, 2011 ABQB 403 at para 19.

² *Ibid* at para 21.

³ Some form of FMS legislation has been in force since the *Married Women's Relief Act*, RSA 1910, c 18 (2nd sess).

⁴ *Wills and Succession Act*, SA 2010, c W-12.2 at s 108 [WSA].

(b) dies either wholly or partly intestate and the share to which a family member is entitled under a will or Part 3 or both is inadequate for the proper maintenance and support of the family member,

the Court may, on application, order that any provision the Court considers adequate be made out of the deceased's estate for the proper maintenance and support of the family member.

(2) The order may be made in respect of one or more family members.

(3) The order may be made in respect of all or any part of the estate, and regardless of whether there is a will or intestacy.

(4) The order may limit or terminate any period of temporary possession or any right of a surviving spouse or adult interdependent partner under Division 1 if, and to the extent that, the Court considers the limitation or termination necessary to provide for the proper maintenance and support of another family member.

Section 93 of the WSA outlines the factors a court shall consider when hearing an application for maintenance and support:

93 In considering an application for the maintenance and support of a family member, the Court shall consider, as applicable,

(a) the nature and duration of the relationship between the family member and the deceased,

(b) the age and health of the family member,

(c) the family member's capacity to contribute to his or her own support, including any entitlement to support from another person,

(d) any legal obligation of the deceased or the deceased's estate to support any family member,

(e) the deceased's reasons for making or not making dispositions of property to the family member, including any written statement signed by the deceased in regard to the matter,

(f) any relevant agreement or waiver made between the deceased and the family member,

(g) the size, nature and distribution of

(i) the deceased's estate, and

(ii) any property or benefit that a family member or other person is entitled to receive by reason of the deceased's death,

(h) any property that the deceased, during life, placed in trust in favour of a person or transferred to a person, whether under an agreement or order or as a gift or otherwise, and