



Legal Education
Society of Alberta

62103.00

Contentious Matters in Wills and Estates

Edmonton, Alberta

Calgary, Alberta

Chair

Barbara J. Stratton QC

Bennett Jones LLP
Edmonton, Alberta

Faculty

Hon. Justice J.S. Little

Court of Queen's Bench of Alberta
Edmonton, Alberta

Hon. Justice C. Jones

Court of Queen's Bench of Alberta
Calgary, Alberta

Anne S. de Villars QC

De Villars Jones
Edmonton, Alberta

Barbara J. Kimmitt

Bennett Jones LLP
Calgary, Alberta

Jennifer R. Lamb

Carscallen LLP
Calgary, Alberta

Layne N. Thiessen

McLeod Law LLP
Calgary, Alberta

Françoise Belzil

Biamonte LLP
Edmonton, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2018, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2018. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-704-9
ISBN-13: 978-1-55093-704-6

Recent Alberta Surrogate Case Reviews

Contentious Matters in Wills and Estates

Written by:

Coleman Brinker

Student-at-Law

Court of Queen's Bench of Alberta

Edmonton, Alberta

For presentation by:

Hon. Justice J.S. Little

Court of Queen's Bench of Alberta

Edmonton, Alberta

For presentation in:

Edmonton, Alberta – November 7, 2018

Calgary, Alberta – November 15, 2018



Legal Education
Society of Alberta

RECENT ALBERTA SURROGATE CASE REVIEWS

Case Summaries	2
Rectification of a Will or Codicil	2
Re Edmunds Estate, 2017 ABQB 754, Jones J.....	2
Re Becker Estate, 2018 ABQB 360, Hughes J.....	2
Applying for Court Direction without Triggering a “No Contest Clause”	2
Re Anderson Estate, 2017 ABQB 422, Jones J (under appeal).....	2
Challenging a Will for Failing to Provide Proper Maintenance and Support	3
Karim v Hirji Estate, 2017 ABQB 526, Macklin J.....	3
Re Moore Estate, 2018 ABQB 614, Hunt McDonald J	3
Interpreting Ambiguous Terms and Determining Compensation for Executors/Personal Representatives of the Estate.....	4
Re Kachur Estate, 2017 ABQB 786, Nielsen J	4
Re Bruce Estate, 2017 ABQB 67, Poelman J.....	4
Re Berry, 2017 ABQB 77, Veit J.....	4
Re Horrasz Estate, 2018 ABQB 428, McCarthy J	5
Re Birkenbach Estate, 2018 ABQB 538, Mahoney J	5
Problems with Executors or Personal Representatives.....	5
Cormack v Indergaard, 2016 ABQB 544, Poelman J, aff’d 2018 ABCA 41.....	5
Adult Guardianships and Trusteeships	6
Perkins v Taylor, 2017 ABQB 312, Sullivan J.....	6
Re Resek, 2018 ABQB 497, Jeffrey J	6
Undue Influence and Lack of Capacity.....	6
Re Krackowski Estate, 2017 ABQB 175, Jones J	6
Re Kozak Estate, 2018 ABQB 185, Renke J	7
Re Shier Estate, 2018 ABQB 494, Jeffrey J	7
Failed Settlement Agreement and Minor Beneficiaries	7
Re Rodehuts Kors Estate, 2018 ABQB 562, Antonio J	7

CASE SUMMARIES

Rectification of a Will or Codicil

Re Edmunds Estate, 2017 ABQB 754, Jones J

In this case, the testatrix gave instructions to a paralegal to draft a new will that would leave her whole estate to her first husband's nephew. The will was prepared but never signed. Justice Jones refused to validate or rectify the unsigned will under s. 39 of the *Wills and Succession Act*, SA 2010, c W-12.2. The testatrix's death was not considered an "accident or omission" and there was no clear and convincing evidence that she had intended to sign the will, nor that her failure to do so arose through pure mistake or inadvertence (at paras 5, 45-57).

Re Becker Estate, 2018 ABQB 360, Hughes J

In *Re Becker Estate*, the two children of the deceased applied for rectification of the deceased's codicil to clarify whether, by leaving the residue of the estate to "my children," she intended for the residue to go only to them, or to be split between them and the deceased's grandchild (the son of a pre-deceased son). Justice Hughes rectified the codicil to make it clear that the deceased's intention was to divide her estate equally between the two children, and not to include her grandchild as a beneficiary. Justice Hughes reached this decision by considering evidence that the deceased was not close with her grandchild and had otherwise divided her property and made multiple statements to indicate her intention to leave her estate to her two children (at paras 26-31).

Applying for Court Direction without Triggering a "No Contest Clause"

Re Anderson Estate, 2017 ABQB 422, Jones J (under appeal)

In this case, Jones J. stated that a beneficiary of an estate may apply for advice and directions from the Court under rr. 4(1) and 57(o) of the *Surrogate Rules*, Alta Reg 130/1995, and that the Court may consider the application as a request for a declaration of right (at paras 2-4). At issue was a "No Contest Clause" in the testator's will that barred challenges to the testator's will and codicil but allowed applications "seeking to enforce or obtain any rights or benefits conferred by the law of the Province of Alberta." Justice Jones held that the beneficiary would not trigger the No Contest Clause – and thereby forfeit her entitlements in the will – by requesting that the Court direct the personal representatives of the estate to apply for formal proof of the testator's most recent will and codicil (at paras 24, 27). The beneficiary's ability to bring an application to obtain formal proof under r. 75(1)(a) of the *Surrogate Rules* was a "right conferred by the law of the Province of Alberta" (at para 31). Therefore, the No Contest Clause did not apply. Justice Jones also suggested that a provision in