



## Joint Ownership subject to dependant relief claim

It is often the case that insurance proceeds are subject to dependant relief claims. A claw back may be ordered by the court where an individual meets the definition as a dependant in financial need under provincial legislation. A recent Alberta case resulted in the court not only taking into consideration insurance proceeds paid but the interest of the survivor of jointly held property as well.

In *Young Estate (Re)*, 2014 ABQB 125 (CanLII), Lucielle Young was the beneficiary of a \$50,000 life insurance policy and an RRSP with a balance of \$50,000. She had been the spouse of Edward Young who died. Lucielle received no specific bequest under Edward's will but she was granted the right to remain in the matrimonial home for as long as she required the premises.

The matrimonial home was owned jointly between Edward and his mother Victoria. When Edward died his mother became the sole owner as surviving joint tenant.

Lucielle suffers from a muscular congenital muscle disease and she uses a scooter for mobility. At the time of her husband's death she was retired and completely financially dependant on him. Once Edward died she left the matrimonial home and moved to Ontario to be with family.

Lucielle had little savings or cash other than the insurance proceeds and RRSP balance left to her. Her monthly income was limited to CPP and OAS. At trial she made a claim for dependant relief. She provided evidence to the court that as she ages she will require more care because her health will continue to deteriorate.

The only substantial asset of the estate was the matrimonial home worth over \$300,000. It became the subject of the dependant relief claim made by Lucielle.

The court considered the provision of the Alberta Dependant Relief Act (the "Act") legislation. Under the Act a judge may order any provision that the judge considers adequate out of the estate of the deceased for proper maintenance and support of the dependant. The court also considered the leading Supreme Court of Canada decision of *Tataryn v. Tataryn Estate*, 1994 CanLII 51 (SCC). While *Tataryn* is a British Columbia case with differing dependant relief legislation that is less restrictive than Alberta, the Alberta court in this case did acknowledge the principals set out in *Tataryn*. It examined what is adequate goes beyond the bare necessities and must be measured against contemporary community standards. The extent to which all the legal and moral claims can be met will depend on the size of the estate.

The court identified a list of factors to consider guided by the principals set out in *Tataryn*. These included the life expectancy of the Lucielle, her medical condition, the duration of the marriage (20 years), her financial dependence upon Edward, her limited pension and assets, the monies already received by way of insurance and RRSP proceeds, the fact that Victoria was never Edward's dependant, and the size of Edward's estate.

Having considered all of these facts the court concluded that Lucielle's future care situation was of "overarching importance". The court rendered an unusual decision ordering that the jointly held property be transferred solely in the name of Lucielle. The rights of Victoria as surviving joint tenant were essentially terminated.

The case illustrates that the Alberta court is willing to take significant steps to ensure that a dependant's needs are met. The case provides a cautionary tale of making a client think very carefully about dependants when doing their estate plan.

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