

JOINT PROPERTY AVAILABLE TO FUND DEPENDENT'S RELIEF CLAIMS

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On March 5, 2014, the Alberta Court of Queen's Bench released the decision of Justice Belzil in *Re Young Estate*, 2014 ABQB 125. The decision concerned an Application under the *Dependent's Relief Act* (which was in force at the time of the deceased's death) by a spouse of the deceased. The decision is remarkable not in terms of the assessment of the Applicant's needs, but rather in the form of remedy that was granted to her.

The Applicant and the deceased were married on December 15, 1990, and had lived together for five years prior to their marriage. By the time the deceased died in June 2010, they had been in a relationship for over 25 years. Despite this, the only provision that the deceased made for the applicant was the ability to remain in the matrimonial home "for as long as she requires use of the premises." The matrimonial home was held in joint tenancy by the deceased and his 91 year old mother, who was the primary and residuary beneficiary of the rest of the deceased's estate under his will. It appears from the case that the only asset of any value in the estate was the matrimonial home, which was an acreage estimated to be worth approximately \$313,500. Outside of the estate, the applicant also receives a life insurance policy and an RRSP, each of which had a value of \$50,000.

At the time of her application, the Applicant was 68 years old and suffering from a congenital muscle disease which will progress to the point where she will require assisted living accommodations. At the time of her husband's death, the applicant had been fully retired for some time, and was "completely financially dependent" on him. By contrast, the deceased's mother had never been financially dependent on the deceased.

It is not a surprise that the Court found the deceased to have failed to make "adequate provision for the proper maintenance and support" of the applicant, under the terms of the *Dependent's Relief Act*. Justice Belzil explicitly stated that he found the applicant's future care requirements to be of "overarching importance". However, in order to remedy that failure, the Court ordered that the title to the matrimonial home should be transferred into the applicant's name, solely.

This can only be seen as a remarkable remedy, which completely ignores the interest of the deceased's mother who became the sole owner as the surviving joint tenant. Surely she was not expecting to lose all of her interest in the property that she had held jointly with her son. If there were extenuating circumstances, such as any nefarious motives by the deceased's mother, or any attempt to hide assets from the applicant in order to defeat her claim, they are not laid out in Justice Belzil's reasons. On the face of the judgment, it appears as though a perfectly valid, titled interest in real property was ignored in favour of a dependent's claim against an estate.

The case illustrates the primary importance of considering the needs of dependents in the course of estate planning. Lawyers in this practice area need to be aware of the lengths that the Court

will go to ensure that there are funds available for dependents, even if that means effecting the property of a third party.

No doubt the applicant in this case was a very sympathetic claimant, and the facts supporting her application cry out for a remedy. However, to order that title be transferred solely into her name, and completely remove the interest held by the deceased's mother, seems to signal that the Court will take extraordinary steps to provide for dependents who can establish their need for greater support. Clients who are preparing their estate plans need to understand that jointly held property is not safe or immune from a successful claim by a dependent.