Blood Rules on Intestacy: *Peters Estate (Re)* 2015 ABQB 168

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A recent case from the Alberta Court of Queen's Bench highlights the issues that can arise when someone makes plans or promises regarding their estate, yet fail to make a Will.

Promises carry little weight without an actual Will and laws of intestate succession will prevail. The end result can be harsh, especially in situations of second marriages with step-children, as was the case before this court. No matter how sympathetic the facts may be, blood relatives trump step-children on intestacy, even if those children were treated as the deceased's own. In other words, blood rules on intestacy.

Background

In ***Peters Estate (Re)*, 2015 ABQB 168** the facts are fairly straightforward and, for the most part, probably quite common: A single father of four daughters married for the second time. With his second wife, he had a son. While the wife never adopted her new husband's daughters, she treated them as her own and introduced them as her daughters. They were a family for 43 years until the husband died. At the time of the husband's death, the husband and wife were on the verge of bankruptcy. One of the daughters (the Applicant in this case) assisted in bringing about a successful conclusion to the bankruptcy for her step-mother. All five children decided to give up their interest in their father's estate so that the mother could benefit. After these events, according to the Applicant, the mother advised that her estate would be distributed amongst all five of the children accordingly. However, despite these assurances, the mother died without confirming these instructions in a Will and died intestate.

The Applicant brought an application, taking the position that all five children should inherit equally pursuant to the Alberta *Wills and Succession Act* S.A. 2010, c.W-12.2. However, the court disagreed and the Honorable Justice Jerke held that the biological son was the one and only beneficiary.

The Law

Section 65 of the *Wills and Succession Act* provides that if an individual dies leaving no surviving spouse (as was the case here) the intestate estate shall be distributed to the

"descendants" of the intestate and that where a distribution is made to "descendants" the intestate estate "shall be divided into as many shares as there are . . . children of that individual who survive the intestate".[1]

The *Wills and Succession Act* s.1(1) describes "descendants" as "lineal descendants". Justice Jerke referenced the definition in *Black's Law Dictionary* to determine that "lineal descendants" means only "*a blood relative in the direct line of descent – children, grandchildren and great grandchildren are lineal descendants*".[2] As the step-daughters were not blood relatives they were not lineal descendants. The son was the deceased's only blood relative, so he was her sole beneficiary.

The Applicant argued that section 68(b) in the *Act* should be applied. That section provides that: "*descendants of the half-kinship inherit equally with those of whole kinship in the same degree of relationship to the intestate*". The Applicant argued that the step-children should be treated as equal to the biological son because the father was the father to all five children, the mother stood in *loco parentis* to them, introduced them as her daughters and treated them in every respect as daughters, and their children as her grandchildren. Justice Jerke noted that while the deceased's treatment of them as daughters was "as it should be", it did not change the law.[3] They were not blood relatives, and blood trumps step-children at law.

Justice Jerke concluded the decision with the following warning:

"*This case is an example of the personal difficulties and harm to relationships which can occur when individuals do not have a will. The distribution of this modest estate has become an instrument with the potential to create, enhance or perpetuate ill will amongst five family members at a time when they should instead be benefiting from good memories of their mother and father*."[4]

Intestacy legislation is based on the assumption that most people would want to pass their estate to their kin and the next generation of their family. For the most part this is likely true. Nevertheless, situations arise where someone may feel closer to a non-relative or step-child than their own 'flesh and blood'. While it is important to have a Will in any case, it is ever so much more important where your wishes or intentions may conflict with the intestacy legislation in your jurisdiction. We have many similar such cases arising from our Succession Law Reform Act intestate succession legislation.

[1] 2015 ABQB 168 at para.7.
[2] 2015 ABQB 168 at para.10.
[3] 2015 ABQB 168 at para.16.
[4] 2015 ABQB 168 at para.20.