



Recent Developments in Dependent Support from Estates

Summer 2017

On December 5, 2016, the Ontario Legislature passed new legislation, called the *All Families Are Equal Act*, 2016 S.O. 2016, c.23 (Bill 28) ("the Act"). This new provincial Act, which came into effect on January 1, 2017, is a tremendous move forward for Ontario's diverse families.

The Act has amended a number of different acts, including the *Children's Law Reform Act*, the *Family Law Act* and the *Succession Law Reform Act*, by changing the rules of parentage, and expanding the definition of family. The Ontario government drafted Bill 28, which became the Act, to reflect the composition of the modern family. These new rules of parentage have been expanded to include children conceived through assisted reproduction and also changed the definition of birth parents to include same sex partners. Formerly, there were administrative hurdles for same sex parents in registering the birth of their children because the registration process was only set up for a mother and father.

The Act also amended the definitions of "child" and "spouse" in the *Succession Law Reform Act*. The definition of child has changed to include posthumously conceived children, the effect of which being that a posthumously conceived child could benefit from the Estate of a deceased parent. Under the *Succession Law*

Reform Act, children and spouses may bring a claim against the estate of a deceased if sufficient provision was not made for their support. There are a number of criteria that must be met before a judge will award a dependant support, including that the deceased was supporting, or had an actual obligation to pay support, immediately before death.

With the change of the definition of spouse under the Act, there was an inadvertent omission. Divorced spouses were excluded from the definition of "spouse" and were therefore barred from being able to bring a claim for dependant support, which they were previously allowed to do. This had a significant impact on the enforcement of the deceased's support obligations to their former spouse. [**Update: The 2017 Ontario Budget introduced the Stronger, Healthier Ontario Act (Budget Measures), 2017, S.O. 2017, c.8 to amend the definition of "spouse" to include divorced spouses for the purpose of dependant support. These changes received Royal Assent and came into effect on May 17, 2017. As it only came into effect on May 17, 2017, any dependant support claims that were brought by a former spouse against an Estate between January 1, 2017 and May 17, 2017, may not be allowed to proceed. We will have to wait to see how the court considers dependant support claims caught in this gap period.**]

The changes to the new Act mean that a posthumously conceived child could be taken into account when



considering whether adequate support has been afforded to the dependants of the deceased. Due to the newness of this amendment, the circumstances under which a posthumously conceived child would be considered by the court have not yet been determined.

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