



# Deadlines and Limitation Periods in Estates

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# Deadlines and Limitation Periods

## Election under the *Family Law Act (FLA)*

- Married spouses may choose to take under their surviving spouse's Will (or on intestacy if applicable), or seek an equalization of Net Family Property
- **6 months from date of death** to make an election
- If the election is not made within 6 months of death, the surviving spouse is deemed to have elected to take under the Will (or on intestacy), unless the deadline is extended

## Will Challenges

- Governed by the *Limitations Act*
- Typically **2 years from date of death** subject to the discoverability principle - *Leibel v Leibel*, 2014 ONSC 4516



# Deadlines and Limitation Periods



## Dependant's Support Claims

- Applications for dependant's support should be commenced within **6 months of probate**, unless the deadline is extended by the court
- May be greater flexibility where probate is never obtained and/or there are undistributed assets remaining in the estate

## Claims by Creditors

- Generally a limitation period of **2 years from date of death**, subject to the discoverability principle
- Potential exposure of estate trustees if distributions are made while there are outstanding claims by creditors
- Option of advertising for creditors

# Deadlines and Limitation Periods

## Executor's Year

- Generally, an estate trustee has **one year** to administer the estate before beneficiaries may have a legal entitlement to demand payment
- Begins from the date of death (may be date of probate where there is no will) and may be flexible depending on complexity of estate

## Rule of Convenience

- Where a will does not specify a time for payment of a legacy, interest will accrue after the Executor's Year has passed
- May apply even where the delay in the administration of the estate is attributable to the legatee – *Rivard v Morris*, 2018 ONCA 181



# Deadlines and Limitation Periods

## Posthumous Conception



In order to qualify as a “child” under the *Succession Law Reform Act*:

- the deceased’s spouse must notify the Estate Registrar in writing within **6 months of date of death** that they intend to use the deceased’s reproductive material to conceive a child;
- the posthumously-conceived child must be born within **3 years of date of death**; and
- the court must make declaration of parentage on application made **within 90 days of the child’s birth**, subject to an extension by the court.

# Dependant Support Claims

## WHO IS A DEPENDANT:

Dependant can be any of:

1. Spouse of the deceased – As defined by s. 29 of the *FLA*
2. Parent of the deceased – includes grandparents or an individual that has demonstrated an intent to treat the dependant as a child
3. Child of the deceased, including, in some circumstances, adult and posthumously-conceived children
4. Brother or sister of the deceased



The deceased must have been providing support or have been under a legal obligation to support the dependant immediately before death

# Dependant Support Claims



## THE APPLICATION

- Order for support can be sought where the deceased did not make adequate provision for support of a dependant
- Courts have great discretion in making an order for support: interim support, transfer of certain assets, periodic payments, or lump sums, etc.
- Section 72 of the *Succession Law Reform Act* and claw-back of assets passing outside of an estate

# Dependant Support Claims

## DETERMINATION OF AMOUNT

S. 62 (1) of the *SLRA* sets out criteria the court may consider in determining the amount and duration of support, including, but not limited to:

1. The dependant's current assets and means, including any they may acquire in the future;
2. The dependant's age, physical and mental health;
3. The dependant's accustomed standard of living and needs; and
4. The nature and proximity of the relationship with the deceased



Moral obligations may also be considered – *Cummings v Cummings*, 2004 CanLII 9339 (ONCA)