

**Alberta Justice
Succession Law Reform Stakeholder Consultation**

Summary of Input

October, 2009

Prepared by:



www.marcommworks.ca

TABLE OF CONTENTS

Introduction 2

Summary of Input..... 3

List of Questions:

 Technical Consultation..... 10

 Public Consultation 13

Note: *Copies of the Public Consultation and Technical Consultation Workbooks are available under separate cover.*

INTRODUCTION

The Government of Alberta through Alberta Justice has been reviewing provincial succession law reform with a view to consolidating and updating provincial statutes in Alberta. One phase of the Alberta Succession Law Reform project looked at issues related to the transfer of property upon death. For this phase, Alberta Justice decided to consult with both professionals and the general public to get their input and opinions.

Marcomm Works, an Edmonton consulting firm, was contracted in October 2008 to develop and implement a consultation program. The program enabled special interest groups, professionals in the field and interested members of the public to review and comment on Alberta Justice's presented options and to provide input on issues that required more deliberation before recommendations could be made.

Two workbooks were prepared; one for the public and one for lawyers, estate planners, accountants, representatives from the insurance industry and others with succession law expertise. The workbooks outlined succession law issues and helped stakeholders to understand proposed changes to legislation and to stimulate feedback. Matters involving technical points of law were added to the discussion with succession law experts. The public workbook and questions were posted on the Internet.

The consultations were held during March, April and May of 2009. In all cases, participants were provided with a consultation workbook and a set of questions to guide discussion and input. This report reflects the collective opinions, comments and suggestions gathered from a number of sources during the consultation including:

- Written submissions from individual Albertans, organizations and the legal community.
- Four focus groups with randomly selected Albertans in Calgary, Edmonton, Camrose and Medicine Hat. Half of the groups involved people 55 years of age or older; half involved adults 55 years of age or younger.
- An on-line survey posted from March 6 to May 15, 2009.
- Two public roundtable sessions in Edmonton and Calgary with representatives from provincial associations, seniors and Aboriginal groups and Non-Governmental Organizations (NGOs) who offer counselling or referral services to Albertans regarding wills or estates or succession planning.
- Six technical roundtable sessions in Edmonton, Calgary, Lethbridge and Grande Prairie with key subject matter experts in law, estate planning, accounting, and the insurance industries; In Lethbridge and Grande Prairie, representatives from professional associations, Aboriginal groups and Non-governmental Organizations (NGOs) with a special interest in succession law also participated.

The Alberta Succession Law Reform consultation activity including the survey and focus groups were arranged and conducted by Marcomm Works. This report and its appendices have been prepared by Marcomm Works and represent the independent and objective recording and summarization of input received from stakeholders. Any opinions, interpretations or conclusions contained within this document are those of Marcomm Works and may or may not coincide with those of Alberta Justice.

SUMMARY OF INPUT

The results of the consultation are presented here in the order in which the topics or issues appeared in the workbooks.

General Principles

- There was broad support for the six general principles as set out in the workbook as most considered them to be appropriate, reasonable and easy to understand.

Family Support (Dependent Relief)

- Most participants wanted to see succession law consider only a few close family members as dependent and automatically provide them with the right to claim for family support without any other conditions. For other dependent family members, allowing family support claims should only occur if they were being supported at the time of death.

“I would certainly hope the surviving parent would be willing to provide support for a disabled adult child.”
- There was consensus that a surviving spouse or partner and minor children should always be considered dependent and eligible to claim for family support without any other conditions.
- Almost all consultation participants believed adult children who have a permanent disability and cannot work should be considered dependent. A small minority believed this should be made conditional on the deceased actively supporting the person at the time of death.
- There was split opinion on whether adult children who are unable to work should be considered dependent and eligible to claim support after a parent’s death. Overall, a slight majority of consultation participants favoured excluding them from the list. There was significant agreement, however, that adult children unable to work because of an addiction should not be allowed to claim or, at the very least, be provided only temporary support.

Most succession law professionals did not support adding this family member category to the list of dependents mainly because they felt there were social supports available to provide financial, personal or emotional help. This support did not have to come from the estate for such a person to cope.

- There was general support for adding minor grandchildren or great-grandchildren, minor stepchildren, minor children under the care of a guardian, and adult children attending school to the list of family members who should be considered dependent and eligible to claim family support. However, consultation participants agreed they should only be eligible if the deceased was supporting the person at the time of death and, in the case of minor children, acting *in loco parentis*.

Despite support for the above noted categories, many succession law professionals cautioned that expanding the eligibility list would lead to increased litigation, increased expense and a more complicated system. Some felt the *Dependants Relief Act* and other current legislation adequately protected dependents.

“If you open up too many categories it will lead to too much litigation. Keep it simple and keep costs down.”

- The suggestion that parents and grandparents and siblings be considered dependent and eligible to claim family support received only minor support.
- There was almost no support for considering adult children who are able to work and honorary family members as dependents.

How Much Support is Appropriate?

- For the most part, participants were comfortable with the proposed list of factors. Majority opinion was that the factors should be looked at with equal weight.

Possession of the Family Home

- The vast majority of consultation participants favoured giving a surviving spouse or partner special rights or considerations regarding the family home.

- Public consultation participants were split on what these special rights or considerations should be. The options that received the most support were:
 - Allow a surviving spouse or partner to stay in the family home until he or she dies. Those who supported this approach either felt this is what the surviving spouse or partner deserved or what the deceased person would have wanted. While 70% of on-line survey respondents favoured this approach, more than half of those respondents said it should only be allowed if there is no will. A number of people in discussion groups believed this right should also end if the surviving spouse or partner remarries.
 - Allow a surviving spouse or partner to stay in the family home for a short period of time. Supporters of this option indicated a surviving spouse or partner deserved some transition time in a stable environment but that it was unfair to the building owner to have no time limit regarding possession rights.

In both of these options, public participants felt the surviving spouse or partner should have the right to purchase the home or buy out any shares held by other owners.

- Succession law professionals favoured allowing continued residence in the family home for a finite minimum and maximum period of time. This support was based on a belief that a survivor deserved stability regarding the family residence during a difficult adjustment period.

“Three months might not be long enough but as long as there is some limit they should be able to stay for awhile.”

However, technical consultation participants said there should be a time limitation so that this consideration does not unduly tie up the future disposition or use of the property. They could not agree on time parameters but the majority favoured 6-12 months minimum and 1-2 years maximum. It was noted the rights of the family home’s owner or owners needs to be considered and protected if this right is to be enacted.

Devolution of RRSP and other Future Income Plans after Death (technical consultation only)

- Most participants supported ‘creditor proofing’ income plans like pensions, RRSPs, RRIFs and DPSPs (Deferred Profit Sharing Plans) for dependents and other beneficiaries. They advocated for consistency with insurance guidelines, the *Bankruptcy and Insolvency Act* and the *Companies’ Creditors Arrangement Act*.

Intestate Succession: Entitlement of Separated Spouses or Partners

- While some believed separated spouses or partners should never inherit, the majority supported a right to inherit within a limited period of time. Most favoured a short time period of 1-2 years from the time of separation.

“A time limit needs to be set otherwise the estate will never close.”

A notable minority - both among public and technical consultation participants - advocated for one time limit for marriage and another for Adult Interdependent Partners (AIPs) because of the separate ways they are formed and dissolved. It was argued that spouses may have many reasons (financial and otherwise) to separate but want to stay married. Separated members of an AIP lack this option. The length of time to inherit should reflect the conscious choice and wishes of some separated couples.

- A significant majority of participants favoured making disinheritance of a separated spouse or partner absolute.

Intestate Succession: Splitting of Assets

- Succession law professionals almost unanimously agreed that a spouse or partner should inherit 100% of the deceased person’s assets when the children are the children of the survivor and the deceased. A majority of public participants agreed with this opinion but a significant minority felt children should get a share.

“The mother or the father, whoever is still living, should know what is best for the kids.”

- In cases where there are other children involved and the surviving spouse or partner receives a preferred share, most consultation participants supported the spouse or partner receiving a minimum cash value or a percentage, whichever is greater. While there was no agreement on what the cash value or percentage should be, participants wanted the formula to ensure the surviving spouse or partner got 50% or more of the estate.

“A combination of a set dollar amount and a percentage will protect all parties.”

- Of the remainder, the majority favoured a guaranteed percentage to the spouse/partner with the remainder split with the children equally or splitting it among the children only. Many participants commented that allowing the spouse or partner to receive a further share would be ‘double dipping’.

Parentelic versus Consanguinity
(technical consultation only)

- There was a slight preference to change to a parentelic approach as a way to provide more fairness and reflect the “presumed intent of Albertans”. A significant number of participants saw no reason to change.

Intestate Succession: Advancement of an Inheritance

- A majority of public participants felt the ‘presumption of advancement’ rule should apply to any advance made to a person who qualifies to inherit a share of the deceased person’s estate. Succession law experts, however, felt the rule should be abolished because it is too difficult to prove an advance unless there is documentation.

“I think this whole concept should be scrapped. I don’t think there is any way to even calculate it. This just creates litigation that tears siblings apart.”

Wills: Impact of Creating or Ending a Marriage or AIP

- Participants agreed that the law needs to change to provide consistency. The majority believed that a marriage or creating an AIP should invalidate a will and divorce or ending an AIP should cause any gifts to an ex-spouse or partner to be void (unless specified otherwise in a will).

“Frankly, I was shocked to read this and find out that divorce doesn’t affect a will.”

Matrimonial Property

- There was significant support for allowing a surviving spouse to make a claim for matrimonial property.
- Most public participants favoured allowing a surviving spouse to receive both matrimonial property and any inheritance provided. Succession law professionals were split on the issue. Those opposed to this right argued matrimonial property already provides a fair share of the estate to the spouse. Permitting both matrimonial property and an inheritance would be “doubling up”.

“If it was in the will, they wanted them (the surviving spouse) to have it. So let them have it.”

Property Arising at or after Death – Life Insurance

(technical consultation only)

- There was no consensus on whether insurance or similar payments that arise on death should be treated as matrimonial property or taken into account when calculating matrimonial property. However, the majority of participants believe Alberta law should be consistent with federal law wherein the cash surrender value of life insurance (to a spouse) at the point of death is considered an asset. This surrender value should be considered part of matrimonial property.

Wills – Dispensation of Formalities

(technical consultation only)

- A majority of participants preferred to leave the law the way it is. It was felt other unintended problems would emerge if the law in this area was changed. While some favoured relaxing the rules and giving the court more flexibility, all participants cautioned that the limits of this flexibility would need to be very clearly spelled out to avoid abuse, disputes and even more litigation.

“A will is the most black and white legal document there is; keep the certainty.”

There was some encouragement to dispense with some formalities of wills produced and validated in other jurisdictions.

Survivorship

(technical consultation only)

- Most participants agreed with a minimum time for which a person must survive in order to inherit or get property under beneficiary designation. There was no agreement on the length of time although 14-30 days was the range of suggestions.

Order of Death

(technical consultation only)

- Participants favoured the “deemed survivor” rule in determining the order of inheritance as it was considered more equitable for families, reflected the views/wishes of Albertans and was consistent with insurance practice.

“Deemed survivor rule is in line with likely intent although changing this law would cause quite a bit of confusion.”

Debt Marshalling (Abatement Rules)
(technical consultation only)

- The majority supported updating the rules, indicating they should complement bankruptcy regulations. Most supported the order listed in the workbook for which estate assets should be used to pay off unsecured debts.

RECOMMENDATIONS

The consultation yielded two recommendations that were supported by a majority of participants. These recommendations extend beyond the opinions provided to specific questions and are set out here for Alberta Justice's consideration. Please note that these points were not necessarily raised and discussed with all participants.

1. Provide public education about wills and estate planning. There was considerable concern by both members of the public and succession law professionals that the public is unaware of impacts that intestacy, improper will preparation and life decisions like marriage, divorce and AIPs have on their lives and the lives of their dependents.
2. Set out clear definitions and common standards on terms and designations such as dependents, unable to work and other specifics that may form part of the language of succession law. This is particularly necessary for lawyers, estate planners and others who work in the field.

List of Questions: Technical Consultation

1. Do you agree with the six general principles to guide succession law reform? If not, what changes would you suggest?
2. Which is the best option for allowing family support claims?
 - i. Family members who were getting support from a person at the time of death. If so, which family members?
 - ii. Family members, regardless of whether or not the deceased was supporting the person at the time of death. If so, which family members?
 - iii. A combination – Family support would be automatically available to some close family members (such as a spouse or partner) whether or not they were being supported at the time of death. For other family members, it would only be available if the deceased was financially supporting the family member at the time of death.
3. Who should be considered dependent and eligible for family support after a person's death in Alberta? (*check as many as apply*)

**Dependent and always able to claim
without any other conditions:**

- Spouse or partner
- Minor children
- Minor stepchildren living in the home of the deceased
- Minor grandchildren or great-grandchildren living in the home of the deceased
- Minor children under the care of a guardian
- Adult children who have a permanent disability and cannot work
- Adult children who are unable to work
- Adult children who are going to school
- Adult children who are capable of earning a living
- Parents and grandparents
- Brothers and sisters
- Honourary family members
- Other (please specify)

**Dependent ONLY if the deceased was
supporting the person at time of death:**

- Minor stepchildren living in the home of the deceased
- Minor grandchildren or great-grandchildren living in the home of the deceased
- Minor children under the care of a guardian
- Adult children who have a permanent disability and cannot work
- Adult children who are unable to work
- Adult children who are going to school
- Adult children who are capable of earning a living
- Parents and grandparents
- Brothers and sisters
- Honourary family members
- Other (please specify)

4. Is the list of factors to be considered when determining how much support is appropriate sufficient? If not, what changes should be made?

5. Should there be a law giving a surviving spouse or partner special rights or considerations when it comes to the family home? If yes, which of the following options should become Alberta law:
 - i. The right to stay in the home for a short period of time after the death of the spouse or partner regardless of who actually owns the home.
 - ii. The right to:
 - Stay in the home until the surviving spouse or partner dies, regardless of who actually owns the home.
 - Buy out the shares of any other owners.
 - iii. The same right as in 'ii' but only if there is no will.
 - iv. The right to have first right to purchase the family home or any share not owned by the surviving spouse or partner.
6. Should the law provide that RRSPs and similar claims be “creditor proof” if they are left to a spouse, partner, child or grandchild of a deceased?
7. When there is no will, when should a separated spouse or partner no longer be eligible to inherit a deceased spouse or partner’s property and assets?
8. Should the disinheritance of a separated spouse or partner be absolute?
9. Should the surviving partner or spouse inherit 100% of the assets if her children are also the children of the deceased spouse or partner? OR Should she receive only a preferred share with the balance split between her and her children?
10. Should the preferred share to the spouse or partner be a cash value, a guaranteed percentage or a combination of both?
11. Should the split of what is left over after the spouse or partner receives her share be equal shares between the spouse or partner and her children? OR Should the spouse or partner get a guaranteed percentage with the remainder split equally amongst the children?
12. If there are no immediate family members to inherit, should the beneficiaries be identified through the parentelic system or by consanguinity?
13. Who should be included in the “presumption of advancement” inheritance rule?

14. Which option should be adopted concerning the impact of creating or ending a marriage or AIP? Should it be:
 - i. Leave the law the way it is.
 - ii. Change the law, so that marriage, creating an AIP, divorce or ending an AIP has no effect on a will.
 - iii. Change the law, so that marriage or creating an AIP invalidates a will and divorce or ending an AIP causes any gifts to an ex-spouse or ex-partner to be void (unless the will indicates otherwise).
15. Should Alberta adopt a law that allows a surviving spouse to make a claim for matrimonial property on the death of a spouse?
16. If the right to claim matrimonial property is created, should the surviving spouse be able to receive only matrimonial property and not any inheritance provided? OR should she receive both matrimonial property AND any inheritance provided?
17. Should insurance and similar payments that arise on death be treated as matrimonial property or excluded from matrimonial property? OR should it not be taken into account in calculating matrimonial property at all?
18. Should the court be given the power to dispense with certain formalities or rules in relation to wills if there is clear evidence the testator intended the document to be his will?
19. Should there be a law that sets a time for which a person must survive in order to inherit or to take property under beneficiary designation? If so, what length of time is reasonable?
20. Should Alberta law follow the “Deemed Survivor” Rule or the Order of Seniority Rule regarding order of death?
21. Should up-to-date rules be created for debt marshalling?
22. Is the recommended order in which estate assets are used to pay for unsecured debts and liabilities appropriate?

List of Questions: Public Consultation

1. Do you agree with the six general principles to guide succession law reform? If not, what changes would you suggest?
2. Which is the best option for allowing family support claims?
 - i. Family members who were getting support from a person at the time of death. If so, which family members?
 - ii. Family members, regardless of whether or not the deceased was supporting the person at the time of death. If so, which family members?
 - iii. A combination – Family support would be automatically available to some close family members (such as a spouse or partner) whether or not they were being supported at the time of death. For other family members, it would only be available if the deceased was financially supporting the family member at the time of death.
3. Who should be considered dependent and eligible for family support after a person's death in Alberta? (*check as many as apply*)

**Dependent and always able to claim
without any other conditions:**

- Spouse or partner
- Minor children
- Minor stepchildren living in the home of the deceased
- Minor grandchildren or great-grandchildren living in the home of the deceased
- Minor children under the care of a guardian
- Adult children who have a permanent disability and cannot work
- Adult children who are unable to work
- Adult children who are going to school
- Adult children who are capable of earning a living
- Parents and grandparents
- Brothers and sisters
- Honourary family members
- Other (please specify)

**Dependent ONLY if the deceased was
supporting the person at time of death:**

- Minor stepchildren living in the home of the deceased
- Minor grandchildren or great-grandchildren living in the home of the deceased
- Minor children under the care of a guardian
- Adult children who have a permanent disability and cannot work
- Adult children who are unable to work
- Adult children who are going to school
- Adult children who are capable of earning a living
- Parents and grandparents
- Brothers and sisters
- Honourary family members
- Other (please specify)

4. Is the list of factors to be considered when determining how much support is appropriate sufficient? If not, what changes should be made?

5. Should there be a law giving a surviving spouse or partner special rights or considerations when it comes to the family home? If yes, which of the following options should become Alberta law:
 - i. The right to stay in the home for a short period of time after the death of the spouse or partner regardless of who actually owns the home.
 - ii. The right to:
 - Stay in the home until the surviving spouse or partner dies, regardless of who actually owns the home.
 - Buy out the shares of any other owners.
 - iii. The same right as in 'ii' but only if there is no will.
 - iv. The right to have first right to purchase the family home or any share not owned by the surviving spouse or partner.
6. When there is no will, when should a separated spouse or partner no longer be eligible to inherit a deceased spouse or partner's property and assets?
7. Should the disinheritance of a separated spouse or partner be absolute?
8. Should the surviving partner or spouse inherit 100% of the assets if her children are also the children of the deceased spouse or partner? OR Should she receive only a preferred share with the balance split between her and her children?
9. Should the preferred share to the spouse or partner be a cash value, a guaranteed percentage or a combination of both?
10. Should the split of what is left over after the spouse or partner receives her share be equal shares between the spouse or partner and her children? OR Should the spouse or partner get a guaranteed percentage with the remainder split equally amongst the children?
11. Who should be included in the "presumption of advancement" inheritance rule?
12. Which option should be adopted concerning the impact of creating or ending a marriage or AIP? Should it be:
 - i. Leave the law the way it is.
 - ii. Change the law, so that marriage, creating an AIP, divorce or ending an AIP has no effect on a will.
 - iii. Change the law, so that marriage or creating an AIP invalidates a will and divorce or ending an AIP causes any gifts to an ex-spouse or ex-partner to be void (unless the will indicates otherwise).

13. Should Alberta adopt a law that allows a surviving spouse to make a claim for matrimonial property on the death of a spouse?
14. If the right to claim matrimonial property is created, should the surviving spouse be able to receive only matrimonial property and not any inheritance provided? OR should she receive both matrimonial property AND any inheritance provided?