

## Surrogate Rules Advisory Committee

### Minutes of the Surrogate Town Hall Meeting – Calgary Court House

June 6, 2019

Justice Jones opened the meeting at 12:30 pm and made introductions (noted below).

#### **Blake Cameron, Assistant Public Guardian, Calgary Region:**

- The OPGT focuses on decision making services for Albertans when required to do so by legislation, or in circumstances where a represented adult has no family member willing, able, or suitable to fulfill the role of legal decision maker, or when a minor or unborn or represented adult is the beneficiary of an estate and there is no other person to administer the estate. They investigate complaints of harm against the vulnerable person. They can serve as agents for a personal directive if requested. They assess claims under the Minors Property Act.
- Capacity assessment training is being done.
- The office is taking on an enhanced role in that they have been given limited discretionary decision making authority for clothing, comforts, and vacation.
- Review Officers under AGTA
  - They ensure the applications are filed properly
  - They meet with the represented adult & report
  - In the last year there have been 407 private guardian applications.
  - There is a decreased number of requests to dispense with service
  - Time frame from Review Officer to the court - 65 days
- Their office is represented at the Calgary Surrogate Round Table.
- They are streamlining internal processes in Calgary and provincially. They are looking at policy and procedures for intake, working on backlogs, and reducing “red tape”
- Two new initiatives:
  - 1) Advanced Care Planning Alberta project
    - A desire to increase the public’s understanding of the advanced care planning process and get people talking about these issues. Encouraged everyone to have
      - Enduring power of Attorney
      - Will
      - Medical directive
  - 2) AISH AGTA Regulation Review
    - AGTA regulations have been reviewed – expiry dates have been removed
    - Streamlining processes
    - Removing some forms
    - This should go to Cabinet in late 2019 or 2020
- Investigating Complaints about Trustees
  - Complaint needs to be in writing
  - For a complaint to meet the criteria for an investigation there has to be reason to believe that the decision maker is not following the court order or are not complying with their duties and this failure is likely to harm the adult physically, mentally or financially

- See the website for more information.

#### **Lisa Lindquist – Court Administration**

- The great work of the surrogate clerks was acknowledged
- They have a full staff complement and training has been completed.
- Before full staffing, the time between drop off and when Clerks commence work on an application was 91 days. Currently it is next day.
- Anyone with questions, comments, suggestions, is encouraged to contact Lisa.

#### **Gladys Takacs – Team Lead, Calgary Surrogate Section**

- Goal of the clerks is to ensure applications are completed to a high standard
- Review times – the goal is to have them done within a 6 week turnaround time. Currently, next day turnaround is possible.
- The Surrogate Checklist has been updated. Most substantive change is the document is available in PDF fillable form. Clerks can make comments electronically and check off the boxes which apply. The goal is to make the system easier for everyone. SRAC has approved the Checklist and it will be posted on the Court of Queen’s Bench website.
- With the new Checklist, the preliminary step is to check for the “Big 5” critical errors for which an application will be rejected. These are:
  - Incorrect judicial centre
  - Will/codicil is not attached
  - Back of will /codicil – Rule 16(1), (2), and (8)
  - Documents not signed
  - The wrong application has been filed
- File is reviewed and NC 26 is completed. File is sent to the Justice with the clerk’s notes. Files go to the justices once per week. Justice decides whether any noted deficiencies must be corrected, and if not, the order is granted and the Grant is issued. Grant issues are currently at 1 week after approval by the Justice.
- If the applicant disagrees with the rejection they can write a letter to the Justice making their case for approval. If still not approved, the file must be re-submitted. All resubmissions go into a re-submit queue. A clerk is assigned daily to work on the re-submit queue
- Comment from the Bar – acknowledged the increased efficiencies and thanked the clerks for their work. Everyone benefits from increased cooperation and collaboration.

#### **Aaron Bickman - Surrogate Round Table**

- The purpose of this group is collaboration for high quality work delivery
- The bench, bar, clerks, OPGT office, and court administration are all represented
- Discussion is about what is going well, challenges, what can be improved
- Suggestions and problems welcomed and discussed with a view to finding workable solutions
- Bar is encouraged to contact them via email – [kimmittb@bennettjones.ca](mailto:kimmittb@bennettjones.ca) & [Aaron Bickman <ABickman@mcleod-law.com>](mailto:ABickman@mcleod-law.com)

## **Barbara Kimmitt – Surrogate Rules Advisory Committee**

- SRAC was established in 2011 by Ministerial order. The mandate is to make recommendations to the Rules of Court Committee for rules and forms used in surrogate matters. RCC then makes recommendations to Cabinet.
- Terms of Reference for SRAC also provides that the committee should keep under review general surrogate practices in Alberta with a goal of having consistent practice province-wide. Discussions focus on practice and procedure to achieve this.
- Membership – 2 judicial co-chairs (Justice Jones - Calgary, Justice Little – Edmonton, 3 CBA reps, 3 LSA reps, ALRI rep, OPGT rep, Alberta Justice rep)
- In decision making, SRAC’s recommendations are forwarded to relevant stakeholders for feedback. SRAC members representing the Bar and LSA are to communicate with the Bar if there are any policy changes.
- SRAC policy decisions will, going forward, be made available on the Court of Queen’s Bench website
- Recent & ongoing work:
  - project to revise and update the Checklist
  - SRAC was made aware of an online service provider for posting notices of claims on a website – it may require a change to Surrogate Rule 38 - SRAC is currently looking at this and determining what is needed to make it available
  - Bill 28 – AIPs are to get similar matrimonial property rights as married partners – this will necessitate changes to some surrogate forms to address the change in legislation
  - Revisions to the User Notes – SRAC is looking at this next meeting

## **Chief Justice Moreau**

Chief Justice Moreau reviewed 2 initiatives the Court is planning to undertake.

### 1) Early Intervention in estate litigation

Early intervention in litigation is one of the 4 pillars of the Court’s work. In family law, big strides have been made in early intervention through the use of case conferences. This involves a meeting between the parties and a judge to see if issues can be resolved. In family law, there has been a 74% success rate in resolving issues on an interim or final basis. with this approach, in part because parties feel as though they’ve had their “day in court”. There seems to be an increase in estate litigation, particularly in Calgary, and the thought is contentious estate litigation could similarly benefit from this approach. The WSA also includes a duty to inform one’s client of alternate dispute resolution. Once a statement of claim is filed, contentious matters could be flagged early and a judge would be assigned to see if a case conference would be helpful. Alternatively, a letter could be sent to the Chief outlining why a case conference would be beneficial. Everyone would be mindful of not creating delay with such an approach. Those present at the meeting expressed enthusiasm for such a pilot project.

### 2) Update of Surrogate Rules

Chief Justice Moreau, Justice Little and Ms. Lois MacLean from the Edmonton Bar met to discuss areas of concern in estate practice. It was noted that the Rules are overly complex and duplicative. There are

two different levels of review by the clerks. Once the grant is obtained, there is very little information available to assist the executor in the fulfillment of his/her duties. They reviewed the approaches taken in other jurisdictions. In Ontario, for example, there has been a consolidation of forms and information about the deceased's total assets as opposed to requiring the composition of assets be provided. Information booklets are available to executors.

Chief Justice Moreau, Justice Little and Justice Jones (the SRAC co-chairs) all agreed these are challenges to be improved upon. They suggest a proposal to have SRAC review surrogate practice in Alberta and make recommendations for changes. A sub-committee of SRAC will be formed for this project. Consultation with the bench, Bar, clerks, and perhaps ALRI will occur. Similarly, the Bar, through the CBA Wills & Estates subsection could form a committee to liaise with the Bar, with a view to the 2 committees making recommendations to SRAC for reform to the Surrogate Rules.

Chief Justice Moreau asked for a show of hands in favour of the proposal. Enthusiastic support was received from those at the meeting for this initiative.

### **Justice Jones**

#### 1) Rush applications

Any suggestions for improvement are always welcome. Because rush applications jump the queue, there is a need to determine what is a "rush". The current policy remains in place and should be relatively consistent between judges.

What is/not a "rush"?

- a) an intestacy where there is no one who is able to proceed with the administration is a rush
- b) real estate transactions
  - a. 80% of the rushes fall into this category
  - b. If a person died months earlier and someone has just decided to sell the property, this is not a rush. A sale in progress when the person dies is a rush. Rationale – why should the fault in proceeding expeditiously be borne by the system? An application for a limited grant can be made in these circumstances.
- c) A demonstrable need for immediate funds – eg. grocery money, an owner manager has died and payroll needs to be met – is a rush
- d) Stock portfolio sale because of market volatility – not a rush

#### 2) Revised checklist – use of outdated forms

Gladys articulated the Big 5. A 6<sup>th</sup> reason for rejection of an application is an existing application already in the system. A 7<sup>th</sup> reason – use of outdated forms. Most people should be able to obtain the most up to date forms. LESA and the Queen's Printer have them. If an outdated form is being used, provide an explanation for doing so. Without an explanation, the file will be flagged and it may be commented on by a judge.

#### 3) AKAs

NC 3 refers to “any other names”. NC 1, 2, 5, 6 also require AKAs, if applicable. If a court order (NC1) is signed, any AKAs should be on the document. If it forms part of the evidence, it would be helpful to be there (ie NC 2). NC 5 references AKAs for the personal representative. These are important for the claimants or beneficiaries to know who to go to to claim their rights, thus there is a need to identify the names the PR uses. NC 6 – if beneficiaries have any other names, those should be included.

All of these details have been communicated to the clerks and the Bench. To facilitate better communication with the Bar, these policies will be posted on the QB website. You can also call the clerks to obtain them, or email Justice Jones.

Where the forms leave little or no room to add all these AKAs, you can modify the forms to add the AKAs. SRAC is working on revising these forms to improve them.

#### 4) Access to forms

Work remains ongoing to get fillable electronic forms. SRAC and the judges are supportive of it. We are trying to get this moving. Resource issues are at play, but we continue to work on it.

#### 5) Surrogate Rule 24

Where the will is lost, you need to come to court with something – an affidavit, a photocopy, etc. Use NC 8 & NC 9 to explain the discrepancy. Section 37 of WSA – gives a wide berth to provide ways to use something that most closely gives evidence of the deceased’s intentions.

#### 6) Dependent Adult applications

These can be done through desk applications or personal appearance. Creative use of the hearing process can increase a matter’s priority rather than putting it in the desk application queue. This is of some concern to the Bench because it potentially raises issues of access to Justice. With decreased wait times, it is anticipated hearings will not be as appealing.

### **Questions from the Bar**

Q: “any other name by which a deceased is known” – how far back do you need to go?

Answer: You only need to provide any AKAs where there are discrepancies between certificates and what is in the will.

Q: What to do when you can’t find a witness or someone who knows the deceased’s handwriting, so you can’t get prepare an NC 8 or NC 9?

Answer: The court wants to try to facilitate getting matters completed. If NC 8 or NC9 is not there, provide an explanation for why. The key is to provide some evidence of the deceased’s wishes.

Q: Will there be a grace period on the AKA issue for matters which are already in the queue?

Answer: The problem with a grace period is it relieves a requirement that has been determined to be mandatory. However, a directive can be sent to the judges informing them that a temporary resolution for matters already in the queue is a request for a fiat from the judge. As of today's meeting, the Bar has notice of the requirement, so the "cut off" for the use of fiats for this is today. Hopefully, with the simplification initiative discussed earlier, this issue will go away.

Comment: Thank you to everyone who worked on the new Wills and Estate Practice Manual. It is great.

Q: Re use of outdated forms and AKAs. Rule 26 deals with "on the fly" amendments. What do you do with the forms?

Answer: The forms that are required are known. The grandfathered forms have expired. If you are using, them attach a letter of explanation.

Q: With handwritten notes with the will, do you need to serve a notice to all those people?

Answer: See if the document satisfies the requirements for incorporation by reference. If it does, the notes are part of the will. If it does not, the applicant needs to decide how to proceed. The applicant's decision on how to deal with their discretion regarding the disposition of items mentioned in handwritten notes will dictate how they address notice requirements which are engaged by that decision.

Meeting adjourned at 2:00pm.