

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: McGean Estate (Re), 2008 NSSC 145

Date: 20080512
Docket: Probate No: 20,357
Registry: Sydney

In the Court of Probate for Nova Scotia

In the Estate of David McGean, Deceased

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Judge: The Honourable Justice Frank Edwards

Heard: March 31 and April 25, 2008, in Sydney, Nova Scotia

Subject: Probate Act S.N.S. 2000, c. 31 s.61; application for removal of personal representative and “best interests of those persons interested in the estate.”

Summary: The Applicant Theresa McGean, and the Respondent were co-personal representatives of the estate. The Respondent was married to but separated from the Intestate at the time of his death. The Applicant and her brother David were the biological children of the Intestate. The Respondent was their step-mother.

At the time of his death the Intestate was entitled to a pension valued at more than \$283,000.00. The Applicants wished to have that amount paid into the estate. To achieve that end they wished to sue the employer. The Respondent was in receipt of survivor benefits under the pension plan. She was opposed to the intended court action.

Issue: Whether removal of the Respondent as personal representative “in the best interests of those persons interested in the estate” (Probate Act s. 61).

Result: The application was dismissed. Under the Pension Plan s. 7.1.1, the Respondent was clearly entitled as spouse of the Intestate to survivor benefits and for payment of a lump sum into her estate if she died within five years of the Intestate’s retirement. The Estate is bound by the terms of the pension plan. As such, the proposed legal action against the employer is not feasible and therefore, the removal of the Respondent as personal representative is not in the best interests of those persons interested in the estate.

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