

CONFLICTING INTERESTS IN FAMILY
LAW AND ESTATE ADMINISTRATION:
CHIPPETT ESTATE (RE)

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The case of *Chippett Estate (Re)*, 2019 NLSC 51, is interesting in terms of both family law and estate planning and administration.

The facts are straightforward. Mae Pittman-Chippett was the administratrix of the estate of her late husband, Ralph Glendore Chippett. The beneficiaries of the estate were Mr. Chippett's daughter, Lisa Martel, and Mae herself. Mae launched an action against the estate in her personal capacity for a division of matrimonial property, which was followed by an application seeking to have the public trustee appointed as the estate's legal representative for the limited purpose of defending the matrimonial property division claim.

The issue to be addressed by Justice Murphy of the Supreme Court of Newfoundland and Labrador, General

Division was whether or not section 71(2) of the province's *Family Law Act*, RSNL 1990, c. F-2 (FLA) permitted the public trustee to step into the role of an estate administrator for the limited purpose of defending a matrimonial property claim made by the estate administrator, while the estate administrator continued to carry out all of the other aspects of the estate administration.

Mae's counsel argued that section 71(2) of the FLA provided for the requested relief:

Death of spouse

71(1) An executor or administrator of a deceased spouse may enter into an agreement with the surviving spouse as to the ownership or division of property under this Act.

(2) Where an executor or administrator of a deceased spouse is the surviving spouse, the public trustee may act in the place of the executor or administrator under subsection (1).

Justice Murphy confirmed that neither he nor counsel could locate any case law interpreting this section of the FLA, nor could they locate an equivalent provision appearing in a statute elsewhere in Canada (at paragraph 10). In considering the application of this section of the FLA, Justice Murphy emphasized the distinction between an administrator of an estate entering into an agreement and an administrator entering into litigation involving the estate (at paragraphs 12-15):

I see a significant distinction between the entering into of an agreement as to the ownership of

or division of property and litigation over the ownership or division of property. The entering into of an agreement generally means that there is no dispute or conflict over the ownership or division of property or that any dispute or conflict has been resolved by the agreement. However, the existence of litigation over the ownership or division of property generally means there is some dispute or conflict between the parties to that litigation, namely the estate and the surviving spouse. ...

[I]t is my view that section 71(2) does not extend beyond circumstances where an agreement exists.

I realize that my interpretation of section 71(2) means that it would apply only in limited circumstances where the surviving spouse as executor or administrator of an estate reaches an agreement with the estate on the ownership or division of property. The logical question one might ask is when or how could such an agreement be reached given the inherent conflict between the personal interest of the surviving spouse on a matrimonial property claim and her duty as legal personal representative of the estate. Notwithstanding such conflict, there can certainly be cases where there is no dispute or disagreement between the beneficiaries of the estate and the surviving spouse as to the ownership or division of property. In such cases, an agreement on ownership or division of property could be made between the surviving spouse and the estate with the

consent of the beneficiaries and assuming there are no creditors of the estate or none who would be prejudiced.

Justice Murphy further noted that this interpretation was supported by the common-law rule that a trustee (including an estate administrator) can be removed in cases where a disqualifying conflict arises between the personal interests of the trustee and the trustee's duties (at paragraph 16).

Ultimately, Justice Murphy refused to grant the order sought by Mae (at paragraph 19):

I cannot imagine a greater conflict than that which exists in this case where Ms. Pittman-Chippett's claim has put her directly in opposition to her duty as Administratrix to the daughter of Mr. Chippett.

Interestingly, Justice Murphy also stated that Mae should be removed from her position as administratrix of the estate owing to the obvious conflict of interest, but he did not make an order as such because it was outside the scope of the application (at paragraph 21).

In light of this decision, surviving spouses who intend to bring a claim against a deceased spouse's estate for a division of matrimonial property should not apply to be appointed as an administrator of the estate, because in most cases this will result in a disqualifying conflict.

