

Lessons from Dagg



Lorne H. Wolfson

Partner, Family Law

PHONE

416 777 5414

EMAIL

lwolfson@torkinmanes.com

Lorne is a senior member of the Family Law bar and a senior partner in our Family Law Group. His practice includes all aspects of family law, including divorce, custody and access, property, support, and domestic contracts. He also acts as counsel to lawyers and accountants addressing family law concerns that arise in business, wills and estates, and personal financial planning.

The recent decision of the Ontario Court of Appeal in *Dagg v. Cameron Estate*, 2017 ONCA 366 contains important lessons for family and estates lawyers, mediators and financial advisors. The essential facts are as follows:

The court order required the husband (H) to pay spousal support to his first wife (W1) and to maintain a policy of life insurance to secure his support obligations. After the husband remarried, he changed the beneficiaries of the policy to W1, his second wife (W2), and his children from his second marriage. After H's death, W1 and W2 each claimed entitlement to the insurance proceeds. The issue before the court in *Dagg* was the interpretation of provisions of the Succession Law Reform Act (SLRA). W1 relied on the court order that required H to maintain the policy as security for his support obligations. W2 brought an application under Part V of the SLRA (the dependents' relief provisions) under which the court has the power to order an estate to pay such provision as it considers adequate for the proper support of the deceased's dependents. In the context of such

an application, the SLRA gives the court the power to "claw back" into the estate assets that were disposed of by the estate during the deceased's lifetime which includes funds payable pursuant to a policy of life insurance. The issue faced by the court was whether these "claw back" provisions applied to the life insurance policy in the circumstances of this case.

In reversing the decision of the lower court, the Ontario Court of Appeal held that W1 was entitled to the insurance proceeds to the extent that it secured spousal support actually payable to W1. The balance of the proceeds was available to the court to utilize to fund a payment under the SLRA to W2.

What are the lessons for professionals arising from *Dagg*?

1. An order for support under the *Family Law Act* automatically binds the estate of the payor.
2. An order for support under the *Divorce Act* does not automatically bind the estate of the payor but will do so if the court order explicitly so provides.

3. Where a court order requires a support payor to maintain a policy of life insurance as security for a support obligation, the order does not entitle the support recipient to the entire insurance proceeds; the policy merely creates a pool of funds to satisfy the payor's support obligations in the event of the payor's death.
4. The portion of the life insurance policy required to satisfy the deceased's support payor's past and future obligations existing at, and calculated in accordance with the terms of the support order in place at the time of the support payor's death is available to satisfy the support recipient's claim; the balance may be clawed back into the estate for the benefit of applicants for dependents' relief under the SLRA.