

## **PUBLICATION**

### **Schwartz Estate v. Kwinter: A Cautionary Tale for Estate Litigation**

April 14, 2014

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Schwartz Estate v Kwinter (2013 ABQB 147, [Schwartz]) is a seminal decision for anyone considering estate litigation. The Plaintiff commenced an action to prove the deceased's will and admit it for probate purposes. After 8 years of litigation under case management, the Defendants discontinued their defense and counterclaim and sought \$1.8 million in solicitor and client costs from the Estate. In response, the executor and main beneficiary sought her and the estate's solicitor and client costs, totaling \$1.4 million. Historically, the estate would be responsible for the costs of litigating disputes in Alberta. However, in Schwartz the Alberta Court of Queen's bench found in favor of the Plaintiffs, confirming that estate litigants may be held responsible for costs in their personal capacity if the estate litigation is found to be "entirely devoid of merit, from start to finish" (para 11), and contains "not a whit of credible evidence" (para 11) or a "disingenuous" argument (para 13). Solicitor and client costs were awarded, as well as punitive damages.

The Honourable Justice Graesser therefore confirmed that the modern rule now applies to estate litigation, whereby the "old starting point that the estate should bear the costs of litigation has been replaced with the principle that the parties will normally bear costs as they would in other types of civil litigation, unless the challenge to the will or the estate was reasonable, even though eventually unsuccessful" (para 113). Justice Graesser further affirmed that Surrogate Rule 90(h) is a statutory codification of the modern rule in Alberta. Schwartz therefore serves as a cautionary tale to vexatious estate litigants.

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