

PUBLICATION

“Who’s Your Daddy?” Compelling DNA Testing

November 12, 2014

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Knowing “who’s your daddy” may have more legal relevance than most people realize, particularly for child support obligations and for a beneficiary’s entitlement to an inheritance. Presumptions of paternity can be made under the Family Law Act in Alberta; however, parentage can also be established by other means.

The best possible evidence to assist in determining parentage is DNA testing. As part of an application for a declaration of parentage under the Family Law Act, the Court may make an order granting leave to obtain blood tests, DNA tests, or any other tests the Court deems appropriate. The results of the testing are then submitted as evidence in a proceeding.

The Family Law Act also states that no test shall be performed on a person without the person’s consent. Thus, an order for DNA testing under the Family Law Act may be hollow without the consent of the person whose DNA is required. The legislation further states that where a person refuses to consent, the Court may draw any inference it deems appropriate. However, a refusal to undergo an ordered DNA test may not automatically result in a negative consequence for the refusing party.

The Alberta Rules of Court, AR 124/2010 (“Rules of Court”) and the Surrogate Rules, AR 130/1995 (the “Surrogate Rules”) can be used together to compel a DNA test in estate litigation matters. Parties may apply for an order directing the medical examination of a person when the “physical condition of a person is at issue” in the action. Case law from other jurisdictions establishes that paternity is a “physical condition” under the applicable civil procedure rules in those jurisdictions. Moreover, Alberta case law suggests a strong adverse inference may be drawn against a person refusing to undergo a court-ordered medical examination, such as a DNA test.

The Alberta Court of Appeal recently commented on the importance of DNA testing in parentage disputes:

“DNA testing is a method of proof of parentage inextricably linked to the declaration of parentage. It is, in fact, the best evidence which operates in aid of the primary purpose ... which is to establish parentage.” (AB v CD, 2012 ABCA 131)

An order for DNA testing pursuant to the Rules of Court therefore allows the Court to resolve parentage issues in a timely and cost-effective manner, based on the best available evidence.

If you have any questions about using the Courts to compel a DNA test, please contact us at info@mcleod-law.com.