



Précis Paper

Administering Intestate Estates

Margaret Pringle (Barrister) and Christina Nicola (Solicitor) discuss succession law and the role of the Trustee and Guardian when dealing with an intestate estate, with particular reference to the Supreme Court of NSW's (White J) decision in *Application of the NSW Trustee and Guardian; Estate of SGB* [2015] NSWSC 398. Ms Pringle acted as Counsel for the NSW Trustee and Guardian. A very useful discussion between experienced practitioners involved with this act and its administration.

Discussion Includes

- What are the statutory duties on administrators of deceased estates?
- What sort of records can be searched to locate next of kin?
- Should administrators insist on strict proof?
- How much searching is reasonable?
- How can a person in the line of succession disclaim his or her interest?

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Administering Intestate Estates

1. In this edition of BenchTV, Margaret Pringle (Barrister) and Christina Nicola (Administrator) discuss succession law and the role of the Trustee and Guardian when dealing with an intestate estate, with particular reference to the Supreme Court of NSW's (White J) decision in *Application of the NSW Trustee and Guardian; Estate of SGB* [2015] NSWSC 398. Ms Pringle acted as Counsel for the NSW Trustee and Guardian. This paper will also consider the process of next of kin inquiries and disclaimers of interests in estates.

Application of the NSW Trustee and Guardian; Estate of SGB [2015] NSWSC 398

2. The deceased died intestate in 2007 with no spouse and no children but was survived by her mother. Her mother was readily identified, but her birth certificate did not disclose the identity of the father. The mother swore to the deceased's father's name and advised that the father had died in a truck accident at Iluka. The Public Trustee (NSW Trustee and Guardian) as appointed administrator had a statutory role to fulfil in the distribution of the estate and was obliged to diligently search for the deceased's father. The NSW Trustee was unable to find any evidence that the father had died as there was no death certificate and searches were made with the coroner, local magistrate, local newspapers and a private investigator.
3. An enquiry made to Centrelink showed that the father had changed his name and was residing in a nursing home with his wife holding his power of attorney. The Court could reasonably infer that the person was the deceased's father. The father's attorney purported to disclaim the father's interest in the estate, which White J accepted.

Next of Kin Enquiry

4. The purpose of a next of kin enquiry is to protect the administrator in distributing the estate in a manner that complies with their statutory duty under the laws of intestacy. It is important to note that the *Succession Amendment (Intestacy) Act 2009* (NSW) that commenced on 1 March 2010 made fundamental changes to the law of intestacy by expanding the classes of persons entitled to an intestate estate. The administrator will need to get orders from the court that are sufficient to protect them and allow the estate to be distributed with finality. In order to ascertain members of the family and other entitled persons, the administrator may need to advertise in other jurisdictions to fulfil their statutory duty. As Master Macready in *Public Trustee v Solah & 6 Ors* [1999] NSWSC 660 noted:

"the rights of persons shown by evidence to occupy a certain relationship to the testator or intestate cannot be ignored on the mere surmise that there may possibly be in existence and unheard of, other persons of equal kin or nearer of kin than they."

Master Macready at [7] citing *Walsh v Weigall* (1887) 13 VLR 449 at [453]

5. Despite the administrator generally requiring conclusive certificate evidence, where such evidence is unable to be obtained, it is possible to pick up secondary evidence from unusual places such as transcriptions of gravestones, obituaries, immigration and military records.

Disclaiming Interest in an Estate

6. A disclaimer does not require any formal deed or court order but the person disclaiming their interest must have full knowledge and understand exactly what it is they are disclaiming for it to be valid. Ward J in *Tantau v MacFarlane* [2010] NSWSC 224 at [108] observed that "... (ie where there is insufficient knowledge or appreciation of the terms of the gift) there was no effective disclaimer in the first place". White J in *SGB* considered the *Powers of Attorney Act 1998* (QLD) in determining whether the father's attorney was able to disclaim any interest, and ultimately decided that the disclaimer was valid. Ms Pringle noted that a disclaimer needs to be in writing, signed and dated to be valid.
7. Where a person disclaims an interest, they are treated as having predeceased the deceased (s 139 *Succession Act 2006* (NSW)).

Costs

8. The cost of a next of kin application is often determined by how much searching is required. The Trustee and Guardian has a statutory limit, however practitioners may choose to charge an hourly rate. Ms Nicola notes that costs are usually paid on an indemnity basis if the matter goes to court.

BIOGRAPHY

Margaret Pringle

Barrister, Chalfont Chambers – Sydney

Before her admission to the NSW Bar in 2010, Ms Pringle was employed at the Public Trustee (now the NSW Trustee & Guardian). She specialises in equity litigation involving deceased estates, particularly matters involving testamentary capacity and claims for family provision, as well as probate and trust matters. Prior to studying the law, she worked as a registered nurse.

Christina Nicola

Solicitor – Sydney

Christina Nicola has worked as a solicitor with the NSW Trustee & Guardian since 2012. She has experience in financial management, trust and estate matters with a special emphasis on intestate estates. She has worked in the private trust area and has a background in Wills & Estates, financial management and powers of attorney.

BIBLIOGRAPHY

Focus Case

Application of the NSW Trustee and Guardian; Estate of SGB [2015] NSWSC 398

Benchmark Link

https://benchmarkinc.com.au/benchmark/html/benchmark_17-04-2015_insurance_banking_construction_government.html

Judgment Link

<https://www.caselaw.nsw.gov.au/decision/552609b5e4b0fc828c9955e4>

Cases

Public Trustee v Solah & 6 Ors [1999] NSWSC 660

Walsh v Weigall (1887) 13 VLR 449

Tantau v MacFarlane [2010] NSWSC 224

Legislation

Succession Amendment (Intestacy) Act 2009 (NSW)

Powers of Attorney Act 1998 (QLD)

Succession Act 2006 (NSW)