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# Beyond the Will: Managing Dependant Claims, Modern Family Dynamics, and Unexpected Heirs

**Estate Litigation Series 2025**

November 20, 2025

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## Exceptions to Paramountcy of the Will

- Across Canada, **testamentary freedom is generally paramount** and estates are distributed in accordance with a testator's will
- There are exceptions and as a result, unexpected heirs
- Most prevalent estate claims in the context of modern family dynamics are Dependants' Relief claims - Dependants' relief legislation allows dependants to claim against the estate of a deceased who fails to adequately provide support
- Policy underpinnings – protection of the public purse.
- Claims of common law spouses are most frequent and raise common legal issues:
  - Does the applicant qualify as a “dependant”?
  - What is “adequate provision”?
  - Are there bars to recovery?

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## What is a Dependants' Relief Claim

- Claim against an estate by a qualifying person (a “dependant”) for proper maintenance and support where Testator has failed to provide adequate provision
- Where successful, relief can include:
  - **Lump sum payment**
  - **Spousal support**
  - **Temporary access to marital home**

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## ▼ ***Tataryn v. Tataryn Estate***, 1994 CanLII 51 (SCC)

- The question of whether a testator has acted as a judicious parent or spouse is measured by an objective standard, assessed in light of current societal legal norms and moral norms
- Legal norms are the obligations that the law would impose upon the testator during his or her life if the question of provision for a claimant's spouse or child were to arise
- Moral norms are grounded in "society's reasonable expectations of what a judicious person would do in the circumstances, by reference to contemporary community standards"
- "What was thought to be adequate, just and equitable in the 1920s may be quite different from what is considered adequate, just and equitable in the 1990s... Courts are not necessarily bound by the views and awards made in earlier times. The search is for contemporary justice."

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## ▼ Dependents' Relief Claims in Alberta

Section 88 of the ***Wills and Succession Act***, SA 2010, c W-12.2

88 If a person dies testate without making adequate provision in the person's will for the proper maintenance and support of a family member, the Court may, on application order that any provision the Court consider adequate be made out of the deceased's estate for the proper maintenance and support of the family member.

Section 72 of the Act stipulates who qualifies as a "family member"

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## Who Qualifies as a “Dependant”?

- **Spouses** (married and common law)
- **Adult Interdependent Partners** (some provinces)
- **Minor children** (including grandchildren, adopted children and potentially stepchildren)
- **Children over 18**, if:
  - Unable to earn a livelihood by reason of mental or physical disability
  - Full-time student (if 18-22 years old and unable to withdraw from parents' charge)
- **Parents** (in some provinces)
- **Brother or sister** (in some provinces)
- **What about Others?**
  - Grown children?

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## Who Qualifies as a “Spouse”?

- **“Spouse”** - generally means either of two persons who are married to each other or have entered into a marriage that is void or voidable in good faith (see *Family Law Act*, Ontario)
- **Spouse may also include a “common law spouse” or “adult interdependent partner”**
- **For example, in Ontario “spouse”** means a spouse as defined in subsection 1(1), and in addition includes either of two persons who are not married to each other and have cohabited,
  - (a) continuously for a period of not less than three years, or
  - (b) in a relationship of some permanence, if they are the parents of a child as set out in section 4 of the *Children’s Law Reform Act*.
- **“Cohabit”** means to live together in a conjugal relationship whether within or outside of marriage

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## ▼ Who qualifies as an “AIP”?

- The partner has lived with the other person in a relationship of interdependence
  - (i) for a continuous period of 3 years or more, or
  - (ii) of some duration, if there is a child of the relationship by birth or adoption, or
  - (iii) the partner has entered into an adult interdependent partner agreement with the other person

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## ▼ Factors: Relationship of Interdependence

- A “relationship of interdependence” means a relationship “outside marriage” in which any person:
  - (i) share one another’s lives
  - (ii) are emotionally committed to one another; and
  - (iii) function as an economic and domestic unit
- Factors
  - Conjugal and exclusive relationship
  - Holding out as a “unit”
  - Direct and indirect contribution to mutual well being
  - Financial dependence or interdependence
  - Ownership and use of property

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## ▼ Cohabitation in the same house required?

- Generally an area where there is mixed law
- In Ontario, *Climans v Latner*, 2020 ONCA 554
  - Parties were in a romantic relationship from 2001 to 2015, during which time they resided in separate homes. They did live together in the summer at a cottage and vacationed together in Florida. They also spent a significant amount of time together at one of their respective homes. Their personal and social lives were closely intertwined. No joint bank account or jointly owed property
  - The parties were spouses within the meaning of the *FLA* as they cohabited (lived together in a conjugal relationship) for more than 3 years. **Lack of a shared residence was not determinative of the issue of cohabitation**

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## ▼ Do AIPs Need to Share Residence?

- In Alberta, historic flexibility on strict 3-year cohabitation requirement for AIPs:
  - *Wright v Lemoine*, 2017 ABQB 395: purchasing a trailer with the intention of living together counted
  - *Rockey v Hartwell*, 2016 ABQB 438: separation to attend school did not interrupt 3-year period
  - *Mitchell v Reykdal*, 2021 ABQB 301: Respondent lived double life and lived with his wife and 3 boys and rented a number of homes for the applicant

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## Some clarity in Alberta on Cohabitation

- Leading case, *Henschel Estate* (2008 ABQB 406) outlined that there were 3 **independent** prerequisites for AIP
  - Lived with the other person
  - Lived together in a relationship of interdependence
  - That relationship continued for a period of not less than 3 years
- Court found cohabitation in same residence is required and relationship of interdependence and how long it continues is irrelevant in determining 1<sup>st</sup> requirement

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## Further Clarity in Alberta on the Cohabitation Requirement:

- *Abbott v Mamdani* (2024 ABKB 342) sets the record straight with a new test:
  - Did the parties cohabit in the same residence for a continuous three-year period?
  - If not, did the parties have a mutual intention to cohabit in the same residence for continuous period which period was interrupted by external circumstances such as employment, academic, financial or health care obligations or requirements?

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## ▼ Do separate tax returns or self-description as “single” or “widow” determine AIP status?

- Part of test for AIP status is how parties hold themselves out to others as a “domestic and economic unit”
- Some cases have found AIP status even where parties describe themselves as “single” or “divorced” on tax return
- *Dey v Blakett* (2018 BCSC 244) held that separate tax returns was “extremely revealing of overall nature of relationship” which was entitled to significant weight and demonstrated a lack of financial integration

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## ▼ What is adequate provision?

- While the legislation differs, in determining the amount and duration, if any, of support, the court shall consider all the circumstances of the application, including...
  - The dependant’s current and future assets and means
  - The dependant’s capacity to contribute to his own support
  - The dependant’s age, physical and mental healthy
  - The dependant’s needs and accustomed standard of living
  - The proximity and duration of the dependant’s relationship with the deceased
  - Any agreement between the deceased and the dependant
  - The claims that any other person may have as a dependant
  - A course of conduct by the spouse during the deceased’s lifetime that is so unconscionable as to constitute an obvious gross repudiation of the relationship

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## Who is a “Spouse” in Ontario?

- **SLRA**
  - S 57(1) “**spouse**” has the same meaning as in s 29 of the *Family Law Act* and in addition includes **either of two persons who were married to each other by a marriage that was terminated by divorce**
- **Family Law Act, R.S.O. 1990, c. F3:**
  - **S 1(1) “spouse”** means either of two persons who,
    - (a) are married to each other, or
    - (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right
  - **S 29 “spouse”** means a spouse as defined in subsection 1(1), and in addition includes either of two persons who are not married to each other and have cohabited,
    - (a) continuously for a period of not less than three years, or
    - (b) in a relationship of some permanence, if they are the parents of a child as set out in section 4 of the *Children’s Law Reform Act*
      - “**Cohabit**” means to live together in a conjugal relationship whether within or outside of marriage

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## *Bormans v Estate of Bormans et al*, 2016 ONSC 428

### Takeaways:

- A former spouse entitled to spousal support payments may be a dependent under the *SLRA*
- Although some assets do not form part of an estate (life insurance proceeds, RRSPs, etc.) court can deem them part of the estate for the purpose of dependent support under *SLRA*.
- Risks of naming children as trustee and beneficiary

### Facts:

- Following divorce of Mr. and Mrs. Borman, Mrs. Bormans was awarded \$500/month spousal support.
- Mr. Bormans died in 2014, leaving an insolvent estate.
- He had a \$70,000 life insurance policy naming his daughter as beneficiary.
- Daughter, also trustee of the estate, spent the \$70,000, including \$40,000 after being served with Mrs. Borman’s claim

### Outcome:

- Court held daughter personally liable for \$40,000 under *SLRA* s. 67(2)

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## ▼ *Mihaescu v. Zodian*, 2009 CanLII 26606 (ON SC)

### **Takeaway:**

- A stepchild can qualify as a dependent under s. 57 of the SLRA

### **Issue:**

- Can a stepchild qualify as a “child” and therefore a “dependant” under section 57 of the SLRA? based on whether the deceased had a settled intention to treat him as a child of his family

### **Facts:**

- Tatiana and Valeriu married in 1995; Tatiana’s son Alexander was sponsored to Canada
- Valeriu died in April 2003. His 1996 Will left the entire residue of the estate to his biological son Andrei, with no provision for Tatiana or Alexander
- Tatiana and Valeriu signed a Marriage Contract in 1995 which waived claims to each other’s assets on breakdown or death
- Estate Assets: Included real estate, insurance policies, pensions, RRSP, and timeshare. Andrei received most assets via insurance and joint tenancy

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## ▼ *Mihaescu v. Zodian*, 2009 CanLII 26606 (ON SC)

### **Claims:**

- Tatiana: Sought support for herself and Alexander under SLRA and equalization under FLA
- Alexander: Claimed dependency support as a child under SLRA

### **Analysis:**

- Dependency:
  - Court found Alexander was a “child” under SLRA s.57 because Valeriu had a settled intention to treat him as his own child (evidence: sponsorship, joint account expenses, tax claims, benefits coverage)
- Marriage Contract Impact:
  - Waiver of spousal support applied between spouses, not to Alexander’s rights. Contract did not bar Tatiana from claiming on Alexander’s behalf or as Estate Trustee. Court noted Alexander could not waive rights as a minor

### **Outcome:**

- Alexander awarded \$105,874.48 for past and future education/living expenses; Tatiana appointed Estate Trustee; Andrei ordered to pay costs and reimburse estate

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## *Juffs v. Investors Group Financial Services Inc.*, 2005 CanLII 32939 (ON SC)

### **Takeaway:**

- Estranged adult children can qualify as dependents under s. 57 of SLRA and are entitled to support through post-secondary education

### **Issue:**

- Whether the deceased's Locked-in Retirement Account (LIRA) proceeds, designated to other beneficiaries, should be treated as part of the estate and used to provide an 18-year-old estranged child

### **Facts:**

- Parties: Roy Juffs (father) and Chantelle Juffs (daughter) vs. Investors Group Financial Services Inc. (IG), David & Valerie Soltis (beneficiaries), and Glenna Caldwell (executrix)
- Bonnie Caldwell (deceased) had a Locked-in Retirement Account (LIRA) worth \$32,127.81. Bonnie named her adult children (David & Valerie) as LIRA beneficiaries with no provision for Chantelle (18, dependent)
- Bonnie owed 6 years of child support arrears (\$14,885.60)
- IG paid out LIRA proceeds to David & Valerie on May 6, 2004. Plaintiffs claimed arrears and support under SLRA after payout

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## *Juffs v. Investors Group Financial Services Inc.*, 2005 CanLII 32939 (ON SC)

### **Claims:**

- Roy Juffs: Claim to recover child support arrears from LIRA proceeds and claim as parent of dependant under SLRA
- Chantelle Juffs: Claim as dependant under SLRA for adequate support

### **Analysis:**

- Roy Juffs' Claim:
  - LIRA not part of estate; creditors cannot claim against LIRA proceeds (*Amherst Crane Rentals v. Perring*)
  - Both arrears and parent claim dismissed
- Chantelle's Juffs' Claim:
  - SLRA allows court to deem LIRA proceeds part of estate (s.72). Court considered needs for 4 years of university, moral obligation for arrears
  - Award: \$22,442.80 (includes half arrears + education support)

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## When can an estranged adult child claim dependent relief?

### *Louis v. Lastman*, [2002] O.J. No. 3521, (ONCA)

- Mother chose to raise children without their father; she released all claims against him; he never acted or was asked to act as their parent; mother never obtained child support order
- Children cannot “come forward and make a support claim decades after they are no longer dependents.”
- Ontario Court of Appeal determined a trial was not required: children not entitled to relief

### *Sabarros v. Morrell*, 2025 ONSC 6122

- Father leaves three-year old daughter and her mother in 1991; mother obtains child support order in 1998; father never provides financial support
- Daughter claims as a dependent under s. 58 of the *SLRA*: father owed an obligation of support through child support order
- Motion Judge found (i) a trial was required to determine whether daughter considered a “child” under the *SLRA* and (ii) to consider whether court must consider moral obligations of deceased

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## Dependant’s Relief Claims in Quebec

**CIVIL CODE OF QUÉBEC** chapter CCQ-1991

**CHAPTER V - THE SURVIVAL OF THE OBLIGATION TO PROVIDE SUPPORT**

**684.** Every **creditor of support** may within six months after the death claim a financial contribution from the succession as support.

The right exists even where the creditor is an heir or a legatee by particular title or where the right to support was not exercised before the date of the death, but does not exist in favour of a person unworthy of inheriting from the deceased.

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## ▼ Who is a “Creditor of Support”

**585.** Married or civil union spouses, and relatives in the direct line in the first degree, owe each other support.

- No de facto spouses / common law spouses;
- No parental union spouses;

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## ▼ Determination and Payment of Support

**685.** The contribution is made in the form of a **lump sum** payable all at once or by **instalments**.

The contribution made to the creditors of support, with the exception of that made to the former spouse of the deceased who was in fact receiving support at the time of the death, **is fixed with the concurrence of the liquidator of the succession acting with the consent of the heirs and legatees by particular title or, failing agreement, by the court.**

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## Determination and Payment of Support

**686.** In fixing the contribution, the needs and means of the creditor of support, his circumstances and the time he needs to acquire sufficient autonomy or, if he was in fact receiving support from the deceased at the time of the death, the amount of the instalments that had been fixed by the court for the payment of the support or of the lump sum awarded as support are taken into account.

Account is also taken of the assets of the succession, the benefits derived from the succession by the creditor of support, the needs and means of the heirs and legatees by particular title and, where that is the case, the right to support which may be claimed by other persons.

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## Determination and Payment of Support

**688.** The contribution granted to the spouse or to a descendant may not exceed the difference between one-half of the share he could have claimed had the entire succession, including the value of the liberalities, devolved according to law, and what he receives from the succession.

The contribution granted to the former spouse is equal to the value of 12 months' support, and that granted to other creditors of support is equal to the value of six months' support; however, in neither case may such a contribution, even where the creditor was in fact receiving support from the deceased at the time the succession opened, exceed the lesser of the value of 12 or six months' support and 10% of the value of the succession including, where that is the case, the value of the liberalities.

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## Quebec Case Highlight

- **Case Name & Citation:** *V.M. c. Directeur de l'État civil*, 2025 QCCS 1304
- **Court:** Quebec Superior Court
- **Judge:** Hon. Andres C. Garin
- **Date:** April 25, 2025
- **Parties:** Families seeking recognition of multi-parent filiation vs. Directeur de l'État civil & Attorney General of Quebec
- **Nature:** Constitutional challenge to Civil Code provisions limiting filiation to two parents

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## Key Facts

- Several families formed through assisted reproduction and joint parental projects sought legal recognition of **more than two parents** for a child
- Quebec Civil Code restricts filiation to **two parents only**
- Plaintiffs argued this violates equality rights under **s. 15(1) of the Canadian Charter** and **s. 10 of the Quebec Charter**
- Intervenors included advocacy groups (e.g., Coalition des familles LGBT+, Egale Canada)

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## ▼ The Three Family Units

- **Family 1 (M–P–D)**
  - Couple and a third adult formed a joint parental project
  - Child conceived through assisted reproduction
  - All three sought legal recognition as parents
- **Family 2 (Pa–J–Je)**
  - Polyamorous relationship involving three adults
  - Shared intention to raise a child together
  - Current law only recognizes two parents, leaving one without status
- **Family 3 (L–M–A)**
  - Three adults committed to co-parenting
  - Demonstrates diversity of family models beyond traditional two-parent norm

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## ▼ Issues & Decision

- **Main Issue:** Does the two-parent limit in the Civil Code violate constitutional equality rights?
- **Court's Decision:**
  - Yes, the restriction is **discriminatory** and unconstitutional
  - Recognized “family status” as an analogous ground under s. 15(1) of the Charter
- **Outcome:**
  - Struck down over 40 Civil Code articles
  - Suspended invalidity for **12 months** to allow legislative amendments
  - Quebec government announced intention to appeal

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## Reasoning & Impact

- **Reasoning:**

- Limiting filiation to two parents perpetuates disadvantage for non-traditional families
- Membership in a family model is an **immutable personal characteristic**
- Violation cannot be justified under s. 1 of the Charter

- **Ratio Decidendi:**

- Equality rights extend to diverse family structures; two-parent limit is unconstitutional

- **Impact:**

- Quebec must amend Civil Code to allow multi-parent recognition
- Aligns Quebec with other provinces recognizing plural parenthood

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## Can a Testator Protect her Estate from Claims?

- *In Terrorem* clauses – not often enforceable
- Prenuptial / Cohabitation Agreements
- Proper provision and support of dependants – a dependant cannot contract out of their right to claim relief – s. 103 Wills and Succession Act, SA 2010, c W-12.2; ***Woods-McKenna v McKenna-Fenton***, 2015 ABQB 37

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Questions?

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## Survey and CPD QR Codes

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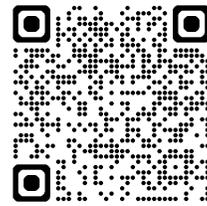


### Law Society of British Columbia

This program contains 1 hour of accredited content for the purposes of the Law Society of British Columbia's annual Continuing Professional Development (CPD) requirements.

The session has been loaded with the LSBC and is titled "Beyond the Will: Managing Dependant Claims, Modern Family Dynamics, and Unexpected Heirs - November 20, 2025".

### Ontario and/or Quebec CPD Certificate



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# Biographies



## Jonathan (Yoni) Feingold

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### Areas of Expertise

Litigation and Dispute Resolution | Wills, Trusts & Estate  
Litigation | Commercial Litigation | Private Client Services

### Education

2008, LLB, University of Montreal

2005, HBA, Philosophy and political science, University  
of Toronto

### Jurisdiction

Québec, 2009

### Languages

French | English | Hebrew

Yoni Feingold is a partner in our Litigation and Dispute Resolution group at the Montréal office. His practice is centered on the resolution of disputes concerning wills, trusts, estates and general commercial matters.

He is regularly called upon to represent clients, including heirs, liquidators, and trustees, as well as local and international companies and their shareholders, officers and directors, before the Superior Court and the Court of Appeal in complex matters.

Yoni regularly advises clients in various industries, including real estate, retail, fashion, media and emerging technology.

He is involved in the legal community and a member of the *Jeune chambre de commerce de Montréal* and the Lord Reading Law Society.

Before joining Fasken, Yoni practised in the business law and litigation group of a Québec firm.

## Memberships and Affiliations

- Member, *Lord Reading Law Society*

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- Member, *Chambre de commerce de Montréal*

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## Areas of Expertise

Litigation and Dispute Resolution | Construction Litigation | Securities Litigation | Product Liability | Wills, Trusts & Estate Litigation | Commercial Litigation | International Arbitration | Class Actions | White Collar Defence and Investigations | Construction Law | Health | Energy and Climate | Insurance | Canada

## Education

2000, LLB, University of Alberta  
1996, BA, University of Calgary

## Jurisdiction

Alberta, 2001

## Language

English

Karen's practice focuses on complex commercial, construction, and contract litigation and arbitration.

Named by *Benchmark Canada* as "Litigation Star" in Commercial Litigation in Alberta and one of Canada's "Top 100 Women in Litigation", Karen leverages her over 20 years' of experience to advise clients on a broad range of complex litigation and arbitration disputes.

Providing counsel to clients in the energy, agricultural, chemical and construction industries, she has been involved in the resolution of a variety of claims, including: multi-party actions, contract disputes, estate litigation, product liability claims, and construction disputes. Most notably, Karen has been identified by *The Best Lawyers in Canada* in Construction Law and in International Arbitration.

Across her practice areas, Karen is a keen project manager who aims to bring certainty to the litigation process and its associated cost by mapping out various paths to dispute resolution early on, providing initial case assessments and managing claims to budget. She works collaboratively with her clients with a constant focus on results.

## Rankings and Awards

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- *Chambers Canada* 2025 Recognized in Litigation: General Commercial in Alberta

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- *Benchmark Litigation Canada 2022-2025* Recognized Nationwide as one of the Top 100 Women in Litigation in Canada
- *The Best Lawyers in Canada 2024-2025* Recognized in International Arbitration in Alberta
- *The Best Lawyers in Canada 2021-2025* Recognized in Construction Law in Alberta
- *Benchmark Litigation Canada 2021-2024* Recognized in Alberta as a Litigation Star in Class action, Commercial, Construction, Energy, Product liability and recall and Securities
- *Lexpert 2024* Recognized in the Canadian Legal Lexpert Directory in Commercial Arbitration
- *Benchmark Litigation Canada 2020-2021* Top 50 Women in Litigation - Canada
- *Benchmark Litigation Canada 2018-2020* Recognized in Alberta as a Litigation Star in Class Action, Construction, Energy and Natural Resources, General Commercial, Product Liability, Securities
- *Benchmark Litigation Canada 2017-2019* Litigation Star

## Memberships and Affiliations

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- Member, Calgary Bar Association
- Member, Canadian Petroleum Law Foundation
- Member, Law Society of Alberta
- Member, Canadian Bar Association
- Member, Association of Women Lawyers
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### Education

2019, LLB (Hons), King's College London

2011, BA, Political Science, Philosophy, McGill  
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### Accreditation

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Accreditation

### Jurisdiction

Ontario, 2021

### Languages

English | French

Joseph Stonehouse is an associate in the Litigation, Dispute and Resolution Group. Passionate about resolving commercial disputes, Joseph maintains a broad litigation practice. He has appeared before the Ontario Court of Appeal, Manitoba Court of Appeal and the Ontario Superior Court of Justice as well as representing clients in domestic and international arbitrations.

Joseph represents clients across a broad array of industries including in relation to various types of complex commercial disputes.

Through his prior experience at a boutique litigation firm and a boutique construction firm, he has worked on wide range of disputes including construction, contract, corporate governance, insurance, negligence, shareholder disputes, intellectual property, licensing agreements, bankruptcy, insolvency, fraud and employment.

During law school, Joseph received his Bachelor of Laws at Kings College London, where he worked as a Teaching and Research Assistant for the Negotiations and Strategic Decision-Making modules. He received numerous academic excellency awards, including the Agnes Day Prize, for the highest overall results in first year,

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and the Willie Kwan Scholarship for outstanding academic performance. In a previous business-to-business sales career, Joseph developed his craft as a skilled negotiator by consistently negotiating and closing deals.

Joseph dedicates time as a member of the fundraising committee for the Barbra Schlifer Commemorative Clinic and volunteering at Pro Bono Ontario's Hotline, where he provides legal help to Ontarians-in-need.

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### Areas of Expertise

Litigation and Dispute Resolution | Wills, Trusts & Estate  
Litigation

### Education

2016, JD, City University of Hong Kong (CityUHK)

2014, BA, Law and Social Anthropology, University of  
London

### Jurisdictions

British Columbia, 2023 | Hong Kong, 2020

### Languages

English | Chinese (Cantonese) | Chinese (Mandarin)

Vivian is an associate in the Trusts, Wills, Estates, and Charities group at Fasken's Vancouver office, with a primary focus on estate and trust litigation.

Prior to joining Fasken, Vivian practiced law in Hong Kong, gaining experience in all stages of the litigation process, from initial pre-action advice through to trial and appeals. She has handled a wide range of complex disputes, including claims involving capacity and undue influence issues, fraud and asset tracing.

During her articling at Fasken, Vivian developed a diverse practice within trust, will, and estate disputes. Recent cases she has been involved in include claims for wills variation, removal of trustees, rectification of testamentary and trust documents, and the setting aside of property transfers.

While pursuing her legal studies, Vivian also worked with a non-profit organization specializing in refugee law and managed the operations of two travel start-ups.



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