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A Windfall Inheritance from a Distant Relative: Daydreams Only Come True for Some

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Cases Considered:

Hilstad Estate, 2008 ABQB 570

Who hasn't daydreamed about inheriting a fortune from some distant and unheard of relative? I suppose one of the reasons it is a fairly common reverie is because, occasionally, it really does happen. This case is about one of those occasions. In September 2008, the maternal second cousins of Mary Hilstad who were alive in her death in 1963 inherited over $900,000 in royalty payments from mines and minerals. Those second cousins are probably deceased themselves by now, but some unsuspecting child or grandchild of theirs is probably about to become more comfortable financially. Their daydreams will come true thanks to the original owner of the mines and minerals, Olaf Christian Hilstad, who died in 1915 in the Judicial District of Red Deer, Alberta, without a will, spouse or children.

When Olaf Christian Hilstad he died in 1915 he did have four siblings. The survivor of those siblings took all and that survivor was his sister, Mary Hilstad. Mary Hilstad, who died in 1963, also died without a will, spouse or children. On September 10, 2008, the Court of Queen's Bench of Alberta granted an uncontested application that recognized the estate of Mary Hilstad as the sole beneficiary of the estate of Olaf Christian Hilstad.

The Alberta government's Office of the Public Trustee is appointed by the court to administer the estates of Albertans who are dependent adults, minors and deceased persons when there is no one else to act. The mines and minerals that Olaf Christian Hilstad owned in 1915 were still registered in his name when they began producing in 1993. The Public Trustee began receiving royalty payments from the mines and minerals on behalf of the estate of Olaf Christian Hilstad in 1996, which was why that office applied for and was issued a grant of administration of the unadministered property for the estate of Olaf Christian Hilstad in 1997. The fact Mary Hilstad was Olaf Christian Hilstad's sole beneficiary was the reason the Public Trustee was appointed the personal representative of her estate in 2003.

Between 1996 and 2008, the royalty payments from the mines and minerals that Olaf Christian Hilstad had owned and that Mary Hilstad's estate now held had accumulated. As of September

2008, the Public Trustee was holding $912,211.96 in trust for the beneficiaries of Mary Hilstad, whoever they might be.

The Public Trustee wanted to distribute the estate to the correct beneficiaries under the *Intestate Succession Act*, R.S.A. 1955, c. 161 and therefore applied to the Honourable Mr. Justice Vital O. Ouellette for advice and direction, pursuant to the *Administration of Estates Act*, R.S.A. 2000, c. A-2, section 60. The question was whether the cash went to the maternal second cousins of Mary Hilstad who were alive when she died in 1963 or to the next of kin of Mary Hilstad's paternal first cousin, Marie Marit Bruun, who had died in 1964. A diagram of the relationships between the would-be beneficiaries, Olaf Christian Hilstad and Mary Hilstad can be found at the end of this post for those who have trouble keeping relatives and their relationships straight. As that diagram shows, Marie Marit Bruun was the closest relative of Mary Hilstad. Therefore, she would normally have inherited under the *Intestate Succession Act*. However, Marie Marit Bruun was born out of wedlock. In 1963, children who were illegitimate could not inherit in circumstances such as these. In fact, the Alberta government did not change the *Intestate Succession Act* to include children born out of wedlock until 1991. Those 1991 amendments did not apply retrospectively and could not affect property interests that had vested before 1991.

The Alberta Law Reform Institute (ALRI) had recommended the abolition of the statuses of legitimacy and illegitimacy in favour of a law providing for the equal treatment of all children in its 1976 Report No. 20 on *Status of Children*. Legislation removing the discrimination against children on the basis of their birth outside marriage was not enacted by the provincial government. The ALRI updated its 1976 recommendations and published Report No. 45 on *Status of Children: Revised Report, 1985*, at the request of a government committee. However, once again, legislation removing the discriminatory treatment was not forthcoming. Then, in 1991, Canada announced its intention to ratify the United Nations *Convention on the Rights of the Child* and that Convention protects children from discrimination on the basis of birth or other status. The Canadian government asked the provinces to bring their laws into line with the Convention. That news motivated the ALRI to once again update its 1976 report and publish Report No. 60 on *Status of Children: Revised Report 1991*. As a result, the 1976 Report's recommendations were substantially enacted by the *Family and Domestic Relations Statutes Amendment Act, 1991*, S.A. 1991, c. 11 - finally.

Section 9 of the 1955 version of the *Intestate Succession Act* provided:

> 9. If an intestate dies leaving no widow, issue, father, mother, brother, sister, nephew or niece, his estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted.

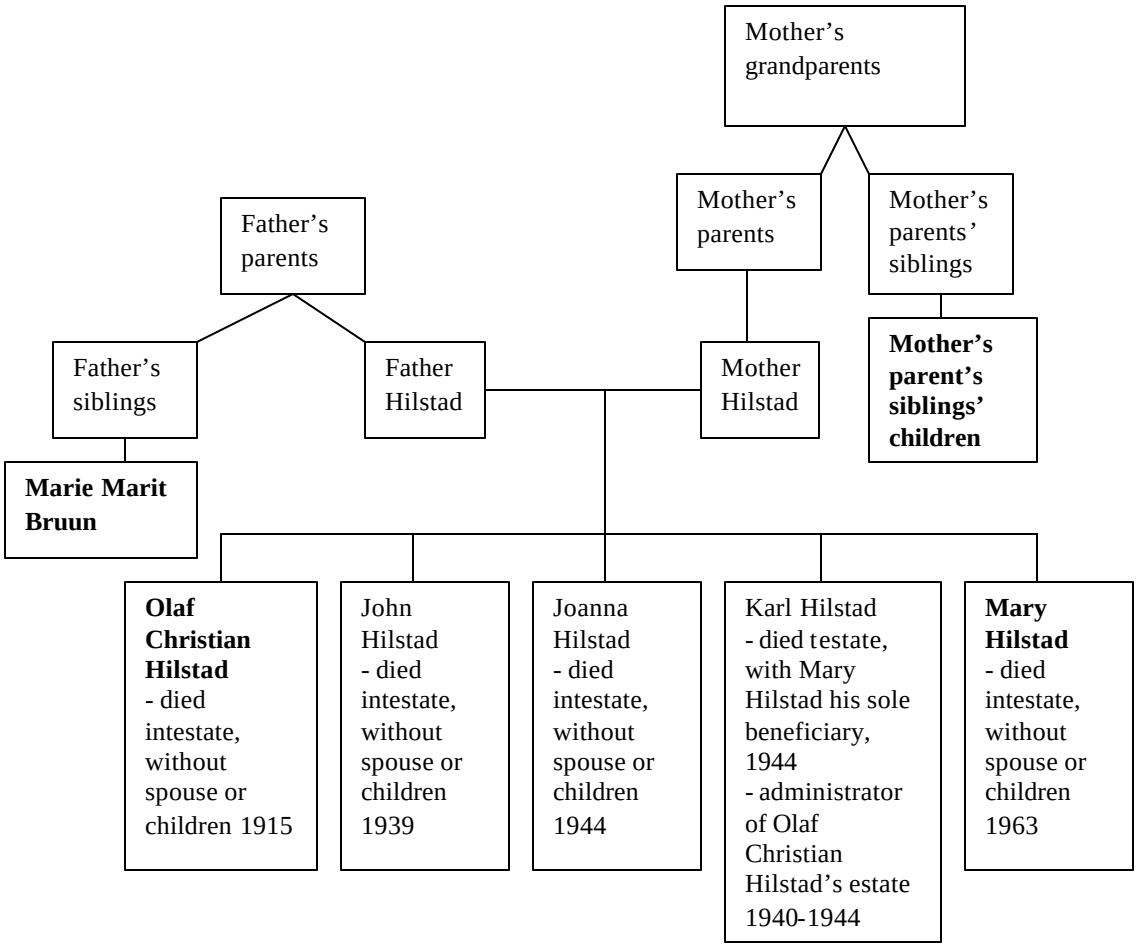
Degrees of kindred are calculated by counting upward from the intestate to the nearest common ancestor and then downward to the relative. Using this method, if you look at the diagram at the end of this post, Marie Marit Bruun was within four degrees of kindred and the maternal second cousins who ended up being the beneficiaries were within five degrees. "Consanguinity" merely

means the relation subsisting among all the different persons descending from the same common ancestor. All of those within five degrees of kindred to Mary Hilstad would inherit in this case.

The issue before Mr. Justice Ouellette was whether Marie Marit Bruun's birth status would deprive her of over $900,000 in 2008. The question was one of timing. Was the beneficiary of Mary Hilstad's estate to be determined at the time of her death in 1963, or in 1996 when the mines and minerals began to pay royalties, or in 2008 when the estate was about to be distributed?

Despite the fascinating facts and the way an apparently worthless interest in land turned into almost one million dollars in 93 years, the legal issue was relatively easy to decide. There is Alberta Court of Appeal authority on the timing issue. In *Re Jardin Estate* (1956), 18 W.W.R. (N.S.) 445 (Alta. S.C.A.D.), the mines and minerals did not come into the estate until approximately 15 years after the death of the intestate. The question before the Court was whether the persons entitled to take on the intestacy were to be determined as of the date of death or fifteen years later, when the mines and minerals came into the estate. The court noted (at page 449) that at common law, succession in the case of a will or on intestacy is prima facie determined at the date of death. There was nothing in the *Intestacy Succession Act* to indicate a contrary intention, as all of the statute's provisions began with the phrase "If an intestate dies leaving. . . ", confirming the date of death was the relevant date. The Court found, therefore, that the next of kin entitled to the mines and minerals were those who were the next of kin at the date of the death of Samuel Jardine, the intestate.

The Public Trustee, as personal representative of the estate of Mary Hilstad, was therefore allowed to distribute the estate to the maternal second cousins of Mary Hilstad who were alive at her death. They were the next of kin of equal degree of consanguinity to Mary Hilstad pursuant to s. 9 of the *Intestate Succession Act*. The closer relative, Marie Marit Bruun, lost out due to her birth out of wedlock.


Mother's grandparents
Mother's parents
Mother's parents' siblings
Father's parents
Father's siblings
Father Hilstad
Mother Hilstad
Mother's parent's siblings' children
Marie Marit Bruun
Olaf Christian Hilstad - died intestate, without spouse or children 1915
John Hilstad - died intestate, without spouse or children 1939
Joanna Hilstad - died intestate, without spouse or children 1944
Karl Hilstad - died testate, with Mary Hilstad his sole beneficiary, 1944 - administrator of Olaf Christian Hilstad's estate 1940-1944
Mary Hilstad - died intestate, without spouse or children 1963