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Beneficiary Designations Under Wills

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Assets for which beneficiary designations may be made can be an important part of an estate plan, whether they be life insurance taken out to fund payment of anticipated tax liabilities triggered by death, a registered retirement savings plan (RRSP) rolled over to a surviving spouse, or a tax-free savings account (TFSA) gifted in a manner that equalizes the distribution of an estate within the context of the gift of an asset of significant value (such as a family business) to one child to the exclusion of another.

Typically, life insurance and other assets for which a beneficiary designation may be made will pass "outside" of an estate, meaning that the asset is typically received by the designated beneficiary, free and clear of exposure to estate liabilities, subject to certain exceptions. However, in order for the proceeds to pass to the intended recipient, it is important that beneficiary designations are valid, consistent with the estate planning client's wishes, and capable of being given effect.

Guidance from the Ontario Court of Appeal

A designation, alteration, or revocation of a beneficiary can be made in a beneficiary designation document provided by the financial institution or in the will of the owner of a plan such as an RRSP or registered retirement income fund (RRIF). Under the *Succession Law Reform Act*, a designation contained in a will is effective if it relates expressly to a plan, either generally or specifically.[1] A designation or revocation in a will is effective from the date that the will is signed[2] and would revoke and replace an earlier revocable designation, to the extent of any inconsistency.

In *Rehel Estate v Methot*,[3] the deceased's surviving spouse asserted that the deceased's RRIF designation included in his will was too vague, as it was not clear to which account he was referring. The Court disagreed with this position, holding that there was no evidence that the deceased had more than one RRIF account and it was, therefore, sufficiently clear to which account he was referring in the will.

In other decisions, including *Laczova v House*,[4] subsection 51(2) of the *Succession Law Reform Act* has been interpreted more narrowly. In the Lower Court's decision (upheld on appeal), it stated, "the legislative intent is clear. The section uses the word 'expressly', a word not often

[1] RSO 1990, c S.26, s 51(2).
[2] *Ibid*, s 52(7).
[3] 2017 ONSC 7259.
[4] 2001 CanLII 27939 (Ont CA).

found in statutory language, but when it is present, its use is there to add emphasis and clarity of purpose."[5]

More recently, in *Alger v Crumb*,[6] the Court of Appeal considered a clause revoking "all Wills and Testamentary dispositions of every nature and kind whatsoever made by me heretofore made." The Court of Appeal summarized the principles it had previously applied in the *Laczova* decision as follows:

1. The SLRA sets out statutory requirements for the designation of a beneficiary by will and for the revocation of a beneficiary designation by will, that are not required for such a designation or revocation when done by instrument;

2. Specifically, a designation of a beneficiary by will must relate expressly, whether generally or specifically, to the plan (s. 51(2)), while a revocation by will of a beneficiary designation that was made by instrument must relate expressly, whether generally or specifically, to the designation (s. 52(1)).[7]

The Court of Appeal agreed with the application judge that the general revocation clause did not relate expressly to the beneficiary designations with respect to the testator's RRIF and TFSA plans and, accordingly, that those pre-existing designations remained in effect. This decision highlights the importance of ensuring that language intended to revoke or amend a beneficiary designation relates expressly, without ambiguity, to the appropriate plan.

Practical Considerations

There are a number of practical considerations that solicitors may wish to keep in mind when asked by clients to assist in making or changing beneficiary designations of plans, which are touched on below:

- ***Avoiding Exposure to Probate Fees*** – Generally, if a client's instructions are to make a new beneficiary designation under a will, it is prudent to include the related terms prior to the vesting clauses rather than amongst other dispositive provisions of the will to assist in avoiding risk that the plan proceeds may be exposed to estate administration tax.

- ***Consistency with Other Designations*** – Generally, the last valid beneficiary designation will govern the transfer or distribution of the proceeds after the original plan holder's death. This raises the issue of what may happen if it is not known which was the more recent beneficiary designation. For example, we often encounter holograph wills that are valid testamentary documents, yet undated. If an undated document amends or revokes a beneficiary designation, it can be difficult to determine whether this predated or followed another beneficiary designation.

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[5] *Laczova Estate v Madonna House* (2001), 37 ETR (2d) 262, 2001 CarswellOnt 416 (Ont Sup Ct J) at para 14.
[6] 2023 ONCA 209.
[7] *Ibid* at para 22.

- ***Ability to Designate a New Beneficiary*** – It may not always be the case that the client is authorized to appoint a new beneficiary for a life insurance policy or other plan. A previous beneficiary designation may be irrevocable, the plan may have been validly assigned to someone else, or the plan may be subject to an agreement that will result in its proceeds being impressed with a resulting or constructive trust notwithstanding any attempted amendment or revocation of the beneficiary designation. For example, in *Moore v Sweet*,[8] an ex-wife who had been paying life insurance premiums pursuant to her agreement with the deceased that she would remain the designated beneficiary was successful in asserting that the policy proceeds were impressed with a constructive trust in her favour on the basis of unjust enrichment. As the Supreme Court of Canada affirmed, even an irrevocable beneficiary designation cannot bar equitable relief.

- ***Section 72 Issues*** – Clients with dependants should be cautioned regarding the possible impact of dependant's support claims commenced under Part V of the *Succession Law Reform Act* and, in particular, the chance that assets that may otherwise pass to a designated beneficiary could be "clawed back" into the estate for the purposes of funding payment to a dependant who has been left inadequate support pursuant to Section 72.

- ***Will Challenges*** – If a will that includes a beneficiary designation is challenged, it is possible that the entire document may be set aside, including the beneficiary designation, amendment, or revocation. Standalone beneficiary designations may separate the issue of the validity of the beneficiary designation from the validity of a will, where other issues that may not otherwise impact a beneficiary designation may result in a will challenge.

- ***Compliance with Statutory Requirements and/or Those of the Financial Institution*** – Legislation, such as the *Insurance Act*,[9] and financial institutions may have their own requirements in order for a beneficiary designation, alteration, or revocation to be valid. When in doubt, it may be prudent to confirm with the relevant financial institution that the proposed form of beneficiary designation is compliant with its requirements rather than facing problems down the road.

- ***Plans to Equalize Inheritances*** – If the proceeds of a plan are intended to equalize gifts made to different individuals (for example, two adult children), it is important that estate planning clients understand the implications that may result if a plan is depleted or no longer exists at the time of their death. In the case of life insurance policies or other plans for which premiums are payable, it is possible that a policy may lapse if premiums are not paid for a period preceding the client's death, such as during a period of incapacity.

[8] 2018 SCC 52.
[9] RSO 1990, c I.8.

- ***Tax Issues*** – The disposition of some plans, such as RRSPs, to someone other than the plan-holder's spouse may trigger significant taxes. It is important that clients consider how they would like the tax liability relating to a plan to be borne and, if it is not intended that it be treated as any other liability of the estate, it should be documented within their testamentary documents to avoid any confusion.

- ***Presumptions of Resulting Trust*** – In 2020, *Calmusky v Calmusky*[10] saw a novel application of the presumption of resulting trust to a RRIF for which an adult child had been designated the beneficiary. While it appears that subsequent decisions have not followed *Calmusky*, it remains important that a client's wishes with respect to the gift of an asset to an adult child by right of survivorship, *inter vivos* transfer, or even by beneficiary designation is clearly documented to assist in rebutting any presumption of resulting trust that may apply now or in the future.

What is the Impact of Will Validation?

Early last year, Section 21.1 was added to the *Succession Law Reform Act* to permit judges of the Ontario Superior Court of Justice to validate "a document or writing that was not properly executed or made" if it "sets out the testamentary intentions of a deceased or an intention of a deceased to revoke, alter or revive a will of the deceased".[11]

This means that wills or other documents made under the *Succession Law Reform Act* may be validated by the court, whether they are substantially compliant with the formal requirements for valid execution or not. For example, in *Grattan v Grattan*,[12] an unsigned will was validated by the Court and admitted to probate.

The *Succession Law Reform Act* addresses beneficiary designations, amendments, and revocations for "plans". While there may not yet be any cases on point, it would appear that Section 21.1 could be applied to validate a beneficiary designation, amendment, or revocation of a plan if contained in a will that sets out the deceased's testamentary intentions. The definition of plan under the *Succession Law Reform Act* includes pensions, RRSPs, RRIFs, and home ownership savings plans.[13] Notably absent from this list are beneficiary designations for life insurance policies.

Beneficiary designations for life insurance policies are governed instead by the *Insurance Act*. A beneficiary designation for life insurance is to be made by way of a signed declaration. Pursuant to the definition of "declaration" under the *Insurance Act*, a declaration should identify the contract and the insurance policy, designate, alter, or revoke the designation of a beneficiary, and be signed by the insured.[14] However, the *Insurance Act* also specifies that, notwithstanding the terms of the *Succession Law Reform Act*, the declaration may be signed

[10] 2020 ONSC 1506.
[11] *Supra* note 1, s 21.1.
[12] (1 February 2023), 22-0054 (Ont Sup Ct J).
[13] *Supra* note 1, s 50.
[14] *Supra* note 9, s 171(1).

electronically.[15] The new will-validation provision under the *Succession Law Reform Act* appears, however, to specifically exclude the validation of electronic wills.[16]

Interestingly, the *Insurance Act* includes terms relating to a scenario in which a valid beneficiary designation is made within a will that is otherwise invalid,[17] but not the opposite situation or the possible impact of Section 21.1 of the *Succession Law Reform Act* on the validity of a life insurance beneficiary designation. This raises the question of whether there is potential for a will to be validated while a beneficiary designation made within it is not. Particularly within the context of life insurance and different statutory provisions relating to beneficiary designations for these policies, a scenario in which parts of an estate plan (most gifts and residuary clauses under a will) are validated while others (a life insurance beneficiary designation, whether under a will or a standalone document) are not, appears to be possible. With the common use of life insurance as an important part of an estate plan to equalize gifts, assist with liquidity to fund payment of tax and other liabilities, and for a number of other purposes, the result could be an estate plan that does not function as planned.

Conclusion

It will be interesting to see whether and, if so, how courts may deal with the issue of the validation of wills containing beneficiary designations in the future. For now, however, this may be another reason to consider alternatives to changing the beneficiaries of life insurance policies and registered plans under wills, such as the use of standalone documents or updating designated beneficiaries using the forms provided by (and confirmed to be acceptable by) the insurer.

[15] *Ibid*, s 190(1.1).
[16] *Supra* note 1, s 21.1(2).
[17] *Supra* note 9, s 192.