Litigation Involving Beneficiary Designations

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Litigation in the field of beneficiary designations is on the rise. The reasons for this include the significant value of assets that can pass by designation and because the focus of such a challenge is often quite narrow. The designation itself is very brief and these cases typically involve only one issue. That, however, should not be taken to indicate that such cases may not be costly or protracted. Issues involving beneficiary designations can tie up the administration of an Estate, delay the receipt of assets by the intended beneficiaries or result in the assets being received by people other than who it was intended.

There are a number of assets for which people can designate a beneficiary outside of a Will. These include insurance, RRSPs, RRIFs and pensions. Generally speaking, a beneficiary designation doesn't have to be in any particular form. It should, however, be sufficient to identify the fund, the person (or persons) to receive the proceeds and be signed or completed in some manner by the donor. No formal language is required to accomplish all of this.

In Ontario, and depending on the asset, the designation of a beneficiary and its revocation may be further governed or impacted upon in various ways by the *Insurance Act*; *Succession Law Reform Act*; Provincial or Federal Statutes governing pensions; and the particular terms of a given policy or plan.

For example, under the *Succession Law Reform Act*[1] *(SLRA)*, a "plan" is defined broadly to include, "a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents or former agents of an employer or their dependants or beneficiaries."[2]

Under the *SLRA*, a participant or donor may designate a person to receive a benefit payable under a plan on the participant's death, by an instrument signed by him or her, or signed on his or her behalf by another person in his or her presence and by his or her direction, or by Will, and may revoke the designation by either of these methods. A designation in a Will is effective only if it relates expressly to a plan, either generally or specifically, and a revocation is only effective if it relates expressly to the prior designation, either generally or specifically. A later designation revokes an earlier designation, to the extent of any inconsistency. A designation made in a Will can revoke an earlier designation made outside of a Will. The revocation of a Will can revoke a designation made in that Will.[3]

As regards the nature of a designation, or of a revocation, the courts have preferred substance over form. Accordingly, a homemade or holograph designation or revocation made by a participant will often suffice. Again, no particular form or words are prescribed.

A designation or revocation contained in a Will is not invalid by reason only that the Will is found to be invalid. And, unlike a Will, the revocation of a designation does not revive an earlier designation. That being said, a designation has been considered testamentary by the Courts. In other words, it speaks from the date of death of the donor.

It is important to note that many of the assets which allow for the designation of a beneficiary are also afforded creditor protection.[4] Whether the asset is exempt from seizure by creditors, and is free to pass to a designated beneficiary, depends upon a number of factors. These include whether the assets are insurance-related, where the funds came from and the interpretation of the applicable beneficiary designation legislation. Not all assets for which a beneficiary can be designated can provide protection from creditors.

A variety of challenges to beneficiary designations have been brought in the courts. In *Re Laczova Estate*,[5] a 2001 case which went to the Ontario Court of Appeal, the deceased had purchased RRSPs from different banks prior to her death and designated certain family members as beneficiaries. In a holograph Will, she disposed of the RRSPs in a different manner. The Court ruled that the holograph Will was not effective to

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change the prior beneficiary designations. The Will did not expressly relate to the prior designation, either generally or specifically. The scheme of a Will cannot impliedly revoke a prior designation. If the Will does not contain an expression relating to prior designations it is not sufficient to revoke them.

A more recent Ontario case in which a seemingly contrary result was reached is *Re Ashton Estate*.[6] In this case the deceased had first designated his eight children as beneficiaries of his RRSPs equally. He later signed a Will in which he disposed of the residue of his estate to his children unequally. As well, he specifically appointed them as beneficiaries of any pension plan benefits or RRSPs that he may own. The Court found that the prior designation was "testamentary" and that the general revocation clause was effective to cancel it. Further, the Court found that the testator must have had in mind his RRSPs when he made his eight children unequal beneficiaries as that appointment formed part of the gift of 95% of the residue.

These *Laczova* and *Ashton* decisions are difficult to reconcile. The revocation in *Ashton* was not express, generally or specifically. The cases may turn on their facts or the specific words used in the instruments being considered. For instance, in *Ashton* it appears that the majority of the testator's assets were comprised of RRSPs. Accordingly, for his Will to make sense, and his intention to be given effect to, the Court was compelled to find a revocation of the prior designation.

In short, there is potentially a lot of confusion which can arise from competing or home-made beneficiary designations. Problems can arise as well in moving a plan or policy from one institution to another or even from one type of investment or account to another at the same institution. A beneficiary designation does not automatically transfer over to a new institution or to a new account. As a result, where the donor intended to devolve an asset in a particular way and who likely does not know or may not have been told that a new designation was required, may result in the donee ending up in litigation.[7]

A beneficiary designation is subject to being interpreted and can be challenged on all of the same bases as a Will, namely lack of capacity of the donor, undue influence, lack of knowledge and approval of the instrument and lack of due execution. If a last-dated beneficiary designation is found to be invalid, the asset will devolve on some default basis. For instance, it may devolve under the residue clause of a prior Will or on an intestacy if there is no Will.

As well, it is possible in certain instances to ask the court to rectify a beneficiary designation. To do so, the claimant needs to clearly establish that a mistake was made as regards the person that was to be designated, or the asset described, and that the designation fails to express the intention of the deceased. Typically, the evidence of the claimant alone would not be sufficient. However, where for instance it can be established that both the deceased and the plan holder believed the claimant to be the designated beneficiary but, through mutual mistake, the instrument did not reflect this, rectification has been granted.

In that context, the recent case of *Conner v. Bruketa Estate*[8] decided in Alberta is also worth mentioning. There, the deceased had intended his pension and life insurance be designated to a former companion. However, he failed to complete designations and his Will did not deal with these assets. The dispute was between the former companion and those who would take on an intestacy; the deceased's adult children. The donor had given written instructions to his