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ESTATE ADMINISTRATION

Armstrong

Release No. 6, June 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in November 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the November 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Estate Administration: A Solicitor's Reference Manual is a how-to guide dealing with all aspects of estate administration in Ontario. Text is augmented by up-to-date forms, precedents, letters and checklists. Commonly used statutes and regulations are reproduced in full. All aspects of estate administration are examined, including the conveyancing of real property and the income tax implications arising upon death.

What's New in this Update:

In this release, the last half of chapter 2 has been updated, as well as a number of Precedents forms, and some Special Instructions and their associated Digests. A new Precedent form 55A – Order for Further Particulars has also been added.

Highlights:

- **Beneficiary designations — Revocation by will — Standard Revocation Clause** — The applicants sought an order directing the Estate Trustees to pay each of the applicants 25% of the sum total of the deceased's RRIF and TFSA accounts in accordance with the beneficiary designations that were on file with the bank. After the deceased had made the beneficiary designations, she executed a will that did not explicitly mention the RRIF or the TFSA but contained a standard clause providing as follows:

I HEREBY REVOKE all Wills and Testamentary dispositions of every nature and kind whatsoever made by me heretofore made.

The issue before the court was whether this clause revoked the beneficiary designations on the RRIF and the TFSA. The court began its analysis by observing that the revocation clause in the would only possibly revoke the RRIF and TFSA designations if those designations fit into the definition of "testamentary dispositions". It noted that, especially in Ontario, it is clear that the designations in question are in fact "testamentary dispositions" (*Amherst Crane Rentals Ltd. v. Perring* (2004), 187 O.A.C. 336 (Ont. C.A.), *MacInnes v. MacInnes*, [1935] S.C.R. 200). The court then went on to determine whether the term "testamentary dispositions of every nature and kind whatsoever" relate "expressly" to the designations in question, "either generally or specifically"? That is, how does s. 52(1) of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (SLRA) impact the interpretation of the standard revocation clause. The court reasoned that on its face, the answer to that question would seem to be no. There is no express reference specifically to either the RRIF designation or the TFSA designation in the revocation clause nor was there any reference to any beneficial designations generally. Although beneficial designations fall under the broad category of "testamentary dispositions" — "it would be a stretch to find that mentioning that broad category amounted to "expressly" referencing the RRIF designation or the TFSA designation, either generally or specifically"(para. 13). Therefore, s. 52(1) seems to dictate that the designations in this case are not revoked by the will. In the course of its analysis, the court considered *Ashton Estate v. South Muskoka Memorial Hospital*, 2008 CarswellOnt 2592, [2008] O.J. No. 1805 (Ont. S.C.J.), where McIssac J. was faced with the exact issue as was before the court and concluded that the standard clause did revoke the previous

designation. The court found that this decision was “plainly wrong”: *Alger et al. v. Crumb et al.*, 2021 ONSC 6076, 2021 CarswellOnt 17392 (Ont. S.C.J.).

- **Interest on Legacies — Rule of Convenience — Interest rate —** In this case a father died in July 2015 leaving a will that, among other things, directed two cash legacies to each of his estranged sons. One of those sons, O, who suffered from disabling genetic condition and sought to have his share paid out in manner that did not disentitle him from receiving Ontario Disability Support Program (ODSP) benefits. On the basis that O was challenging the will, the estate trustee brought an application for directions. The dispute lasted for several years. O eventually brought an application to vary the will and the matter was finally settled in 2021 by a consent judgment in his favour. O sought interest on the judgment at the rate of five percent per annum. The Court granted him interest of 1% from the anniversary of his father’s death to the date of payment. The court stated at para 33. and 34. that “[a]s per *Rivard v. Morris*, 2018 ONCA 181 (CanLII), the Ontario Court of Appeal confirmed that the common law “Rule of Convenience” is alive and well. Interest is payable on gifts of personal property such as the personal property in this case. Similar to this case, the amounts in question in *Rivard* were cash legacies of \$530,000 payable to each of the deceased’s daughters...The presumption of course is that such gifts are to be paid out within the Estate Trustee’s year. Where payment is delayed beyond one year and there is no specific provision for delay in the will, interest is payable as “general powers of postponement are not specific enough to achieve this” (para. 50). Further, the payment of interest is not connected to “fault” or even impossibility” The court found that interest at rate of five percent would, however, result in a windfall in this case. An interest at rate of one percent, which fell within parameters of current GIC rates, was fair and more realistic. The court also ordered that if estate had not preserved sufficient funds, the trustee was to make payment personally: *Campbell Estate v. Campbell*, 2021 ONSC 2424, 2021 CarswellOnt 4671, 68 E.T.R. (4th) 286 (Ont. S.C.J.).

ProView Developments

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