

Designated beneficiaries of registered accounts must be expressly revoked

Litigation | Litigation & Dispute Resolution | Tax and Estate Planning

30 March 2023

Estate litigation often centres around determining the intentions of a testator. Since a deceased testator can no longer explain their intentions, some provisions in the Ontario *Succession Law Reform Act* (the “SLRA”) attempt to provide guidance as to how a testator’s written instruments are dealt with. Registered accounts such as RRIFs and TFSAs are legal testamentary instruments that permit an account holder to designate a beneficiary, the person entitled to receive the funds upon the death of the account holder. Issues may arise, however, as to whether an account holder actually intended to change the beneficiary of their accounts, depending on the language used in their wills or codicils. In such circumstances, there may be a disagreement between the estate trustees and financial institutions holding the accounts as to how to deal with the testator’s accounts.

In *Alger v Crumb*, 2023 ONCA 209, the Ontario Court of Appeal re-affirmed that a general revocation clause in a testator’s will is not effective to revoke existing designations by instrument(s) made in a testator’s RRIF and TFSA plans.

In this case, the testator held RRIF and TFSA plans at Scotiabank. The testator designated all four of her children as equal beneficiaries of the plans by instruments in the account documentation with the bank.

Subsequently, in 2019, the testator made will containing the following general revocation clause: “I HEREBY REVOKE all Wills and Testamentary dispositions of every nature and kind whatsoever made by me heretofore made.”

After the testator’s death, the estate trustees claimed that the general revocation clause revoked the previous designation of the four children as the beneficiaries of the RRIF and TFSA accounts. Litigation ensued between the estate trustees and the testator’s children over entitlement to the funds in the accounts.

A court application was heard by the Ontario Superior Court of Justice in 2021. The application judge referred to an earlier Court of Appeal decision, *Laczova v. House*, 2001 CanLII 27939 (ON CA), and found that the beneficiary designations by instruments of the RRIF and TFSA plans were testamentary dispositions at law and that the general revocation was ineffective to revoke the designations since that revocation did not comply with section 51(2) of the SLRA.

The trustees appealed and the Court of Appeal was required to consider whether the testator’s failure to expressly refer to the prior designations of beneficiaries by instruments rendered the revocation clause under the will ineffective under 51(2) of the SLRA in connection with the two accounts.

Section 52(1) of the SLRA states that “a revocation in a will is effective to revoke a designation made by the instrument only if the revocation relates expressly to the designation, either generally or specifically.” The latter wording has led to some confusion over what “generally or specifically” actually means, and whether a previous beneficiary designation needs to be expressly referred to in a revocation clause in order to be validly revoked.

The SLRA sets out statutory requirements for the revocation of a beneficiary designation by will whereby (i) it must relate to the designation (as opposed to the plan); and (ii) it must relate to the designation expressly, “either generally or specifically”.

The purpose of requiring an express revocation of beneficiary designations of plans is to make clear to banks that hold such plans and to estate trustees exactly who the testator is referring to when revoking a beneficiary designation. In the words of the application judge, “the will must demonstrate that the testator turned

her mind to the beneficiary designations made before those designations will be revoked”.

Conversely, implicit designations in a will are insufficient to instruct banks on the beneficiaries of plans or to whom to make payments since there is no guidance with respect to the identify of the beneficiaries. As noted by the Court of Appeal:

Assume, for the sake of discussion, that the banks were presented with the deceased's will and a demand for payment of the benefits under the plans founded upon designations “implicit” in the will. Who, or what, is the object of those implied designations? To whom would the banks be obliged to make payment? To the estate? To the estate trustee? To all of the beneficiaries named in the will collectively? To each of them proportionately?

As a result, the will did not revoke the beneficiary designations of the RSPs of the testator because the will did not reference the designations as required by s.52(1).

The Court’s analysis in *Alger* shows the implications of a general revocation clause on banks, who are tasked with trying to determine to whom funds out of a plan should be paid when confronted by an estate trustee who contends that the will overrides the beneficiary designation in an RRIF and/or TFSA instrument. Without a will expressly referencing the beneficiary designations, the banks will not know that the testator intended to revoke their previous designations made by testamentary instrument. A general revocation is not good enough to replace a testamentary instrument's designated beneficiary clause. Accordingly, care should be taken when preparing a will or codicil to ensure that the proper steps are taken to revoke any beneficiary designations in registered accounts if that is in fact the testator’s intention. A PDF version is available to download [here](#).

If you require any litigation assistance, our [Dispute Resolution Group](#) lawyers are available to assist you. Please contact **James Cook** at 416.865.6628 or jcook@grllp.com.

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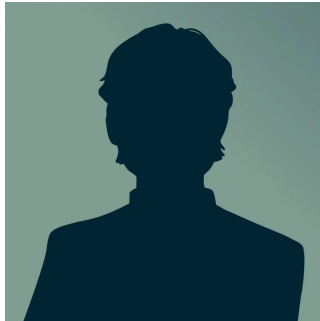


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