

Beneficiary Designations

Intentions are no replacement for a written declaration

COURT REPORT

BY JAMIE GOLOMBEK



What do RRSPs, RRIFs, pension plans, life insurance policies and segregated funds

have in common? They all share the ability to designate a beneficiary who will receive the benefits of the plan or policy after the client's death.

Much has been written over the years about the importance of naming a beneficiary and ensuring that beneficiary designation, once completed, is reviewed and updated annually, as required.

A fascinating case (*Moxsom v The Queen*, 2006 TCC 541), decided last month in Halifax, deals with the intricacies of a beneficiary designation made on a pension plan upon the death of a member along with the potential tax risks associat-

ed with failing to make the beneficiary designation properly.

The case involved Cindy Moxsom, who was reassessed for the 2003 tax year in respect of benefits paid to her under her late father's pension plan that were included in her income. Moxsom acknowledged that the cheques she received from the pension administrator were in her name, as was the T4A, but she maintained that such amounts were not received by her

in her personal capacity.

In April 1997, Moxsom's father retired, signed a document entitled "Appointment or Change of Beneficiary Form" appointing his daughter Cindy as his only beneficiary under his pension plan

Four years later, Moxsom's father was hospitalized with lung cancer and "began worrying about getting his affairs in order." As a result, in April 2001, he summoned his family to his hospital wherein he completed a document, thought to be a will, but which turned out to be a "wills questionnaire."

On May 12, 2001, Moxsom's father passed away, and was survived by his four children: Cindy, Doris,

Brenda and Ronald. Following his death, Sun Life began paying the pension benefits to Moxsom, as the sole designated beneficiary.

In 2003, she received nearly \$16,000, which she deposited in a bank account established for the estate of her late father. During the year, she disbursed the accumulated benefits in equal shares to herself and her three siblings, in accordance with her father's wishes, as evidenced by the wills questionnaire.

At the end of the year, Sun Life issued a T4A slip in Moxsom's name for entire pension benefits paid to her. Notwithstanding that it was her name that appeared on the T4A, Moxsom reported the pension benefits in her late father's estate's return. The Canada Revenue Agency reassessed to include the pension benefits on her return.

Moxsom's argument was that her appointment as the sole beneficiary under her father's pension plan was effectively altered when her father signed the "wills questionnaire" naming her and her siblings as equal beneficiaries of his estate.

The CRA, on the other hand, argued that Moxsom's father never took the necessary steps to give effect to his intention to change the beneficiary designation on the plan from Cindy to his four children.

The judge agreed, finding that "the fact that the appellant shared the pension benefits with her siblings does not alter the fact that the cheques received were issued by Sun Life in her name." The judge added, "the evidence supports the [CRA's] argument that doing so was a matter of choice, rather than a legal requirement."

Under the terms of the pension plan, a change of beneficiary must be done by written declaration by a "member" of the plan, which is defined as an employee who has not been terminated nor become a pensioner nor has died.

The judge ruled that because Moxsom's father was no longer a "member" of the pension plan when he signed the wills questionnaire in April 2001, he was not in a position to legally change his beneficiary designation from his daughter to all four of his children. Accordingly, the judge ruled that the entire amount must be taxed in Moxsom's hands.

This case once again emphasizes the importance and significance of beneficiary designations and clients need to understand that they such choices should not be made lightly.

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