

A MATTER OF TRUST: Joint Bank Accounts With Children

Michael J. Prsa



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What seems like a simple matter of access to a parent's bank account can be more complex than most family members realize.

Let's suppose that Bob is a 75-year-old widower with \$50,000 in his bank account. Bob has two children: Jack, who lives in Alberta, and Jill, who lives nearby. Bob asks his daughter to help him with payment of his bills and for convenience, adds Jill's name to his bank account. What will happen to that account when Bob dies? Will the money in the account belong to Jill—or to Bob's estate?

Until recently, the law presumed that the person who added an adult child's name to a bank account intended to make a gift to the child. This is no longer the law in Canada. The Supreme Court of Canada recently released two decisions that have a significant impact on all persons who have joint accounts with their adult children. The Court ruled that in situations where a parent has transferred a bank account into joint names with an adult child, the money in the account is *presumed* to be held by the child in trust for the parent or the parent's estate. Accordingly, in the above example, it is presumed that the money will not belong to Jill. If Bob had intended the money to belong to Jill, he would have had to make that intention clear. Opening a joint account with right of survivorship is not enough.

If the bank account is held by the parent and a child

who is under age 18, it is presumed that the parent intended the money in the account to pass to the minor child on the death of the parent.

The question of the parent's intention often becomes an issue after the parent has died. In some cases, the child who is the joint account holder will claim that the money in the account belongs to him or her and not to the parent's estate. The other beneficiaries or creditors of the estate may disagree. To avoid such disputes and minimize cost and expense to the estate, we recommend that all parents who have joint accounts with their children document their intentions in writing.

Professional advice should be obtained in all cases where money is being placed in a joint account, since such transfers may also trigger unexpected tax consequences and creditors' claims. Our Wills and Estates Group can advise on all aspects of joint accounts.



Michael Prsa, a member of the Society of Trusts and Estates Practitioners (STEP), heads Lawrences' Wills and Estates Group. He can be reached at 905 452-6880 or mjprsa@lawrences.com.

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Lawrence, Lawrence, Stevenson LLP
43 Queen Street West
Brampton, ON L6Y 1L9

T: 905 451 3040
F: 905 451 5058
E: newsletter@lawrences.com
www.lawrences.com