Family Law Considerations in an Estate Plan

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December 17, 2014

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Estate planning involves the transfer of wealth to family, friends and charity in an efficient and effective manner. In many cases, the efficiency goal requires a review of various tax minimization, tax avoidance or tax deferral strategies. Indeed, tax considerations are an integral and important part of any estate plan.

For an estate plan to be effective, it is also important to have an understanding of the client's goals and priorities and to advance them within the relevant legal framework. A wide variety of legal considerations need to be taken into account in every case. It is beyond the scope of this paper to address all such considerations.

This paper is focussed on family law considerations and how family law rules impact how an estate is allocated and structured. While family law rules can result in claims being made against an estate, family law can also be used to protect assets. The extent to which specific family law rules will apply will often depend on the marital status of the client and his or her beneficiaries as well as the location, nature and extent of assets owned by the client and where the client and the beneficiaries reside. Failure to collect all of the relevant information and to understand and deal with family law rules will likely lead to unintended consequences, costly litigation and delays in the administration of an estate and disappointed beneficiaries.

The summary of family law considerations in this paper is for individuals who reside in Ontario. Individuals who have a multi-jurisdiction estate or non-resident beneficiaries also need to address the relevant legal considerations in other relevant jurisdictions.

Since this paper is being presented to non-lawyers, the paper does not exhaustively cover all legal considerations. The goal of this paper is to raise general awareness. This summary is provided for information and education purposes only. You should not rely on this summary as legal advice. Specific advice should be sought in each case.

1. The Limits to Testamentary Freedom

In some countries, the state dictates how an estate will be distributed on death. In Ontario, there is no forced heirship regime. However, there is a default scheme for the distribution of an estate if the person dies without a Will (intestate). The *Succession Law Reform Act* contains the rules for "intestate succession".

For example, if a legally married person died without a Will and left a spouse and no children, the surviving spouse would be entitled to the entire estate.

If a legally married person died without a Will and left a spouse and one child, the spouse would be entitled to the first $200,000.00 of the estate and the balance would be divided equally between the spouse and the child. If the child is a minor, the child's share would be paid into court and the child would be entitled to all of the funds paid into court when the child attains 18 years of age.

If the person died with a spouse and two or more children, the spouse would be entitled to the first $200,000.00 of the estate and one-third of the remaining amount. The children would equally share the remaining two-thirds.

If the person left children only (no spouse), the children would share the estate equally. Children would include adopted children and biological children whether from a first, second or third relationship. Note that if a child pre-deceased the parent and the child had children of his or her own, those grandchildren would be entitled to a portion of the estate.

This is the so called "government Will" if the person failed to leave a valid Will at death.

Most individuals do not want the intestate succession rules to apply to them and they prefer to decide who will participate in their estate and when and how much of their assets will be transferred to each beneficiary. We call this testamentary freedom and each adult may make a Will that meets his or her personal goals and objectives.

While every adult is free to make a Will and to dispose of his or her estate as he or she sees fit, if that individual is legally married and fails to leave the surviving spouse sufficient value of family property or if the individual died and failed to make adequate provision for his dependants, the spouse and/or dependants may make claims against his or her estate. The *Family Law Act* of Ontario gives a legally married spouse the right to equalize the value of family property when the marriage ends. The *Succession Law Reform Act* of Ontario imposes an obligation to make provision for one's "dependants".

Before finalizing an estate plan, it is important to be mindful of these rights and obligations and to design a plan that will avoid such claims. Individuals who fail to address these issues will usually have an ineffective plan and their expected goals or obligations will be disrupted when they die.

(a) *Family Law Act* of Ontario ("FLA")

Most provinces have legislation dealing with the division of family property when a marriage ends.

In some provinces, it is called “community of property”. In Ontario, it is referred to as Net Family Property (“NFP”). The central premise of the FLA is that marriage is an equal economic partnership and, upon marriage breakdown, the value of all property acquired during the marriage will be shared equally.

The FLA also recognizes that spouses may not want some of the rules to apply to their marriage, in which case, they may enter into a Domestic Agreement (Marriage Contract) to modify or opt out of the usual rules. The property provisions of the FLA do not presently apply to spouses who are not legally married.

Please note that the division is of wealth, not of assets. There is a big difference. Each person (or estate) continues to own all of his or her assets but has NFP on which a value is placed. There are no precise rules for determining the value of an asset but, in most cases, fair market value is used.

There is a mathematical calculation to ascertain the value of a spouse’s NFP. The appropriate date for making the NFP calculation is called the “valuation date”. In the case of death, the valuation date is the day before death. In the event of separation, the valuation date is the date of separation. The formula can be generally expressed as follows:

(a) For each spouse, add up the value of all assets, net of liabilities, on the valuation date (subject to special rules for “excluded property” below) = (A)

(b) For each spouse, add up the value of all assets, net of liabilities, on the date of marriage, except the value of a matrimonial home if it is owned by one or both spouses at the date of marriage and is also owned on the termination of the marriage = (B)

A minus B = Net Family Property

If, for example, the husband’s NFP was $200,000.00 and the wife’s NFP was $500,000.00, the gross NFP would be $700,000.00 and each spouse would be entitled to one-half of the gross amount unless the court orders otherwise. In this example, the spouse with the lower NFP is entitled to make a claim against the spouse with the higher NFP and the husband would be entitled to an equalizing payment of $150,000.00 from the wife. They would then both have $350,000.00 of NFP. A spouse’s NFP can never be less than zero.

The value of certain assets called “excluded property” does not have to be equalized. The value of the following property that a spouse owns on the valuation date does not form part of the spouse’s net family property:

1. Property, other than a matrimonial home, that was acquired by gift or inheritance from a third person after the date of the marriage.

2. Income from property referred to in paragraph 1, if the donor or testator has expressly stated that it is to be excluded from the spouse's net family property.

3. Damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages.

4. Proceeds or a right to proceeds of a policy of life insurance, as defined under the *Insurance Act*, that are payable on the death of the life insured.

5. Property, other than a matrimonial home, into which property referred to in paragraphs 1 to 4 can be traced.

6. Property that the spouses have agreed by a domestic contract is not to be included in the spouse's net family property.

7. Unadjusted pensionable earnings under the *Canada Pension Plan*.

For example, assume that, after the date of marriage, the wife, in the above example, received an inheritance of $200,000.00 and assume that she held that asset on the valuation date. If the inheritance was not deducted from her NFP in the above illustration, she can deduct the value of the "excluded property". Her NFP would be reduced to $300,000.00. In this example, the husband would still be entitled to an equalization payment, but he would only be awarded $50,000.00.

Assume the inherited funds are used by the wife to buy a matrimonial home or to discharge the mortgage on the matrimonial home. In this example, because the inheritance is traced to a "matrimonial home", it no longer qualifies as "excluded property" unless she and her husband complete a Domestic Agreement that provides otherwise.

Please note that unlike the tax concept where the spouses can only have one principal residence, under the FLA, several properties may qualify as a "matrimonial home". For example, the house in the city, the cottage and the chalet may all qualify as a matrimonial home.

If the person who left the inheritance to the wife had a Will and that Will included a special clause to protect the increase in value of the inheritance for family purposes, the increased value would also be excluded so long as the inherited funds are not traced to the matrimonial home.

For example, assume that the wife opened an investment account after receiving $200,000.00 and that the investment account increased to $250,000.00 by the valuation date. The full value of $250,000.00 would be excluded if there was a special clause in the Will to that effect.

It is for this reason that most Wills in Ontario include a special clause to exclude the income and growth from the inheritance when calculating the beneficiary's NFP on marriage breakdown.

While it is common to include such a clause in Wills, it is not as common when parents make gifts to their children while they are alive. It is recommended that a Deed of Gift be prepared and signed by the parent and child in all cases where the child is receiving a substantial gift while the parent is alive. The same kind of language that is found in the Will is included in the Deed of Gift.

As noted, if the funds the parent is advancing to the child will be traced to the child's home, the gift will lose its status as "excluded property". In such cases, consider imposing the requirement that the child complete a Marriage Contract as a condition of receiving the gift or restructure the advance to the child and make it a loan rather than a gift. If the advance is a proper loan, the parent can demand repayment in the event the child's relationship breaks down and the child may deduct a valid liability when calculating his or her NFP.

Many parents directly gift homes or cottages to their married children. If a married child receives a home or cottage by gift or inheritance and the property is ordinarily used by the child or the child's family, that property will be considered a "matrimonial home". The value of that property, if owned on the valuation date, will not be excluded from the child's NFP unless the child and his or her spouse have a Marriage Contract that provides otherwise.

In a recent Ontario case, the court held that a property held in a specific type of trust was not a "matrimonial home" because the child only had an interest in the trust and not the home. It appears that a family trust may be a planning tool in certain circumstances.

There is a common misconception that if a parent leaves a child a cash inheritance in a trust, the child does not have to equalize the value of property in the trust. This may be true in those cases where the trust comes into existence <u>after</u> the child marries. It is not true if the trust was already settled (in existence) when the child married.

If the child was a discretionary beneficiary of an existing trust on the date of marriage, the child will get a <u>deduction</u> for the value of the discretionary interest at the date of marriage, but any increase in value in the trust interest during the marriage will be included in the child's NFP.

The forgoing is just a general commentary on how NFP is calculated and also addresses some of the nuances and special rules for the “matrimonial home” and “excluded property”.

Now assume that in a second marriage situation, an individual decides not to leave any part of his estate to his second wife and makes a Will in which he leaves his entire estate to his children from a prior marriage. The individual then dies.

Under the FLA, the second wife has a right in law to accept what was given to her in the Will or to claim an equalization of NFP. Since the value of benefits under the Will are worth nothing, she would likely elect to enforce her strict legal rights and make a claim for equalization of NFP.

This right to elect is only available to the surviving spouse and not to the estate of the first spouse to die. The election has to be made within 6 months of death. The surviving spouse can also apply to court within the 6 months for an extension of time to make a decision.

The decision to elect to take under the FLA or the Will is not always an easy decision and, in most cases, requires a careful assessment of the assets owned by each spouse at the date of marriage and the valuation date and should also take into account gifts or benefits that flow outside the Will to the surviving spouse, i.e. by right of survivorship or beneficiary designation. If the spouse elects to claim under the FLA and the value of benefits the spouse received from all sources exceeds the value of the equalization entitlement, the surviving spouse has to pay back the difference.

Once the spouse elects to take under the FLA and not the Will, the spouse is deemed to waive her entitlement under the Will, unless the Will provides otherwise. In that case, the Will is read as if the surviving spouse predeceased.

During the period that the surviving spouse is waiting to make a decision and pending the outcome of the court process, the executor will usually not distribute the estate to the other beneficiaries named in the Will.

As you can see, these spousal rights or claims can disrupt an estate plan and the administration of the estate.

Whenever a Will is drafted, care should be taken to ensure that the allocation of assets to the spouse meets the minimum requirements to which the spouse is entitled to at law. If spouses agree that a lesser allocation is acceptable, they should complete a Marriage Contract to confirm their agreement and confirm that the surviving spouse will not exercise his or her strict legal rights.

This issue is of particular concern in second marriages but can also be an issue in first marriages where there is significant wealth and the spouses agree that some wealth will pass to the children or other family members or to charity and not just to the spouse.

This is also an issue in all cases where a portion of the surviving spouse's share of the estate is allocated to a spouse trust, especially if the surviving spouse is not a trustee and/or does not control the administration of the trust and/or if there are restrictions on the surviving spouse's access to capital in the trust.

(b) Dependant's Relief – *Succession Law Reform Act* ("SLRA")

In addition to the right to equalize net family property, individuals also have to consider their obligations to "dependants". If adequate provision has not been made in the Will or estate plan, the dependant may make a claim against the estate.

Dependant's relief legislation has been in place since the 1900s. Who is a dependant varies across the country. In Ontario, the SLRA defines a "dependant" as follows:

(a) A spouse, parent, child or sibling (brother or sister) of the deceased individual, and

(b) Be someone to whom the deceased individual was providing support or was under a legal obligation to provide support immediately before his or her death.

For dependant relief purposes, a "spouse" includes a former spouse, common law spouse and same-sex spouse.

A spouse is a common law spouse if that person and the deceased were cohabiting continuously for a period of not less than 3 years or with whom the deceased individual had a relationship of some permanence if they are the natural or adoptive parents of a child.

If a person died and left a "dependant" and did not make adequate provision for that person, the dependant may make a claim against the estate for support. The court has wide authority to order how the payment will be made.

The claim has to be made within 6 months of the date that a Certificate of Appointment of Estate Trustee (probate) is issued. The court also has discretion to allow a claim after 6 months under certain circumstances.

After the application is filed, the estate trustee is prohibited from distributing the estate pending the outcome of the proceeding. However, the estate trustee may make reasonable advances for support of dependants who are beneficiaries.

A successful claim usually involves three steps:

(i) prove status to make the claim;

(ii) prove entitlement, and

(iii) establish the amount or quantum of support.

Status and entitlement are based on the above definition. When determining quantum, the court is directed to have regard to a list of factors. They are reproduced below:

62. (1) In determining the amount and duration, if any, of support, the court shall consider all the circumstances of the application, including,

(a) the dependant's current assets and means;

(b) the assets and means that the dependant is likely to have in the future;

(c) the dependant's capacity to contribute to his or her own support;

(d) the dependant's age and physical and mental health;

(e) the dependant's needs, in determining which the court shall have regard to the dependant's accustomed standard of living;

(f) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;

(g) the proximity and duration of the dependant's relationship with the deceased;

(h) the contributions made by the dependant to the deceased's welfare, including indirect and non-financial contributions;

(i) the contributions made by the dependant to the acquisition, maintenance and improvement of the deceased's property or business;

(j) a contribution by the dependant to the realization of the deceased's career potential;

(k) whether the dependant has a legal obligation to provide support for another person;

(l) the circumstances of the deceased at the time of death;

(m) any agreement between the deceased and the dependant;

(n) any previous distribution or division of property made by the deceased in favour of the dependant by gift or agreement or under court order;

(o) the claims that any other person may have as a dependant;

(p) if the dependant is a child,

(i) the child's aptitude for and reasonable prospects of obtaining an education, and

(ii) the child's need for a stable environment;

(q) if the dependant is a child of the age of sixteen years or more, whether the child has withdrawn from parental control;

(r) if the dependant is a spouse,

(i) a course of conduct by the spouse during the deceased's lifetime that is so unconscionable as to constitute an obvious and gross repudiation of the relationship,

(ii) the length of time the spouses cohabited,

(iii) the effect on the spouse's earning capacity of the responsibilities assumed during cohabitation,

(iv) whether the spouse has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents,

(v) whether the spouse has undertaken to assist in the continuation of a program of education for a child eighteen

years of age or over who is unable for that reason to withdraw from the charge of his or her parents,

(vi) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse had devoted the time spent in performing that service in remunerative employment and had contributed the earnings to the family's support,

(vii) the effect on the spouse's earnings and career development of the responsibility of caring for a child,

(viii) the desirability of the spouse remaining at home to care for a child; and

(s) any other legal right of the dependant to support, other than out of public money.

Case law now also stands for the proposition that the court must take into account the individual's moral and ethical obligations to all dependents when allocating the estate or available resources among them.

While the court is directed to have regard to any agreement between the parties in which they waived or released claims for support, the court is not bound to uphold the terms of the agreement. In other words, Domestic Agreements dealing with a release of support claims on death are not binding on a court.

A dependant relief award is effectively treated as if it were a debt or other obligation of the deceased and such debt or obligation is paid from the assets that form the estate before the remaining value, if any, is distributed to the named beneficiaries in a Will or according to the intestate rules if there is no Will.

If the deceased person arranged his or her affairs such that certain assets passed outside the estate, for example, by right of survivorship or beneficiary designation and, if the value of assets in the estate is not sufficient to satisfy the support obligation, certain assets that passed outside the estate are deemed to be part of the estate under section 72 of the SLRA. The section is reprinted below:

> **72.**(1) Subject to section 71, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his or her death, whether benefitting his or her dependant or any other person, shall be included as

testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his or her net estate for purposes of ascertaining the value of his or her estate, and being available to be charged for payment by an order under clause 63 (2) (f),

(a) gifts *mortis causa*;

(b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any bank, savings office, credit union or trust corporation, and remaining on deposit at the date of the death of the deceased;

(c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death under the terms of the deposit or by operation of law to the survivor or survivors of those persons with any bank, savings office, credit union or trust corporation, and remaining on deposit at the date of the death of the deceased;

(d) any disposition of property made by a deceased whereby property is held at the date of his or her death by the deceased and another as joint tenants;

(e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his or her death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof, but the provisions of this clause do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;

(f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him or her;

(f.1) any amount payable on the death of the deceased under a policy of group insurance; and

(g) any amount payable under a designation of beneficiary under Part III of SLRA (i.e. RRSP, TFSA).

Idem

(2) The capital value of the transactions referred to in clauses (1) (b), (c) and (d) shall be deemed to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants was furnished by the deceased.

The key point here is that a person cannot evade his or her obligations to dependants by putting assets into joint names with others or naming others as beneficiaries of certain plans or insurance policies.

If for example, the deceased owned a $500,000.00 insurance policy and named his girlfriend as the beneficiary, his children who are dependants can demand that the policy be paid to his estate if he did not leave sufficient value in his estate to satisfy his obligations to them.

This is a frequent issue in second or multiple marriage situations.

(c) Domestic Agreements

While there are limits to the effectiveness of Domestic Agreements and they may not always be enforceable or upheld, the courts have also said that Domestic Agreements should generally be honoured if they are objectively fair both when made and when they are being enforced and if both spouses provided complete financial disclosure and obtained independent legal advice.

It is possible for Domestic Agreements to modify the usual rule. The following are some examples of how agreements can modify the rules:

(a) the parties agree to opt out of the FLA provisions that give them the right to equalize NFP;

(b) the parties agree that the NFP concept will apply but certain assets will not be included in the NFP calculation (i.e. a spouse's interest in a family business or other asset);

(c) if one person already owns a home and the couple plan to marry and live in the home after marriage, they can agree that the value of the home on the date of marriage may be deducted when calculating that person's NFP;

(d) the parties may also agree that "excluded property" that is traced to a matrimonial home will maintain its status as excluded property;

(e) the parties may agree that one home will be the "matrimonial home" to the exclusion of all others;

(f) the parties may also modify support rights and obligations within limits.

In addition to claims for equalization of NFP and possible claims of dependants, estate planners should also be aware of a number of rules relating to a person's spousal or marital status.

2. Some Marital Status Considerations

(a) If a married individual separates from his or her "spouse", the separation alone has no effect on an existing Will. In other words, if the other spouse is named as executor and beneficiary and the person dies, the surviving spouse will be entitled to act as executor and to receive the estate, notwithstanding the actual separation, unless there is a formal Separation Agreement in place that provides otherwise. The key point is that a separation alone does not void a Will or the gift to the spouse in that Will.

(b) If a married individual separates and obtains a divorce, the divorce does not void an existing Will in which the spouse may be named as an executor and/or beneficiary, but the appointment of the spouse as executor and/or beneficiary is revoked unless the Will provides to the contrary. In other words, the Will is read as if the former spouse predeceased.

(c) If an individual has an existing Will and then marries, the marriage revokes that Will unless the Will includes a provision to the contrary. In the situation where the individual wants the existing Will to remain in effect after marriage, the Will should say that it is made in contemplation of marriage.

(d) A legally married spouse is entitled to an equalization of NFP on separation. If a spouse predeceases, the surviving legal spouse has a right to an equalization of NFP on death.

(e) Common law spouses in the Province Ontario are not entitled to an equalization of NFP under the present rules. Common law spouses are considered separate as to property and may retain their separate assets when the relationship ends without having to equalize their wealth.

(f) Legally married spouses have status to make a claim for support strictly because they were married. Common law spouses may not have status to make a claim for

support unless they have been living together continuously for 3 years or have lived in a relationship of some permanence and had a child of the relationship.

(g) If a person dies intestate (without a Will), the legally married surviving spouse has rights to share in the estate. See earlier commentary above. A common law spouse is not entitled to a share of an intestate estate. In many such situations, the common law spouse has to resort to the courts to get a share of the estate but only if he or she can prove a legal right to an interest in property or to support as a "dependant".

(h) An individual who is legally married is generally considered a "spouse" for all legal purposes. An individual who is cohabiting is not automatically a "spouse" and may have to meet different tests to qualify as a "spouse" for different purposes.

(i) A common law couple may need to live together for 3 years before being able to make a claim for support but may qualify for health benefits and for certain tax considerations after living together for only one year.

(j) Who is entitled to collect pension benefits or insurance proceeds may also depend on whether the person is legally married or living common law. It is possible to have two "spouses" at the same time, i.e. a legally married spouse from whom the individual is separated but not divorced and the new partner with whom he or she formed a new relationship.

3. Ownership Arrangements and Family Law

(a) Joint Accounts:

If legally married spouses are joint owners of a bank account, there is a presumption in law that the funds in the account were advanced to both joint account holders and the surviving spouse will be entitled to the funds on the death of the first spouse. A similar rule exists for joint accounts held between a parent and a minor child.

Contrary to popular belief, the right of survivorship rule does not automatically apply to joint accounts between parents and their adult children, even if the account agreement at the financial institution states that the account is "joint by right of survivorship"!

When a parent adds a child to his or her account, the law presumes that the funds are not advanced to the child. On the death of the parent, the child holds the remaining funds in trust for the parent's estate. This presumption may be rebutted with evidence of a contrary intention. It is now common practice to provide evidence of a contrary intention by expressly dealing with the parent's intention in the Will or in a standalone document.

(b) Beneficiary Designations:

Spouses often designate each other as beneficiaries of various assets or hold property in joint names as joint tenants. As in the case of existing Wills, separation alone will not affect their legal rights to such assets when one of them dies.

If a separated spouse did not want the other spouse to remain a beneficiary of certain assets, the spouse should expressly revoke the prior designation.

If the family home is owned as " joint tenants" and a spouse does not want the right of survivorship to apply, the joint tenancy could be severed. Specific advice should be sought in each case before severing the joint tenancy.

(c) Deemed Severance of Matrimonial Home Owned with a Third Party:

Assume a parent transferred a family cottage to two sons as joint tenants, it being the parent's intention that the cottage will pass to the surviving son on the death of the first son. Assume that one of the sons married before he died and that he and his wife used the cottage in such a way as to qualify the cottage as a "matrimonial home". Under section 26 of the FLA, where a spouse dies owning an interest in a matrimonial home as a joint tenant with a third person and not with the other spouse, the joint tenancy shall be deemed to have been severed immediately before the time of death.

Because of this section, the surviving son would not receive the deceased brother's share by right of survivorship as the parent contemplated. The deceased son's share will pass to his estate and not by right of survivorship.

This issue could also come up in all cases when a parent and child are co-owners of the child's matrimonial home.

(d) Spousal Consent Required for Some Asset Transactions During Marriage:

Under the law of Ontario, each spouse, whether legally married or not, is separate as to property and may deal with his or her property as he or she sees fit during the relationship. There is one important exemption to this rule if the spouses are legally married. A legally married spouse may not sell or encumber a "matrimonial home" without a court order or the consent of the other spouse regardless of which spouse is the registered owner. By definition, spouses may have more than one "matrimonial home".

This requirement for spousal consent for the disposition or encumbrance of a family residence does not apply to "common law spouses" in Ontario. A common law spouse who owns the family home may sell or encumber the property without the consent of the other spouse.

(e) A Gift May Not Always be a Gift:

See comment above about section 72 of the SLRA. Consider the following example to illustrate the point.

Assume a person designates his second wife as the beneficiary of a $100,000.00 insurance policy (the gift) and that person died and left two minor children from his first marriage and did not provide for them in his Will. Assume as well that there are nominal assets in this person's estate.

The children would qualify as "dependants" and the Children's Lawyer for the Province of Ontario ("OCL") will likely advance a claim on the children's behalf for "dependant's relief" under the SLRA. The OCL will request the court to make an order that the insurance proceeds be paid to his estate to satisfy his obligations to the minor children who are dependants.

If the second wife is also a " dependant", the court will allocate the proceeds among all "dependants" having regard to various considerations.

Family law considerations can impact an estate plan in numerous ways. One or more of the above rules will likely be relevant in every estate plan.

With the rise in divorce and remarriage, family law rules will continue to provide challenges for estate planners who are attempting to design an efficient and effective estate plan.