

PUBLICATION

If Wishes Were Willed

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If Wishes Were Willed: The Estate of Osborne, Testamentary Intent and WSA s. 71

On September 18, 2013, McLeod Law LLP took a beneficiary designation dispute to trial. According to the will, the Deceased divided her estate amongst various friends and charities, but excluded her siblings. The deceased owned an RSP, but the will did not reference an RSP or retirement plans. The solicitor's notes from drafting the will indicated that the Deceased did not want her family "involved", and may have referenced the RSP. Unfortunately, at the time of passing the RSP designation - and the bank file - was lost. Although the signed beneficiary designation had been lost, TD Bank's computer records indicated that the Deceased's brother was the beneficiary.

The Personal Representative argued the Deceased intended to exclude her siblings from her estate, which included the RSP. Conversely, McLeod Law LLP argued that (a) the loss of an RSP designation wasn't relevant, and (b) the insufficiency or lack of any evidence as to contrary intention. The will did not contain a revocation clause that complied with section 71(6) of the Wills and Succession Act, and accordingly failed to revoke the TD Bank designation that named the Deceased's brother as the lawful recipient.

The Honourable Justice Jones held the Deceased's brother was the beneficiary of the RSP, and that the will failed to revoke same. Justice Jones confirmed a designation or revocation by will involves statutory prerequisites that must be satisfied in order to give effect to a testator's intent. Here, neither the will nor the solicitor's file referenced the existence of an RSP, let alone its revocation. Further, Justice Jones noted that a will containing a generic clause revoking "all other testamentary dispositions" did not constitute a sufficient general reference to an RSP as required by section 71(6) of the Wills and Succession Act (formerly section 47(5) of the Trustee Act).