
Estates Pitfall: Former Spouses and Beneficiary Designations

The end of a marriage marks a time of transition, upheaval and emotional challenges. For those who are legally married but separated, or who are in a subsequent, long-term cohabiting relationship while separated but still legally married, it also creates a number of uncertainties around the status of wills and beneficiary designations in the event of an untimely death.

Two recent decisions from the Ontario Court of Appeal appear to have introduced some clarity to the matter. In both decisions, the Court affirmed that the legally married surviving spouse, although separated, benefited from the deceased spouse's estate.

In *Carrigan v. Carrigan Estate*, the Court reviewed the application of the spousal priority rule under the *Pension Benefits Act* (PBA). Generally under the PBA, even in cases where a pension holder designates a beneficiary other than the pension holder's spouse to receive their benefits, a spouse will receive the benefit of the pension upon the pension holder's death. The PBA does provide an exception to this rule where the pension holder is living separate and apart from the spouse on the date of death, in which case the spousal priority provisions under the PBA no longer apply.

In *Carrigan*, Ronald Carrigan separated from his wife, Melodee Carrigan, in 1996, but they never divorced. In 2000, he moved in with Jennifer Quinn, with whom he cohabited until the time of his death. The issue before the Court of Appeal was the application of the spousal priorities as, in this case, both Ms. Quinn and Mrs. Carrigan qualified as the spouse under the PBA.

The Court examined the PBA and ultimately concluded that, if the pension holder dies before retirement and is cohabiting with someone while separated from a legally married spouse, the word "spouse" refers only to the legally married spouse, thus excluding Ms. Quinn from receiving any benefit of the spousal priority under the Act. As Mr. Carrigan had been separated from Mrs. Carrigan at the time of his death, the PBA's subsections dealing with spousal beneficiaries had no relevance to the allocation of Mr. Carrigan's pension benefit. Instead, the listed beneficiaries on the plan would receive the benefit. In this case, the designated beneficiaries remained Mrs. Carrigan and the two children she had with Mr. Carrigan.

The Court's interpretation of the PBA has implications for anyone who is eligible under a pension plan and is in a long-term common law relationship but legally married and separated from a former spouse. The spousal prioritization provisions of the PBA will not apply to provide the common law spouse with any rights to the benefits if the pension holder is still legally married to a former spouse. But the provisions do permit pension holders to designate beneficiaries under the PBA.

The Court of Appeal faced a similar issue in *Makarchuk v. Makarchuk*, holding that, after separation from a legally married spouse (but not divorce), the deceased's will, which named the spouse as beneficiary, still applied. This remained the case even though the parties had signed a separation agreement containing standard wording wherein each party agreed to the release of rights "which he or she has or may acquire under the laws of any jurisdiction in the estate of the other." The Court held that this wording was only sufficient to override any statutory rights. The will, as a private document, governed. The Court was mindful that



the deceased, who was a retired lawyer, could have taken steps to revoke the will. He did not.

These decisions remind us that, upon separation, there is more to consider than just the equalization of property. Separating spouses should take additional steps to protect their assets, including executing new wills and powers of attorney, and changing beneficiary designations where applicable. These issues should also be revisited when entering into new long-term relationships.

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