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Beneficiary Designations and Minor Children

Often, minor children are designated as beneficiaries of the proceeds of life insurance policies, or of investment accounts such as RRSPs and RRIFs. Minor children, however, are considered parties under a disability and as such are not entitled to receive funds directly. Therefore, the funds must be received by a Trustee on behalf of the child, and kept invested for his or her benefit until the age of majority (age eighteen in Ontario).

Unfortunately, in many cases, beneficiary designations are made without a great deal of consideration and without any professional advice. Often, Trustees for minor beneficiaries are not named. This often occurs when group life insurance and/or group RRSPs are offered by an employer, and a new employee is required to sign a number of forms at once for his or her employer. Often these forms are standardized, and some do not include space for naming a Trustee. If the form does contain information regarding naming a Trustee, it is typically in fine print and easily missed. Often, the forms do not include powers for the Trustee, but if they do, they are restricted to a short, standard paragraph, which cannot be amended to reflect the employeeøs specific circumstances or wishes.

Where no powers for the Trustee are specified, then a ñbare trustò is created, meaning the funds must be held until the minor is eighteen, and in the meantime, there is no ability to access the funds for the childøs needs (for example, for sports, camps, orthodontics, music lessons, counseling, education, etc.). In addition, these standard Trustee clauses never permit the holding of funds beyond age eighteen.

A childøs parent, while automatically the guardian of the childøs person, is not automatically the guardian of the childøs property. Thus, if a Trustee has not been named, the childøs parent or guardian must apply to Court to be appointed to manage the childøs property. The Office of the Childrenøs Lawyer (OCL) must be served with the Application, and responds to it on behalf of the child. It is by no means automatic that the Application will succeed. In many cases, the OCL will not consent to the guardianship Application, particularly if the person applying has little in the way of income and/or assets, has no experience managing money, or has a history of financial mismanagement. As well, if a childøs parent or guardian applies, he or she may be considered to have a conflict of interest if he or she wishes to access the funds to help defray his or her own obligation to support the child. In addition, the OCL is often of the view that payment of the legal fees for the Application ought not to be made from the minorøs funds, especially if the Application has little chance of success, and as such, the proposed guardian is required to pay personally for what may well be an unsuccessful Application.

If no Trustee is named, and no guardian appointed by the Court, the funds will be paid into Court to be managed by the Accountant of the Superior Court of Justice (ASCJ). This is not necessarily an undesirable outcome, as over time, some Trustees and guardians of property find the role to be time-consuming and complex; but it is in all likelihood, not the outcome the deceased would have wanted. Clearly, it is important to have the appropriate beneficiary designations in place in advance, in order to avoid this situation completely. Added

benefits of doing so are the ability to specify Trusteesô powers, and to have the funds held until later than age eighteen if desired. Beneficiary designations do not have to be made on the insurance policy or on the investment account forms. They can be done separately as a stand-alone document, or in a Will. Advice should be obtained from a lawyer competent in Wills and estate planning, and from your financial advisor.

About the Author
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