



**Will Drafting Tips for the Appointment of Multiple Estate Trustees:  
Handling Disagreements During an Estate Administration**  
*By Suzana Popovic-Montag - March 2023*

It may be prudent to encourage a client to select more than one person to serve as estate trustee, particularly for large or complex estates. Often times, the role of estate trustee can be quite onerous for just one person. Having said that, clients should also be aware that the appointment of multiple estate trustees could end up making the estate administration process more complicated or more contentious, and that it may thereby take more time, if there is disagreement amongst the trustees as to how the estate ought to be administered.

As a result, it is wise for a will that appoints multiple estate trustees to also address how to proceed in the event of a disagreement amongst the trustees. At common law, all estate trustees must be unanimous in all decisions regarding an estate. If a dispute arises, it is not the case that the majority of estate trustees can simply choose how to proceed. The only way to overcome the requirement that estate trustees must act in concert, other than seeking guidance from a court, is to set out a dispute resolution procedure in the will to apply should a dispute arise.<sup>1</sup>

There are a variety of dispute resolution mechanisms that a client can choose from, such as:

- a simple majority rules provision;<sup>2</sup>
- a clause requiring a particular trustee to be in the majority in the event of any dispute; or
- a directive which requires the estate trustees to proceed to mediation or arbitration if they reach an impasse when administering the estate.<sup>3</sup>

A client may wish to know what would happen if a dispute resolution mechanism is not included in the will or if it is not effective in resolving a dispute. In that case, there are at least two ways that the trustees could handle disputes amongst themselves. The first, and less drastic, solution is to apply to the court for directions in an attempt to resolve the dispute. For example, in *Dewaele v. Roobroeck*, the estate trustees resorted to the court to address a number of disagreements, including how to value estate assets, what assets comprised the estate, and

---

<sup>1</sup> See *Dewaele v. Roobroeck*, 2020 ONSC 7534 [*Dewaele*] at para. 51, citing *Kaptyn Estate (Re)*, 2009 CanLII 19933 (Ont. S.C.J.) at para. 16.

<sup>2</sup> For an example of a majority rules provision, see *Re Brodylo Estate*, 2022 ABQB 358 [*Brodylo*] at para. 7.

<sup>3</sup> See Lindsay Ann Histrop, *Estate Planning Precedents: A Solicitor's Manual* (Toronto: Thomson Reuters, 1995) (loose-leaf updated 2023, release 1), Appendix A:14. app. 12 – Will Drafting Checklist at 7. Executors.

how and when to distribute the estate assets.<sup>4</sup> However, clients should be aware of the potential cost of administering an estate in this manner. Obtaining assistance from the courts may reduce the size of the estate and thereby reduce the size of bequests left to the testator's beneficiaries, depending on how the cost of any court application is handled.

Another option in the face of disputes between multiple estate trustees is to apply to the courts to remove one or more of the trustees. This is likely an undesirable solution from the estate planning client's perspective, insofar that it would defeat the point of selecting multiple estate trustees. Removal will also only be warranted in cases where disagreement amongst the estate trustees makes the continued administration of the estate impossible or improbable.<sup>5</sup> Even then, however, if the different positions taken by the estate trustees regarding the administration of the estate are all reasonable, the court may decline to remove a trustee.<sup>6</sup> In the event of a dispute, there is no legal principle which permits the court to simply remove the minority of estate trustees who disagree and allow the majority to remain.<sup>7</sup>

It also warrants noting that a dispute resolution mechanism may not be useful in the face of all disputes. For example, a majority rules clause cannot be used to override executors' fiduciary duties to one another or to the estate's beneficiaries.<sup>8</sup> Accordingly, if a disagreement arises that relates to the fiduciary duties of the estate trustees, a majority rules clause is unlikely to have any meaningful impact. Similarly, if one of the estate trustees is not cooperative during the estate administration, a dispute resolution mechanism will be of little assistance, although if there is hostility due to a lack of cooperation, the dissenting executor may be removed by the court.<sup>9</sup>

In short, if a will appoints more than one estate trustee, best practice would be to also include a procedure for resolving any dispute that may arise amongst the trustees during an estate administration. While such a clause may not solve all the problems that could arise amongst the trustees, it could be helpful in averting a preventable stalemate. The possible consequences of a dispute not being effectively managed also highlight the need to exercise great care in the selection of estate trustees, who can work together in implementing the testator's wishes in the interests of the beneficiaries of the estate.

C:\Users\nesterbauer\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\U6SW21Q7\March 2023 Solicitor's Tip.docx

---

<sup>4</sup> *Dewaele*, *supra* note 1 at paras. 4, 7.

<sup>5</sup> *Ibid.* at paras. 54-55.

<sup>6</sup> See, for example, *Nand Estate (Re)*, 2022 BCSC 1718 at paras. 78, 82. There must be a basis to conclude that an estate trustee has been unwilling or unreasonably refuses to carry out his duties so as to warrant the removal of that estate trustee.

<sup>7</sup> *Bartel Estate, Re*, 2006 MBCA 139 at para. 20.

<sup>8</sup> *Brodylo*, *supra* note 2 at para. 30.

<sup>9</sup> *Mailing v. Conrad*, 2003 CanLII 21143 (Ont. S.C.J.) at para. 17.