



Hull & Hull LLP

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Building Flexibility Into Alter Ego Trusts

Can an alter ego trust be part of a flexible estate plan? At first glance, an alter ego trust may not seem suited to responding to a client's changing circumstances. After all, alter ego trusts are subject to strict rules¹ and have been described as "a statutory vehicle for tax and estate planning in which the parties must be careful and precise with their language in order to achieve the desired outcome."² However, there are a number of ways to build flexibility into alter ego trusts, depending on how the document which establishes the trust is drafted. This Solicitor's Tip will address how an alter ego trust can be drafted to give clients, in either their capacity as settlor or trustee of the trust, the power to add property to the trust after it is established, modify the distribution of trust assets, appoint a successor trustee, resettle the trust, and even wind-up the trust.

The Power to Add More Property to an Alter Ego Trust

To make an alter ego trust flexible for future estate planning purposes, the trust document can be drafted to expressly permit more property to be added to the trust after it has been settled.³ For example, the trust document may define trust property as including subsequent additions.

If property is added to an alter ego trust, the additions may be documented through deeds of gift or declarations of trust.⁴ Documenting late additions to the trust assets is advisable to minimize ambiguity as to which assets are trust property, thereby preventing the need to apply to the court for direction in the future to determine which assets are trust property and which are to be distributed under the client's will, after the client has passed away.⁵ Documenting the transfer of property to an alter ego trust will also be useful in the event there is a subsequent challenge to the validity of the trust.⁶

It may also be necessary to transfer legal title of the property from the client, as settlor of the trust, to the trustee to ensure that the trust is properly constituted.⁷ As noted in *Larochelle v Soucie Estate*, an incompletely constituted trust is not a trust at all, but is rather "an inoperative shell which consequently

¹ The requirements for establishing an alter ego trust are addressed in Suzana Popovic-Montag's "Solicitor's Tip February 2026 – When Estate Planning Meets Tax Planning: When to Consider Using Alter Ego Trusts" (3 February 2026), online (blog): Hull & Hull LLP <<https://hullandhull.com/2026/02/solicitors-tip-february-2026-when-estate-planning-meets-tax-planning-when-to-consider-using-alter-ego-trusts/>> [February 2026 Tip].

² *Lau v McDonald*, [2021 BCSC 1207](#) at para 70.

³ See, for example, *Armstrong v Scholz*, [2022 BCSC 863](#) at para 155; *Larochelle v Sousie*, [2019 BCSC 1329](#) at para 241 [*Larochelle*].

⁴ See *Mong Alter Ego Trust No. 1 v Yip*, [2022 BCSC 1327](#); *Larochelle*, *ibid* at paras 287-291.

⁵ See *Bank of Nova Scotia Trust Company v Mount Sinai Hospital Foundation of Toronto*, [2025 NSSC 319](#) [*Bank of Nova Scotia*].

⁶ See *Larochelle*, *supra* note 3.

⁷ See *Larochelle*, *ibid* at para 285; *Bank of Nova Scotia*, *supra* note 5 at para 12.

has no legal significance,”⁸ This step will be imperative if the client is not acting as trustee of the trust. If real property held by the client in their personal capacity is placed in the trust after it has been established, for example, a deed of conveyance should be made to the trustee and title should be registered in their name.⁹

Technically, it may not be necessary to transfer title of trust property if the trust is established by declaration of trust and the client is acting as both settlor of the trust and trustee.¹⁰ Nevertheless, this is still a prudent step to take when adding property to an alter ego trust, in order to provide notice of the trust, and is relatively simple to complete – for clients acting as both settlor and trustee, title may simply be re-registered in their name “as trustee” of the alter ego trust.¹¹

Lastly, it merits noting that if property is added to an alter ego trust, the trust must continue to satisfy the requirements imposed on alter ego trusts, meaning that the settlor must remain entitled to all of the income generated by the trust, and no other person may receive or obtain use of the income or capital before the settlor’s death.¹²

The Power to Change the Distribution of the Trust Property

A power of appointment can be included in an alter ego trust to give the settlor control over the distribution of the trust property on death.¹³ The use of a power of appointment essentially enables the settlor to amend and update the distribution scheme under the trust so that it can evolve in conjunction with the settlor’s broader estate plan.¹⁴

If a power of appointment is included in an alter ego trust, it is advisable to expressly specify how it can be exercised – for example, by deed, by will, or both.

Notwithstanding the inclusion of such a power of appointment in an alter ego trust, it is important to note that it is not advisable to establish a secondary or “second-generation” trust through an alter ego trust. Trusts created within an alter ego trust will generally be treated as *inter vivos* trusts for tax purposes, and therefore may not benefit from graduated rates available to estates or qualifying testamentary trusts, even if the trusts do not begin until the settlor’s death.¹⁵ It may be advisable to instead direct the settlement of such trusts under the client’s will, to assist in ensuring that they receive more favourable tax treatment.¹⁶

⁸ *Ibid* at para 285, citing Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith, *Waters’ Law of Trusts*, 4th ed (Toronto: Carswell, 2012) at 179. See also *Bank of Nova Scotia*, *ibid* at para 11.

⁹ *Larochelle*, *ibid* at para 290.

¹⁰ *Larochelle*, *ibid* at paras 301, 305.

¹¹ See Lindsay Ann Histrop, *Estate Planning Precedents: A Solicitor’s Manual* (Toronto: Thomson Reuters, 1995) (loose-leaf) at § B:11 [Histrop]. See also *Chalmers v Chalmers Alter Ego Trust*, [2017 BCSC 2646](#) at para 49 [Chalmers].

¹² See the February 2026 Tip, *supra* note 1.

¹³ To learn more about powers of appointment, see Suzana Popovic-Montag, “Solicitor’s Tip: Including a Power of Appointment in a Will” (3 March 2025), online (blog): Hull & Hull <<https://hullandhull.com/2025/03/solicitors-tip-including-a-power-of-appointment-in-a-will/>>.

¹⁴ Histrop, *supra* note 11 at § B:2.

¹⁵ *Ibid* at § B:11.

¹⁶ See Elizabeth Bozek and Maureen Berry, “Alter Ego Trusts: The Jekyll or Hyde of Estate Planning? – An Examination of Why an Alter Ego Trust is an Estate Planning Tool that is not Appropriate in all Circumstances” in Anne Armstrong, *Estate Administration: A Solicitor’s Manual* (Toronto: Thomson Reuters, 1984) (loose-leaf) [Bozek and Berry].

The Power to Change the Successor Trustee

A power of appointment may also be included in an alter ego trust to give the settlor the power, in their capacity as trustee, to designate a successor trustee at a later date.¹⁷ This can be quite helpful if the client's choice of successor trustee is not finalized prior to the settlement of the alter ego trust. That said, it is also a good idea to name a default or backup trustee in the trust agreement itself, in case the client does not exercise the power of appointment.

The Power to Resettle an Alter Ego Trust

Where flexibility is a priority, an alter ego trust can also be drafted to expressly permit the trustee to resettle the trust into a new trust.¹⁸ For example, the trust instrument in *Chalmers v Chalmers Alter Ego Trust* bestowed this power on the trustee, and the court found that she resettled the trust by executing a new trust deed in her capacity as trustee.¹⁹

The power to resettle an alter ego trust should be approached cautiously, however, due to the potential tax consequences.²⁰ While it is possible to continue the tax-deferred status of an alter ego trust that is resettled into another alter ego trust during the taxpayer's lifetime,²¹ so long as the trust expressly permits the alter ego trust to be resettled, the trust's tax-deferred status may be lost if there are significant changes to the trust. For instance, the trust property transferred to the new trust and the beneficiaries of the new trust ought to be substantially the same as the property and beneficiaries included in the original trust.

The Power to Wind Up an Alter Ego Trust

Finally, an alter ego trust may be drafted to give the trustee the authority to wind up or revoke the trust during the settlor's lifetime,²² providing a practical exit valve in the event that the trust structure no longer aligns with the settlor's objectives. However, should the trustee exercise this authority, there may be tax implications – subsection 75(2) of the *Income Tax Act* will apply,²³ meaning that the benefits associated with the use of the alter ego trust will be lost.²⁴

Conclusion

Alter ego trusts are a powerful estate planning tool, particularly if they are drafted to be adaptable to a client's changing circumstances. By incorporating carefully drafted powers – ranging from permitting property to be added to the trust, to its resettlement, or even its revocation – practitioners can provide clients with meaningful flexibility while preserving the integrity of alter ego trusts.

¹⁷ See *Vines v Wilcock*, [2025 BCCA 393](#) at para 10.

¹⁸ *Chalmers*, *supra* note 11 at para 32.

¹⁹ *Ibid* at paras 9, 40, 46-47. The trust in this case provided that in order to resettle the alter ego trust into a new trust, the trustee had to be of the opinion that the persons beneficially interested in the new trust were substantially the same and have similar interests, contingent or otherwise, in the new trust. The trust also provided that the terms of the new trust had to be substantially the same as the terms upon which the trustee held the current trust.

²⁰ *Bozek and Berry*, *supra* note 16.

²¹ *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 104(5.8)(a) [*Income Tax Act*].

²² *Bozek and Berry*, *supra* note 16.

²³ *Income Tax Act*, *supra* note 21, s 75(2).

²⁴ *Bozek and Berry*, *supra* note 16.