

THE PROBATER

VOLUME 21, NUMBER 4, SEPTEMBER, 2015



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Can a Beneficiary Enjoy the Windfall of a Mistaken Payment?

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There is settled law for the proposition that when a beneficiary receives an inheritance by mistake, he/she is obliged to return it to the estate: *Cronan Estate v. Hughes*, 2000 CarswellOnt 4587, 37 E.T.R. (2d) 27. The principle behind this ruling is that, *prima facie*, it is against equity and good conscience that the party who receives the money should retain it.

In *Cronan Estate*, the estate trustee redeemed a RIFF and mistakenly thought that the bank had held back appropriate income tax. The estate trustee held back monies for income tax liabilities and expenses and made an interim distribution to each defendant. The amount owing for income tax at the time of trial was in excess of the holdback, with interest and penalties continuing to run.

The court held that the interim distribution was made on a mistake of fact, and that the estate trustee was not aware that there was income tax liability that had not been taken care of by deduction from the proceeds of the RIFF. The estate trustee was therefore an innocent party in making the interim distribution payments. The court also held that the monies ought to be repaid by the beneficiaries equally, unless they were able to show a “countervailing equity” to make it unjust to order the return of the monies.

The Court in *Cronan Estate* cites and follows the principles regarding repayment of monies originally set out in the judgment of Iddington J. in *R. v. Bank of Montreal* (1907), 38 S.C.R. 258 (S.C.C.), an appeal to the Supreme Court of Canada. He said at p. 280:

The remaining ground taken on which to rest these claims is the right to recover money paid by mistake.

Let us bear in mind that the action for money had and received by means of which this right has usually been asserted, rests upon the principle that *prima facie* it is against equity and good conscience that the party who received it should retain it, and remember further that in many instances this *prima facie* case is answered by virtue of conditions existing at the time of payment, or subsequent events creating, so to speak, a countervailing equity that would make it against equity and good conscience to insist on the return of the money.

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A counter-veiling equity is a situation where a party has altered his position to his prejudice or has placed himself in a compromising situation. However, there are few cases on the issue, such that it begs the question – what type of conduct or circumstances will meet this test? The courts have not yet given us a clear answer on this, although we are seeing consistency on what type of behaviour does not amount to a countervailing equity:

- In *Cronan Estate*, making a significant investment in a vacation property in anticipation of receiving the funds was not considered a counter-veiling equity.
- In *Central Trust Company v. Flynn*, 1987 CarswellNB 62, 25 E.T.R. 302, a decision of the New Brunswick Court of Appeal, the appellant executor had lost its action to recover an overpayment to a beneficiary. The trial Judge had found that it would be “against equity” to order the repayment, due to the fact that the appellant had failed to provide an inventory statement such that the respondent did not have an accurate knowledge of the size of the estate, and due to the finding that the appellant had in various ways been negligent in carrying out its duty as executor.

The appeal was allowed, and payment was to be returned. In rendering its decision, the appellate court noted that the executor’s failures to properly administer the estate (e.g. by delaying in the administration, incurring tax penalties and by making advances without reconciliations) were not countervailing equities. Further, the funds were advanced from time to time at the urging of the heirs, and the respondent was notified of the error within a reasonable time. Finally, the respondent was unable to demonstrate any countervailing equity, as there was no evidence of her having altered her position to her prejudice or of having placed herself in a compromising situation.

- In *CIBC Trust Corporation v Bayly and Bayly*, 2005 BCSC 133, 2005 CarswellBC 217, [2005] B.C.W.L.D. 1695, [2005] B.C.J. No. 194, a decision of the British Columbia Supreme Court, the beneficiaries used funds received by mistaken payment to pay down their lines of credit, and to financially assist their son who had been involved in a very serious motor vehicle accident, leaving them in debt. The Court, citing *Cronan Estate*, held that debt alone does not constitute a material change in position, and required repayment of the monies.

Although there is limited jurisprudence thus far on the issue, we can glean from the outcomes of these cases that the principles of equity and good conscience stand firm. I expect that in future decisions we will continue to see that it will not be easy to convince a court that one should be permitted to reap the benefit of an overpayment of estate assets, and it will likely take more than spending the windfall or even going into debt to do so.



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