



HULL & HULL LLP
Barristers and Solicitors

Advising Clients Regarding RRSP Tax Obligations

When advising estate planning clients who wish to gift Registered Retirement Savings Plans (“RRSPs”), it is important to properly counsel them regarding the related tax implications.

Upon the death of the holder of an RRSP, the taxes that may become payable can be significant, unless the plan is subject to a spousal rollover, such as in circumstances in which the deceased has transferred an RRSP to one or more surviving children.

Absent a contrary indication within a last will and testament or another testamentary document, the taxes payable on the transfer of a registered savings plan will be dealt with in accordance with the terms of Canada’s *Income Tax Act*, R.S.C. 1985, c. 1 (the “ITA”).

The ITA provides that the deceased individual and the beneficiary of an RRSP are jointly and severally liable for the payment of the related tax obligations. This does not necessarily mean, however, that the tax liability related to the RRSP is to be paid from the asset itself. Ontario courts (see, for example, *Banting v. Saunders Estate* (2000), 34 E.T.R. (2d) 163 (ONSC)) have confirmed that the payment of any tax liability remains the obligation of the estate of the RRSP holder. Only in the event that there are insufficient assets in the estate to satisfy the tax obligations will the recipient of an RRSP be required to pay the taxes triggered by its transfer.

Clients should be advised of the potential tax consequences of leaving an RRSP to a loved one, the option of leaving the RRSP to a spouse to whom the plan may be rolled over in a tax-neutral manner, as well as how the related tax obligation will be dealt with unless alternative arrangements are put into place pursuant to the estate plan.

In light of the typical tax treatment of RRSPs, it can be important that liquid assets are available to the estate to fund the payment of this liability. Other estate assets, which the testator intends to

leave to his or her survivors, may otherwise need to be sold to fund payment of the tax obligations relating to the RRSP.