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Further Guidance on Beneficiary Designations

A [previous tip](#) highlighted the importance of documenting client instructions whenever dealing with gifts to independent adult children, whether an *inter vivos* gift, a transfer into joint tenancy, or under a beneficiary designation. For certain gratuitous transfers by parents to adult children, a rebuttable presumption of resulting trust may apply to the asset received by the child. In such cases, evidence regarding the intentions of the parent and, specifically, whether a gift was intended, becomes crucial, with the presumption of resulting trust in favour of the parent's estate operating if none of the available evidence rebuts the presumption.

In *Mak (Estate) v Mak*, 2021 ONSC 4415, Justice McKelvey declined to apply the reasoning in *Calmusky v Calmusky*, 2020 ONSC 1506, in considering whether the proceeds of a RIF for which a beneficiary had been designated were subject to the presumption of resulting trust. Instead, the Court found in this case that the presumption did not apply to an asset for which a beneficiary had been designated because:

- (1) the presumption of resulting trust applied only to *inter vivos* dispositions, while a beneficiary designation takes effect only at death;
- (2) the intention in making a beneficiary designation should be evident from a review of the beneficiary designation itself; and
- (3) beneficiary designations are specifically addressed under section 51 of the *Succession Law Reform Act*, RSO 1990, without any reference to the presumption of resulting trust or any evidence to be considered prior to giving effect to a disposition in accordance with the beneficiary designation.

Estate solicitors should not have a sense of false comfort relating to this issue as a result of the recent decision revisiting beneficiary designations and the presumption of resulting trust. There are currently two different possible interpretations of whether the presumption of resulting trust should be applied to assets for which a beneficiary designation is in place. As a result, it remains highly important to investigate and document a client's wishes relating to any and all assets passing outside of an estate to avoid complications resulting from legal presumptions that may change or be further refined over time. Our notes and testimony may be determinative of the issue of the outcome of these matters and may have direct bearing on whether our clients' wishes are implemented.