

# Tax & Estate Planning Newsletter

New Year Resolution - Keep your estate plan up to date

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*This month's newsletter provides a reminder of the importance of ensuring all of your estate planning is current and reflects your wishes. We also examine a recent case from the Ontario Court of Appeal regarding beneficiaries of pension plans, as an interesting reminder of the confusion and challenges that can occur if estate plans are not clear.*

### Importance of Estate Planning

Estate Planning is more than simply deciding who will receive what. A proper estate plan should ensure that you will be cared for during your life if you become incapacitated and that you will leave the memory and legacy you want upon your death. Your estate plan should include a power of attorney and personal care directive and may also require family trusts or life insurance declarations. Tax planning should be considered in the process to ensure that beneficiaries will receive their inheritance with the least amount of tax consequences.

### Reviewing Your Will and Estate Documents

You should review your Will and any other estate planning documents at least every few years. If you have any major life events or changes, all the documents should also be reviewed to ensure they have not been affected. People often think of updating their wills after a marriage, separation or divorce or the birth or adoption of a child. However, there are many other events that could affect your estate plan, such as the death or disability of a beneficiary, significant acquisition or disposition of property, or a change in your residency or citizenships.

When reviewing and updating your estate planning, it is important to keep in mind all the assets and benefits that will be payable upon your death. Registered investments with a designated beneficiary, pension benefits and life insurance policies should be reviewed to ensure the appropriate beneficiary is named. Beneficiaries may be changed or named in your estate planning process, which can allow for revisions to be made more easily in the future.

### Case review: *Carrigan v. Carrigan Estate*

A recent decision from the Ontario Court of Appeal is a good reminder of the importance of ensuring that all your estate plans are in order. *Carrigan v. Carrigan Estate*, 2012 ONCA 736 ("*Carrigan*") has caused concern in the estate planning and pension community as it seemed to go against the common practice and understanding of who was considered a "spouse" under the Ontario pension legislation. *Carrigan* could affect Nova Scotia, as broad changes have been made to the Nova Scotia *Pension Benefits Act*, which mirror the Ontario legislation, although the new legislation is not yet in force.

At the trial level in *Carrigan*, the Court interpreted the Ontario *Pension Benefits Act* (the "Act") in a manner consistent with the general practice in the industry: that the spouse (married or common-law) who is living with a plan member at the date of death has priority, and is "the spouse" entitled to the death benefit payable upon the plan member's death, subject to the operation of a spousal waiver if one exists. As there was no spousal waiver



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in the *Carrigan* case, the common-law spouse was awarded the pre-retirement death benefit at trial.

The majority of the Court of Appeal overturned the trial decision on appeal. The Court of Appeal interpreted the provisions of the *Act* such that if the married spouse was “living separate and apart” from the plan member at the time of death, the married spouse was not entitled to receive the death benefit. However, the Court went on to determine that a plan member could only have one “spouse” under the *Act*, and therefore, a common law spouse who was living with the plan member at the date of death would not be able to receive the death benefit either. As there was no “spouse” to receive the death benefit, it had to be paid to the plan member’s designated beneficiary. In the *Carrigan* case, the designated beneficiary was the married spouse (from whom the plan member was living separate and apart) and their two daughters. The common-law spouse (who had been living with the plan member at the time of death) was, accordingly, denied the death benefit.

The deceased in the *Carrigan* case did designate the married spouse and their two daughters after they had separated and when he was living with his common law spouse, so he may have wanted them to receive it. However, his intention may have been for them to benefit only if he was not living with his common law spouse at the time of his death.

Leave to appeal to the Supreme Court of Canada is currently being sought in the *Carrigan* case, so the law may change again and the estate planning community will certainly be watching it. If the new pension benefit legislation in Nova Scotia is proclaimed in force, appropriate estate plans and beneficiary designations should be made in order to ensure that the common-law spouse receives such entitlements.

### Summary

Estate planning is not something everyone is keen on beginning – it is unpleasant to think about your own passing. However, without a comprehensive estate plan, the assets you have accumulated throughout your life may be significantly diminished due to taxes upon your death, or given to unintended beneficiaries. Developing an appropriate estate plan that is reviewed and updated when necessary, will ensure your final wishes are fulfilled.

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Our Tax and Estate Planning Group has a wide range of experience in all will and trust matters. If you have any questions about this newsletter or need tax and estate planning advice, please feel free to contact one of our lawyers.

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