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CLIENT ALERT: JOINT ACCOUNTS IMPACT OF RECENT SUPREME COURT OF CANADA DECISIONS

Joint accounts have often been used as an “easy” method of ensuring that funds are available for the surviving joint account holder without requiring Probate of the Will of the deceased joint account holder. However, where the accounts are joint between a parent and child, there is often an issue as to entitlement to the account balance at the death of the parent.

It is generally presumed that, if the child survived the parent and there is no evidence to the contrary, the parent intended to “gift” the balance of the joint account to the child. This presumption is known as the “presumption of advancement.” In two recent cases however, the Supreme Court of Canada has re-defined the presumption of advancement, particularly in the case of gifts made to children via joint accounts.

A key issue is the intention of the person who deposited the funds into the joint account. Did they intend to make a gift to a joint-account holder or did they simply intend that the joint-account holder act as a trustee of the donor’s assets (which assets would in fact form part of the donor’s estate)? In the absence of any evidence of the intention, the courts have relied on the competing presumptions of either advancement (ie “gift”) or resulting trust (ie. “trust”) to determine whether the deposit was intended to be a gift to the surviving account holder or to be held by them in trust for the estate of the deceased.

In the recent cases of *Pecore v. Pecore* and *Madsen Estate v. Saylor*, the Supreme Court of Canada determined that the presumption of advancement applies only as between spouses or between parents and minor children. Deposits or transfers by parents into joint accounts with adult dependent or adult independent children will now be presumed to be held in trust by the adult child for the parent and/or his or her estate, unless contrary evidence exists.

As a result, it is now more important than ever that if you transfer assets into joint names with a child, especially an adult child, you properly document your intentions as to what is to happen to those assets at your death. The failure to do so may have unintended consequences, to say nothing of potential adverse tax liabilities in the case of real property.

We encourage you to consult one of the members of our Wealth Preservation Practice Group for more information.

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