

What is the Effect of a Revocation Clause in a Will on Beneficiary Designations?

Sanjana Bhatia, B.B.A., LL.B., LL.M. (Tax), TEP
Director, Tax and Insurance Planning
Insurance Tax Solutions

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In *Alger v. Crumb*,¹ the Ontario Superior Court (ONSC) concluded that a general revocation clause in a Will was insufficient to revoke two previous beneficiary designations. The Ontario Court of Appeal (ONCA) upheld that decision and provided important guidance on how to revoke beneficiary designations in an Ontario Will. This article summarizes both decisions.

Facts

Theresa Crumb (Theresa) had four children (Teresa, Sherri Ann, Karen and Robert) who were the equal beneficiaries of her Scotiabank registered retirement income fund (RRIF) and tax-free savings account (TFSA) plans.

Theresa later made a Will that contained a general revocation clause which stated that:

I HEREBY REVOKE all Wills and Testamentary dispositions of every nature and kind whatsoever made by me heretofore made.

In her Will, Theresa also appointed Karen and Robert as estate trustees and named them as the only residuary beneficiaries.

After Theresa's death, Karen and Robert took the position that the general revocation clause in Theresa's Will revoked the RRIF and TFSA beneficiary designations. The other two children (Teresa

¹ 2023 ONCA 209, aff'g 2021 ONSC 6076 (CanLII). (*Alger*)

and Sherri Ann) did not agree and brought a court application seeking an order to direct the estate trustees to pay each of them 25% of the RRIF and TFSA accounts as per the beneficiary designations.

Decisions

The ONSC and the ONCA referred to sections 51 and 52(1) of the *Succession Law Reform Act*,² (SLRA) which read as follows:

Designation of beneficiaries

51 (1) A participant may designate a person to receive a benefit payable under a plan on the participant's death,

(a) by an instrument signed by him or her or signed on his or her behalf by another person in his or her presence and by his or her direction; or

(b) by will,

and may revoke the designation by either of those methods.

Same

(1.1) A designation under clause (1) (a) may be provided electronically in accordance with the *Electronic Commerce Act, 2000*. 2020, c. 7, Sched. 15, s. 1.

Idem

(2) A designation in a will is effective only if it relates expressly to a plan, either generally or specifically. R.S.O. 1990, c. S.26, s. 51. ...

Revocation of designation

52 (1) A revocation in a will is effective to revoke a *designation made by instrument* only if the revocation relates expressly to the designation, either *generally or specifically*. (Emphasis added.)

The ONCA focused on SLRA section 52(1) and interpreted section 52(1) to mean that a revocation clause must be either:

- express and general, or
- express and specific.

² RSO 1990, c. S.26.

As discussed below, the ONCA gave two examples of revocation clauses that would have been: 1) express and general, and 2) express and specific.

ONSC

The ONSC found that the general revocation clause in Theresa's Will was insufficient to revoke the RRIF and TFSA designations. In reaching this conclusion, the ONSC considered whether the beneficiary designations were "testamentary dispositions." This is because the revocation clause in the Will could only revoke the RRIF and TFSA designations if those designations fit into the definition of "testamentary dispositions." The court stated that it is clear, especially in Ontario, that RRIF and TFSA designations are testamentary dispositions.³ The ONSC also concluded that if there was no SLRA section 52, the clause in Theresa's Will would clearly revoke the beneficiary designations.

The ONSC then considered whether the term in Theresa's Will which stated, "Testamentary dispositions of every nature and kind whatsoever" related "expressly" to the RRIF and TFSA designations, "either generally or specifically." The court concluded that there is no express reference to either the RRIF or TFSA designations in the revocation clause. Also, her Will did not refer to any beneficial designations generally. The ONSC found that it would be a stretch to find that mentioning the broad category of "testamentary dispositions" amounted to "expressly" referencing the designations, either generally or specifically.

In finding that the designations were not revoked by the Will, the ONSC ordered the estate trustees to direct Scotiabank to pay Teresa and Sherri Ann 25% each as per the RRIF and TFSA beneficiary designations.

³ The ONSC relied on *Amherst Crane Rentals Ltd. v. Perring*, 2004 CanLII 18104 (ON CA), leave to appeal to S.C.C. refused, [2004] S.C.C.A. No. 430).

ONCA

The ONCA upheld the ONSC's decision and agreed that the general revocation clause in Theresa's Will did not revoke the RRIF and TFSA beneficiary designations. The ONCA also suggested two examples of wording that may comply with SLRA section 52(1):

Example 1

An example of wording that would have been sufficient as an express and general revocation is:

I hereby revoke any and all beneficiary designations by instrument that I have heretofore made on any fund or plan as defined in the *Succession Law Reform Act*.

Example 2

An example of wording that would have been sufficient as an express and specific revocation is:

I hereby revoke the beneficiary designations on my RRIF and TFSA accounts at Scotiabank.

In *Leslie Estate v. Gough*,⁴ however, the Nova Scotia Supreme Court found that a general revocation clause in a Will revoked an RRSP beneficiary designation.⁵ This is because Nova Scotia is a jurisdiction that does not have a SLRA section 52(1) equivalent. In any event, *Gough* was overturned on appeal because the RRSP was subject to a "secret trust," which the court concluded was not a testamentary disposition.⁶

⁴ 2021 NSSC 63, rev'd 2022 NSCA 25 (CanLII). (*Gough*)

⁵ The general revocation clause stated, "**I HEREBY REVOKE** all former Wills and other Testamentary Dispositions made by me at any time heretofore and declare this only to be and contain my Last Will and Testament."

⁶ For a discussion of secret trusts, see [Sanjana Bhatia, "Beneficiary Designations and Secret Trusts", September 2023.](#)

Key takeaways

Key takeaways from *Alger* include:

- In Ontario, general revocation clauses in a Will cannot revoke previous beneficiary designations.
- To revoke previous beneficiary designations in an Ontario Will, the Will clause must be:
 - express and general, or
 - express and specific.
- However, it may be possible to revoke beneficiary designations by a general revocation clause in a Will in other provinces which do not have an SLRA section 52(1) equivalent.
- It is always best to consult with provincial and territorial estate planning counsel when making changes to a Will because succession laws are not consistent throughout Canada.

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