IT'S PERSONAL

PRESERVING WEALTH FOR PEOPLE AND PRIVATE COMPANIES

It is with real pleasure that I introduce Martin Rochwerg as the new co-editor of It's Personal. My good fortune of having joined Miller Thomson LLP is having the opportunity to work with so many personable and talented people; Marty, as he is more affectionately known, is one of those people and he is a stand-out. Marty is approachable, knowledgeable, modest and highly accomplished. And he has a good sense of humour... Let me continue by telling you a little about his professional accomplishments: Marty is a tax partner at Miller Thomson's Tax and Private Client Services Group. According to *Euromoney's* Best of the Best for 2010, Marty is one of the World's top 25 pre-eminent Trusts and Estates practitioners. He is a member of the Board of Governors of the Canadian Tax Foundation. In fact, he is rated annually by *Lexpert* as one of the most frequently recommended estate planning lawyers in Canada. As counsel to investment groups, businesses, families and philanthropists globally, Marty provides advice on personal tax planning, estate planning, and succession and family business. Marty further advises trustees and beneficiaries on estate, trust and charitable administration and dispute resolution, and corporate clients on tax minimization, reorganizations and ownership regimes. Marty has particular expertise and extensive experience in multi-jurisdictional tax, trust and estate issues.

On the educational front, Marty is an Adjunct Professor at Osgoode Hall Law School, York University, a post he has held since 1980 and he has also been the recipient of a distinguished teaching award. Marty is working on a number of book projects including the publication of a forthcoming chapter entitled: "Estate Freezing and Re-freezing in an Economic Downturn" in *Taxation, Valuation & Investment Strategies in Volatile Markets*, Chodikoff & Horvath, editors (Toronto: Carswell, 2010), and he is Editor-in-Chief and co-author of *Miller Thomson on Estate Planning* (Toronto: Carswell, 2011).

David Chodikoff, Miller Thomson LLP ■

United States Estate Tax in 2010*

By Martin Rochwerg, Krystle Ng-A-Mann, Miller Thomson LLP

Federal estate tax in the United States is in a state of flux. U.S. estate tax is generally applied on death at graduated rates to the value of the deceased's estate.

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For a non-resident of the U.S., the fair market value of U.S.-situs property owned by such a non-resident (minus permissible deductions for debts and certain expenses) will be subject to U.S. estate tax.

In June of 2001, legislation was enacted in the U.S. providing for a phase-out of the tax over a period of 10 years and an eventual repeal altogether by 2010. The legislation brought about reduced estate tax rates and increased exemptions from the tax over this period. However, this legislation will sunset in 2011, so that the estate tax regime will revert to the pre-2001 rules. Practically, this may mean that there will be a sharp decline in the exemption to $1 million and a significant increase in the maximum tax rate to 55% in 2011. To prevent a return to lower exemptions and higher rates, Congress must pass legislation before January 1, 2011, subject to its ability to make future legislation retroactive to that date or before.

Generation-skipping transfer taxes ("GSTT") are taxes imposed on transfers to related persons who are at least two generations younger than the transferor, and, like the estate tax, were repealed by 2010. GSTT stands to make a reappearance in 2011 with a lower exemption and higher rate than in 2009 if new legislation is not enacted. Note that the gift tax—levied on *inter vivos* gifts—carries a $1 million exemption in each of 2009, 2010 and 2011, which is not affected by the expiration of the current legislation, although the maximum gift tax rate will spike from 35% in 2010 to 55% in 2011 if new legislation is not enacted.

This uncertainty has stimulated much debate surrounding the administration of U.S. estate tax, and unsuccessful legislative attempts have been made to address the situation. Some would eliminate what they term the "death tax" altogether, while others would see the exemption decreased (one House Bill would have fixed the exemption permanently at $2 million, indexed for inflation), resulting in a legislative impasse.

Adding to the uncertainty is the potential retroactivity of new legislation, a matter that has been discussed in Congress. Although the constitutionality of such an enactment is debatable and the result of a challenge is unpredictable, there is some support for upholding the government's right to enact retroactive estate tax legislation: see the U.S. Supreme Court case of *United States v. Carlton*. Ultimately, the political nature of the decision on estate tax and GSTT for 2010 and beyond makes an accurate prediction impossible.

These developments no doubt affect Canadian residents owning property situated in the U.S., such as vacation homes, rental properties and even U.S. securities, and will impact not only the quantum of U.S. tax liability but also the manner in which property may devolve on future generations. While the unpredictability makes estate planning more difficult, there are ways to structure gifts and other transfers to lessen the effect of future U.S. tax policy changes. Every estate is different, and planning is always fact-specific. However, one of the keys to adapting

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to future policy changes is building flexibility into estate planning devices, allowing for adaptation where necessary. Instruments now in existence should be carefully reviewed for terms connecting the value of gifts to the amount of U.S. estate tax or GSTT to ensure they effectively respect the donor's wishes and intentions. As these matters involve a complex consideration of a host of factors, seeking professional estate planning advice is strongly suggested.

* With special thanks to Edward Northwood of Ruchelman Law Firm in New York. ■

TAX-FREE SAVINGS ACCOUNT: TELL EVERYONE YOU KNOW!

By David Chodikoff, Miller Thomson LLP

Not enough Canadians know about the Tax-Free Savings Account ("TFSA") and they should! Back on January 2, 2009, the Minister of Finance, Jim Flaherty, and the Minister of National Revenue and the Minister of State (Agriculture), Jean-Pierre Blackburn, announced the availability of the New TFSA. The government introduced the TFSA in the 2008 budget.

TFSA is a fairly flexible registered general purpose savings vehicle that permits Canadians to earn tax-free investment income. It is complimentary to the existing plans like the Registered Retirement Savings Plan ("RRSP") and the Registered Education Savings Plan ("RESP").

The TFSA operates in a straight-forward manner. You must be a Canadian resident, 18 years or older. You can contribute on a yearly basis $5,000.00 to a TFSA and that amount may be increased by the rate of inflation. The TFSA contribution room for a year includes the unused TFSA contribution from prior years and withdrawals from a TFSA made in prior years. Excess contributions to a TFSA are subject to taxes, interest and penalties. Any money a person contributes to a TFSA is not tax deductible like an RRSP contribution.

The good news is that any income or capital gains earned in the TFSA will not be taxed. Most investments that are presently RRSP eligible will also be permitted in a TFSA. For example, some eligible investments include: stocks, mutual funds, bonds, certain types of saving accounts and GIC's.

An individual can withdraw funds at any time and for any reason. The withdrawal of funds is not subject to income tax. You can put back the amount withdrawn from a TFSA starting from the beginning of the following year. Any transfers of funds from your TFSA could be considered as a withdrawal from your TFSA and a transfer to your TFSA account could be considered as a contribution to your TFSA. The TFSA will not affect an individual's eligibility for federal income-tested benefits, such as the Child Tax Credit Benefit, Old Age Security and the Guaranteed Income Supplement. TFSA assets can be transferred to your spouse or common law partner as part of a person's last will and estate without any effect on the survivor's existing contribution room. For the latest guide on the TFSA go to the Canada Revenue Agency website and order up the 37 page RC 4466 Guide to the TFSA.

Recently, the Department of Finance ("Finance") has proposed legislative changes to the TFSA rules in the *Income Tax Act*. Finance issued explanatory notes on April 30, 2010. Essentially, the proposed legislation takes aim at alleged "abuses" of the TFSA rules. The three main abuses are as follows: (1) over contributions; (2) swap transactions; and (3) non-qualifying investments being held in the TFSA. The new rules will provide that any income or capital gains from any of these abuses will be taxed at 100%. According to Finance, the old penalty rules were just not sufficient to stop people from "breaking the rules".

Even with these proposed changes, the TFSA is still another important savings and investment vehicle. Professional tax advisors owe it to their clients to raise the awareness of every client about the existence and operation of the TFSA.

A DECISION THAT DEFIES COMMON SENSE AND A TAXPAYER THAT RIGHTLY CHALLENGED THAT DECISION

By David Chodikoff, Miller Thomson LLP

Sometimes you read a case decision and say to yourself: "this is so outrageous it can't be true". Then a moment or two passes, your senses fully return and you realize that you have just read a true story. Such is the case of Celyne LaFlamme, a case that came before the Federal Court in December of 2008 and was just finally translated into English. It was an application for Judicial Review of a Ministerial decision to deny Ms. LaFlamme the cancellation of penalties and interest assessed against her as a result of the late filing of her income tax returns for the years 2003, 2004 and 2005.

By way of legislative background, subsection 220(3.1) of the *Income Tax Act* (the "Act") permits the Minister of National Revenue (the "Minister") to waive or cancel all or any portion of any penalty or interest payable under the Act. The Canada Revenue Agency ("CRA") has adopted and published an Information Circular ("Circular") entitled "Taxpayer Relief Provisions", No. IC07-1, dated May 31, 2007. The Circular sets out the circumstances in which an application may be made and the factors used in making the decision. Section 23 of the Circular provides that exceptional circumstances are the grounds on which the Minister must exercise his discretion. Section 25 lists the situations that are considered to be exceptional circumstances such as natural disasters (floods), serious illness and serious emotional or mental distress (such as a death in the immediate family). The list is not exhaustive but it presents the types of situations that the CRA considers exceptional.

Unfortunately for Ms. LaFlamme, life was not kind. She was a nurse and married with children. She lived with her husband in St. Albert, Ontario. She and her husband had an understanding that she would look after the kids and the house and he would take care of such matters as banking and tax returns.

Disaster surely struck for Ms. LaFlamme in 2002. That year, her husband died suddenly; this was followed by the deaths of her mother and her father-in-law in the same year. Ms. LaFlamme's youngest child became depressed and suicidal. The family accountant who dealt with the tax returns fell seriously ill and he later died in 2005. More tragedy occurred in 2003 when Ms. LaFlamme's basement of her home was flooded and infested with rodents. After her husband passed away, Ms. LaFlamme had to find work to support the family. She did. But, she also changed jobs three times from 2002 to 2005. It was no wonder that Ms. LaFlamme fell into deep depression and since the death of her husband she was under psychiatric care and taking medication. It should come to no one's surprise that as a result of all of these converging calamities, Ms. LaFlamme was not capable or able to file her tax returns for 2003, 2004 and 2005. In any event, she believed that since she did not earn income for those years she was not required to file tax returns.

Finally, at the urging of the executor of her late husband's estate, the support of her sister and a new accountant, by 2007, she was able to file her tax returns for the 2003 to 2006 years. She paid the taxes owing which was approximately $33,000. However, the Minister assessed her late filing penalties and interest on arrears in the amount of $13,005.02.

She applied for relief from the assessment in respect of the penalties and interest based upon her extraordinary circumstances and mental condition. Despite all of these facts, the Minister concluded that she failed to act quickly to remedy the delay and failed to meet her tax obligations in the past. The Minister's official also stated that there was no error or delay on the part of the CRA and there were no circumstances beyond her control that might have prevented her from doing the accounting on time. As a result, the Minister shockingly upheld the penalty for late filing and interest on arrears.

Ms. LaFlamme rightfully sought to challenge the Minister's decision. The sole issue before the Court was whether the decision made by the Minister was reasonable in the circumstances. The Court had little difficulty in concluding that Ms. LaFlamme's situation fell "squarely within the exceptional circumstances" beyond her control and in fact, referred to the Minister's own policy guidelines. The Minister's decision was determined to be unreasonable and the application was allowed. The decision by the CRA officer was set aside and the application was referred back to the Minister so that another authorized person could review it in accordance with the reasons set out in the Court's ruling.

There are valuable points that one can take away from this story. Sometimes, the CRA gets it so wrong that the decision seems absurd. If you and your advisor believe that the CRA are wrong, don't give up as you do have recourse to the Courts. And there, justice can prevail. ■

Recent CRA Views

Views document 2009-0327081C6 reproduces CRA's answer to Question 13 from the Round Table on the Taxation of Financial Strategies and Instruments at the APFF 2009 Conference. In Question 13, the CRA was asked to confirm its current position on the transfer of latent capital losses between spouses, in light of the decision in *Lipson*, which restricts certain strategies using the attribution rules between spouses. Specifically, the CRA was asked for its position in the situation where there is a transfer of property with an inherent capital loss between spouses, and an election is made not to have the spousal rollover in subsection 73(1) apply to the transfer. As a result, the property is disposed of at fair market value, there is a denial of the capital loss for the spouse who disposed of the property, and an addition to the adjusted cost base of the property for the spouse who acquired the property. Essentially, the result of the transaction is that the latent capital loss is not lost, but is potentially suspended for some time for the spouse who acquired the property and who will be able to claim it at the time of the eventual disposition of the property. The CRA had affirmed in past technical interpretations that it would accept this kind of planning.

In its response, the CRA confirmed that it is possible for spouses, in a situation similar to the one described above, to carry out a transfer of capital losses. However, in situations dealing with transfers of capital losses other than the one described above, the CRA would examine if such transfers of losses are subject to the application of the general anti-avoidance rule (GAAR).

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CRA Views document 2009-0332521I7, dated March 23, 2010, provides a timely reminder regarding the information filing requirements required by Canadian beneficiaries of nonresident trusts. The taxpayer, a Canadian resident beneficiary of a U.S. testamentary trust, asked the CRA for its views on whether he is liable for a penalty under subsection 162(7) of the *Income Tax Act* (the Act) for late-filing Form T1142, *Information Return in Respect of Distributions from and Indebtedness to a Non-Resident Trust*.

Form T1142 is an information return that must be filed by a Canadian beneficiary of a non-resident trust who receives a distribution from, or is indebted to, the trust in the particular year. There is an exemption from filing Form T1142 for certain excluded trusts and where the trust is "an estate that arose on and as a consequence of the death of an individual" (subsection 233.6(1)).

The taxpayer took the position that, as a beneficiary of a U.S. testamentary trust, he met the exemption in subsection 233.6(1) of the Act, since the trust is an estate that arose on and as a consequence of the death of an individual.

The CRA's position is that the late-filing penalty in subsection 162(7) applies unless distributions are made from an estate, and that such distributions must have arisen before the estate is fully administered. An estate is considered fully administered when the assets of the estate have been distributed and a clearance certificate is requested pursuant to section 116 or 159 of the Act. In this case, the taxpayer was a beneficiary of an on-going testamentary trust that was created under the terms of the will, not an estate that arose on the death of an individual. Therefore, he is not exempt from filing Form T1142, and is liable to penalties if he did not file the form by its due date (which is the same date as the taxpayer's Canadian income tax return).

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In CRA Views document 2009-0307821E5, the CRA was asked for its views on whether employee stock options and warrants can be contributed to a Tax Free Savings Account (TFSA), and the tax consequences of doing so.

The CRA responded that an option or warrant is a qualified investment for a TFSA if it gives the holder the right to acquire, either immediately or in the future, property that is a qualified investment (Reg. 4900(1)(e)). Essentially, the property that may be acquired by the holder of the option or warrant must be a share or unit of, or debt or certain warrants issued by, the issuer of the option or warrant, and the issuer cannot be connected to the TFSA.

Where property such as an employee stock option or warrant is contributed by a taxpayer to a TFSA, the property must be contributed at its fair market value and the contribution is subject to the holder's unused TFSA contribution room. The fair market value of a particular option or warrant is a question of fact. It is the CRA's view that the intrinsic value of a warrant, option, or similar right is not reflective of the property's fair market value; an appropriate valuation method should be used to determine its value. The CRA further stated that where a TFSA exercises an employee stock option (pursuant to paragraph 7(1)(c)), the employee is deemed to have received a benefit in the taxation year

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in which the TFSA exercises the option equal to the amount by which the value of the shares acquired under the option exceeds the total of the amount paid by the TFSA to acquire the shares and the amount, if any, paid by the employee to acquire the option. However, if the option expires in the TFSA, the employee will not be deemed to have received a benefit. ■

Cases of Note

Laflamme c. Ministre du Revenu national, 2008 CarswellNat 6015, 2008 CarswellNat 4850, 2008 FC 1403, (sub nom. *Laflamme v. M.N.R.*) 2009 D.T.C. 5647 (Fr.), 2008 CF 1403 (F.C.)– Frenette J. – The taxpayer's spouse, mother, and father-in-law died unexpectedly in 2002 and the taxpayer's son became suicidal as result of the unexpected deaths. The taxpayer's accountant died of cancer in 2005. As result of these deaths, the taxpayer became depressed and began psychiatric treatments. The Minister assessed penalties in the amount of $13,005.02 for the late filing for 2003-2005 taxation years. The taxpayer brought an application for a judicial review of the Minister's decision, disallowing the annulment of the penalties and interests for filing income tax returns late for the 2003-2005 taxation years. The application was granted. The taxpayer's depression contributed to the late filing of income tax returns. The letter from the psychiatrist confirmed that as result of extraordinary events, the taxpayer became depressed and was unable to function normally. There was ample evidence of extraordinary circumstances that justified the late filing.

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Botham Holdings Ltd. (Trustee of) v. Braydon Investments Ltd., 2009 CarswellBC 3135, 2009 BCCA 521, 59 C.B.R. (5th) 1 (B.C. C.A.) – Finch C.J.B.C., Lowry, Groberman JJ.A. – The bankrupt, BHL, was a corporation which at one point held substantial profits from a real estate venture. It sold some real estate holdings and invested the proceeds into an automobile dealership business, in part to gain the benefit of the dealership's capital cost allowances. To access the capital cost allowances of the automobile dealership, BHL became the general partner in the car dealership, and lent in excess of $5 million to the partnership through an intermediary. To limit BHL's exposure in the automobile dealership business, a new company was created to hold the bulk of BHL's assets. BHL transferred 99.9% of its assets to the new company and the new corporation assumed $4.3 million in BHL's liabilities, gave BHL two promissory notes, and issued shares to BHL. BHL's shares in the new corporation were redeemed, and the new corporation's shares in BHL were redeemed, promissory notes were exchanged and set off against each other, with the result that the new corporation owed approximately $350,000 to the bankrupt. The effect of the transaction was to transfer assets to the new corporation and save the interest in the partnership, without triggering capital gains tax. At the time of the transactions, BHL's debt to creditors exceeded $11 million. When BHL entered bankruptcy, the Trustee began an action to recover assets from the new corporation. BHL brought an unsuccessful motion for summary judgment and the action was allowed. BHL appealed and the appeal was dismissed. The trial judge concluded that the transaction constituted a fraudulent conveyance. The directing mind of BHL stated that the transaction was undertaken to avoid creditors, and statements to the contrary could not be accepted. Dishonest intent was not necessary to apply the doctrine of fraudulent conveyance, as the bankrupt had the intent to defeat creditors. The defence under s. 2 of the *Fraudulent Conveyance Act* was not available, as the transaction had no good consideration, the transaction was not made in good faith with regards to creditors, and the transferee was aware of fraud. [Application for leave to appeal filed February 1, 2010, 2010 CarswellBC 303.]

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Frye v. Frye Estate, 2008 CarswellOnt 5207, 2008 ONCA 606, 51 B.L.R. (4th) 159, 91 O.R. (3d) 721, 42 E.T.R. (3d) 190, 299 D.L.R. (4th) 184, 244 O.A.C. 192 (Ont. C.A.) – J.M. Simmons, R.G. Juriansz, P. Rouleau JJ.A. – The testator was one of four siblings who held shares in a family business. The testator and his siblings feuded constantly but ultimately executed a shareholder's agreement to resolve disputes. The agreement provided that none of the shareholders would be permitted to transfer or otherwise deal with any of the shares in the business except in accordance with the agreement. The agreement provided that any transfer of shares required the approval of at least three siblings and it acknowledged that the intention of their father was that his children would share equally in the family business. The testator made the will in the final days of his life and left his shares in the family

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business to his sister. A brother brought an action for a finding that the transfer of shares under the will was null and void. The trial judge allowed the action on the basis that the testator was bound by the provisions of the shareholder's agreement and had no right to transfer his shares in the business to his sister by his will and that the words of the agreement were broad enough to include a transfer by testamentary disposition. The sister appealed and the appeal was allowed. The testator may have been bound by the shareholders' agreement, but the right to bequeath his shares was entirely another matter. Pursuant to s. 67(2) of the *Business Corporations Act*, the testator's estate trustees were entitled to be treated as the registered holders of the shares which he bequeathed to sister. The estate trustees held legal title to the shares in trust for the sister and had a duty to administer the estate on that basis. Their inability, because of the shareholders' agreement, to transfer the shares immediately to the sister did not render the bequest void. Until the estate trustees determined how to transfer the shares to the sister, they, as bare trustees for the sister, had to exercise the rights associated with the shares as the sister directed. [The application for leave to appeal to the Supreme Court of Canada was dismissed, *Frye v. Frye Estate*, 2009 CarswellOnt 615.]

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Bates v. Oryshchuk, 2009 CarswellAlta 1923, 18 Alta. L.R. (5th) 306, 2009 ABQB 688 (Alta. Q.B.) - J.M. Ross J. – The testator executed two different wills. The first will was executed in 1983, before two witnesses, typed by a lawyer and valid in every respect. The first will left everything to the testator's wife at that time through a residual clause. The testator and his wife separated in 1994 and were divorced in 1999. After separation, the testator commenced a relationship with B and they began living together in 1996. In November 1995, the testator executed a holograph document, purporting to distribute assets to various people. The second will was handwritten and signed by the testator and a witness. The second will listed company assets to be disposed to B and others, but did not mention shares held by the testator, and the final clause left the "balance of personal assets" to his ex-wife. B brought an application for advice and direction in regards to the validity of second will and whether or not "personal assets" included shares in company. The second will is valid, as it met the requirements of s. 7 of the *Wills Act*. The second will did not contain a revocation clause, but the intention to revoke could still be inferred. The term "personal assets" was determined in context to mean real and personal property. Although the testator's dispositions in regards to business were not valid testamentary gifts, his intent in making gifts was clear. The testator believed that he had given away the entire value of company, even if he did not actually gift ownership of the company. "Personal assets" did not include shares of the company, because they represented a right of ownership of the company, rather than a personal investment.

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MacDonald v. MacDonald Estate, 2009 CarswellNS 585, 52 E.T.R. (3d) 237, 283 N.S.R. (2d) 100, 2009 NSSC 323 (N.S. S.C.) - Joseph P. Kennedy C.J.S.C. – The testatrix executed a will in 1994 which was prepared by a lawyer and named various siblings, nieces and nephews as beneficiaries. The testatrix prepared the document in her own handwriting in March 2006. The testatrix did not sign the document. The two people who were to sign as witnesses did not sign in each other's presence. Both the 1994 will and the handwritten document of 2006 named the niece as executrix. The testatrix died in August 2008. The Registrar of Probate declined to issue a grant of probate in common form in relation to the 2006 document. The executrix applied to have the 2006 document declared to be the last will and testament of the testatrix. The application was dismissed. At the time of the making of the 2006 document, provisions governing the execution of wills in Nova Scotia were under the *Wills Act* of 1989 and the 2006 document was not a valid will in Nova Scotia. The *Wills Act* was amended in 2006 and s. 8A was added. Pursuant to s. 8A of Act, the courts had the power to find documents that did not satisfy the formal requirements of the *Wills Act* to be valid wills. The *Wills Act* did not contain a provision causing ss. 6 or 8 to operate retroactively or retrospectively. The *Wills Act* did not contain transitional provisions in relation to ss. 6 or 8. There was no clearly stated legislative intent to cause the *Wills Act* of 2006, either generally or specifically in any of sections, to be applied retroactively or retrospectively prior to its proclamation in 2008. The presumption against retroactivity applied. The handwritten document of 2006 was not a valid will and the Registrar was correct in not issuing a grant of probate.

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Smith v. Smith Estate,2009 CarswellBC 3429, 2009 BCSC 1737, 53 E.T.R. (3d) 302 (B.C. S.C.) – Williams J. – The testatrix's relatives included her sister, husband, 43-year-old son, and two six-year-old grandchildren who were her son's children. The son was an aircraft mechanic with a 2007 income of $61,827. The son's wife was unable to work due to illness. The son had a $512,100 home

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with a $375,000 mortgage. The son and his family were devout Christians who wished to enroll the children in a Christian school but could not afford to. The testatrix lived a secular lifestyle and had an interest in arts and education and disapproved somewhat of her son and his family's religious devotion. After she was diagnosed with terminal brain cancer, the testatrix made a will leaving personal property to her husband and sister and the remainder to her grandchildren in trust for their education and secular, cultural enrichment. The testatrix died and the husband obtained a grant of letters probate to administer the testatrix's $230,000 estate. The son brought an application for a declaration that the will failed to make adequate provision for his support and maintenance and for an order making such provisions for him. The application was granted. The testatrix had a moral obligation to her only son which was not appropriately respected by her will. There was no valid, rational reason for disinheritance and nothing in the evidence could be construed as an articulation by the testatrix that she elected to leave nothing to her son and had done so for specific reasons explaining why she decided to deny him some share of the estate. Notwithstanding minor differences from time to time between the testatrix and her son, the differences did not appear to be anything that would constitute a serious dispute or a reason to allow the inference that the testatrix had reason to consider a moral obligation to her son to be extinguished. The testatrix was a good, loving mother and her son was a loving, respectful son. The court should not run roughshod over the testatrix's wishes to recognize the testatrix's moral obligation and her obligation could be recognized by ordering significant, reasonable reallocation to her son of something less than the entire estate. To order that the entire estate be paid to the son would inappropriately spurn the wishes of the testatrix who had given considerable thought and care to the matter of providing for the grandchildren's needs. One-half the value of the estate met issues and objectives and represented a meaningful bequest to the son while allowing testatrix's intended goal to be served in a significant way. The declaration was to issue that the will failed to make adequate provision for son's support and maintenance, and the order was to issue that the son was to receive 50% of net value of estate, with remaining 50 per cent to remain subject to trust in favour of grandchildren in accordance with conditions imposed by the testatrix. ■