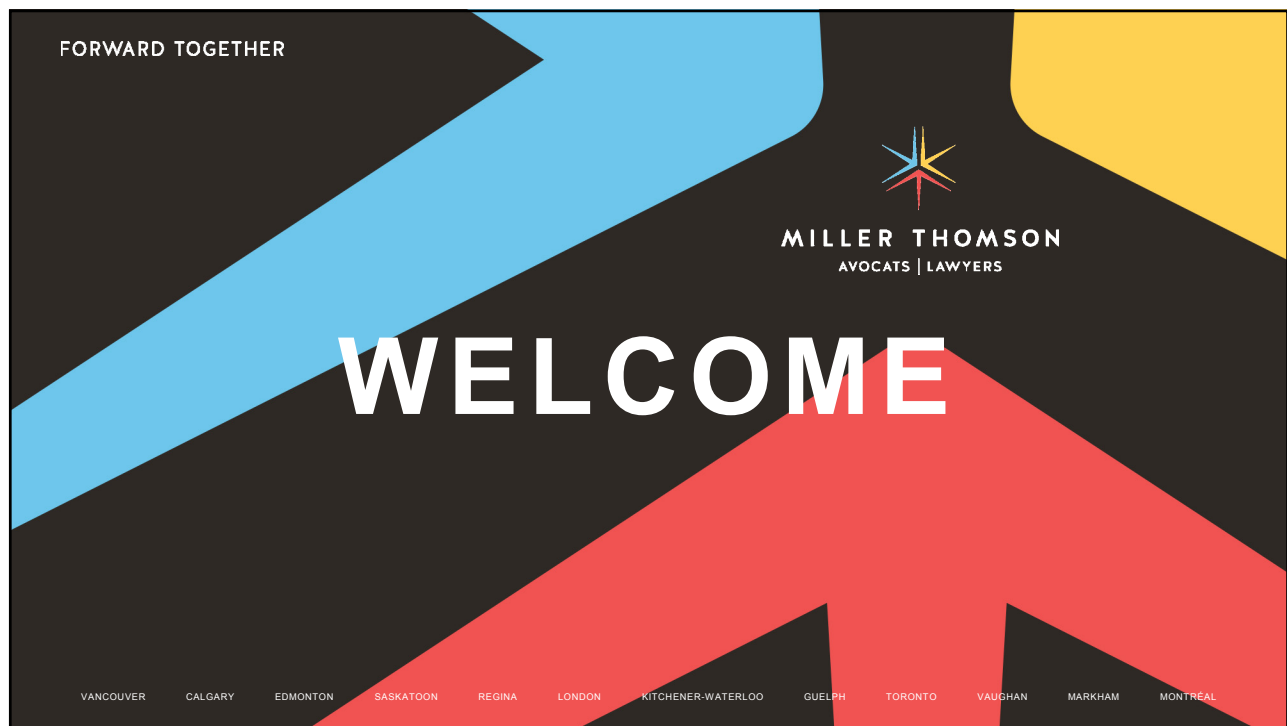






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Canada Revenue Agency: Update

March 14, 2018

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VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL



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Update: Political Activities

- Since 2012, CRA has devoted significant resources to auditing charities for political activity
- November 2015 – mandate letter from Prime Minister Trudeau to Finance Minister, Bill Morneau and from Prime Minister Trudeau to Minister of National Revenue, Diane Lebouthillier
- “Top priorities” include:
 - “... to allow charities to do their work on behalf of Canadians free from political harassment, and modernize the rules governing the charitable and non-for-profit sectors. This will include clarifying the rules governing ‘political activity,’ with an understanding that charities make an important contribution to public debate and public policy. A new legislative framework to strengthen the sector will emerge from this process.”

Background: CRA Audits

- January 2016 – Minister LeBouthillier announced political activity audit program to be wound-down
- Confirmed in Budget 2016
- Audit program update:
 - 30 political activity audits completed (5 resulted in revocation)
 - 24 more audits underway and scheduled for completion
 - 6 remaining charities selected for audit not to be reviewed
- Dealing with audits resulted in significant costs to charities
- Of approx. 86,000 charities in Canada, approx. 500 report carrying on political activities on their annual information returns

5

Consultation

- September 2016 – Minister LeBouthillier announced consultation process to explore CRA interpretation of “political activity”
- In-person meetings
- Panel prepared report and made recommendations March 31, 2017:
 - Marlene Deboisbriand (Boys and Girls Clubs of Canada, Imagine Canada)
 - Peter Robinson (David Suzuki Foundation)
 - Kevin McCort (Vancouver Foundation)
 - Shari Austin (Former Executive Director, RBC Foundation)
 - Susan Manwaring (Miller Thomson LLP, Pemsel Case Foundation)

6

Consultation Report

- Panel made 4 recommendations:
 - Revise CRA's Administrative Positions and Policies
 - Implement changes to compliance, audits and appeals
 - Amend the ITA by deleting reference to non-partisan "political activities" and allow charities to engage in non partisan public policy dialogue and development in furtherance of their purposes
 - Modernize the legislative framework for the charitable sector

7

Revise CRA Policies

- Explicitly allow public policy dialogue and development
- Clarify that charities can provide information, conduct research, express opinions that further their charitable purposes without restriction
- Permit advocacy for changes in law as charitable
- Clarify the rules around social media
- Remove requirement to reflect all sides of the argument
- Note – Always retain the prohibition on partisan activities

8

Compliance, Audits and Appeals

- Adopt a transparent and accountable system to ensure consistent application of CRA rules
- Publish and communicate the audit issues that CRA is concerned about
- Conclude the remaining political activity audits
- Allow for appeals to Tax Court of Canada
- Even the playing field between charities and CRA – they are not like other taxpayers

9

Amend the Income Tax Act

- Delete any and all references to “political activities” and if necessary replace with public policy dialogue and development
- Retain the prohibition on “partisan political activities” – this must never be permitted
- Retain the requirement that charities must be established for charitable purposes – remove activities requirement – this will ensure an organization cannot be registered with political purposes

10

Modernize the Framework

- Focus on charitable purposes rather than activities
- Consider opting for an inclusive list of charitable purposes reflecting social and environmental issues and value
- Modernize the framework within which a charity can operate (i.e. remove the direction and control requirements)
- Accommodate social finance and social enterprise
- Amend the appeals framework to permit an appeal to Tax Court of Canada

11

Minister's Response

- Initially Minister LeBouthillier thanked the Panel and indicated she would review the report carefully
- Minister made an announcement in June that the ongoing audits would be suspended
- Silence until 2018 Federal Budget!
- 2018 Budget confirms that the Government will respond to the Consultation report in the coming months

12

Sector's Response

- Sector thankful for the suspension of the ongoing audits – but until when?
- Sector disappointed that there has been no further concrete announcements
- Sector organizations have been meeting with representatives in government in support of recommendations # 1, 2 and 3
- Imagine Canada Day on the Hill

13

Senate Committee

- January 30, 2018 the Senate of Canada passed a motion to appoint a Special Committee of the Senate which will have as its mandate:
 - “to examine the impact of federal and provincial laws governing charities, non profit organizations, foundations and other similar groups and to examine the impact of the voluntary sector in Canada.”
- The Committee will release a meeting schedule soon and expects to hear from witnesses from particular organizations. The final report is due December 2018.
- The big question is whether and how this work will fit with the Government work which it committed to in the 2018 Budget

14

Federal Budget – What else?

- Prescribed Universities no longer!
 - Changes to the ITA from 2012 require various types of “qualified donees” to apply to the Charities Directorate for confirmation of their qualified donee status
 - One type of entity that was having to apply was a foreign university that met the requirement of having Canadian students in regular attendance. Such a university could apply for “qualified donee” status which would mean that Canadian donors could give to the University and get the same tax credit for the donation they would get if the donation was made to a Canadian charity

15

Federal Budget – What Else?

- Previously for a foreign university to get this status, once the application process was completed, the Government was required to pass an amendment to the Regulations to the *Income Tax Act* to list the foreign university on Schedule VIII – this step has been removed
- A positive red tape reduction move which the Government should be applauded for!

16

Federal Budget – What Else?

- Municipalities may qualify to be “eligible donees” (subject however to Ministerial approval)
- Government to explore charitable support for “trusted, professional, non-profit journalism and local news”. This could include “new ways for Canadian newspapers to innovate and be recognized to receive charitable status for non-profit provision of journalism, reflecting the public interest they serve.”

17

What's New at CRA?

- “Charities Education Program”
- Guidance on Head Bodies and their Internal Divisions
- Webpage on personal information of directors and like officials
- Updated Community Economic Development Guidance
- Revision of website name on charitable tax receipts
- CRA not accepting draft documents
- Video series on services, websites and software, and auctions
- E-services starting in November 2018

18

Charities Education Program

- Launched November 7, 2017
- In-person visits from CRA involving:
 - Information sharing
 - Books and records review
 - Summary of Findings and Recommendations
- Charities selected by CRA (approx. 500/year)

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/compliance-audits/charities-education-program.html>

19

Head Bodies / Internal Divisions

- Issued September 22, 2017
- Examples of internal divisions: branches, sections, parishes, congregations or other divisions of registered charities that receive donations on their own behalf
- Internal divisions operate under the authority of a head body
- CRA indicated **then** it would issue separate charity registration numbers for head bodies and internal divisions
- CRA says **now (March 2018)** there will be no need for internal divisions to have their own unique business number

20

Personal Information of Directors

- Website launched October 3, 2017
- When applying for charitable registration and when completing their annual filings, charities must provide information about their directors
- CRA also collects personal information from the internet, internal CRA systems, third-parties such as financial institutions, other government departments and agencies, and other sources
- CRA uses the information to check ID and assess relationships between directors, risk of registration, ineligible individuals
- Personal information shared as permitted by law

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/personal-information-of-directors-trustees-and-like-officials.html>

21

Updated CED Guidance

- Revised August 9, 2017
- Scope of relief charities can provide to people in need in disaster zones now includes helping to rebuild businesses in affected communities
- Guidance sets out criteria businesses must meet to be eligible for support from charities (providing goods, services, and employment to residents of the affected area)

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/community-economic-development-activities-charitable-registration-014.html>

22

Charitable Tax Receipts

- Announced March 1, 2018
 - Official donation receipts must be updated to include the new Canada Revenue Agency website address
 - The new address is:
canada.ca/charities-giving
- Charities and other qualified donees have until **March 31, 2019** to make this change.

23

Other CRA Updates (1/2)

- Reminder to B.C. societies to file their governing documents with the Charities Directorate
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/transition-new-BC-societies-act.html>
- CRA no longer accepting draft documents as of July 1, 2017 as part of applications for registration

24

Other CRA Updates (2/2)

- New video series (CRA website and YouTube)

- Services
- Websites and software
- Auctions
- Gifting and Receipting: Gift certificates and gift cards

<https://www.canada.ca/en/revenue-agency/news/cra-multimedia-library/charities-video-gallery.html>

- E-services available for charities starting in November 2018

25

Questions?

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26



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Societies Act, SBC 2015, c.18

- Most provisions in force November 28, 2016.
- Some provisions relating to directors will come into force on November 28, 2018.

What has changed already?

The changes already in effect include provisions dealing with:

- Director number and residency requirements (for Societies other than member-funded Societies)
- *Ex officio* directors
- Terms of office
- Director indemnification
- Director liability
- Conflict of interest
- Director removal
- Disclosure re directors

29

What is about to change?

The changes coming into effect in November 2018 address:

- Director qualifications
- Director consents
- Board composition rules
- Director remuneration

30



Director residency and numbers; *ex officio* directors; terms of office

- Member funded societies:
 - only one director is needed
 - no residency requirements
- Other societies:
 - At least three directors
 - At least one must be ordinarily resident in BC
- Directors may hold office automatically, by virtue of holding some other position.
- Unless bylaws say otherwise, director terms end at the conclusion of the next AGM.

31



Director indemnification

- No requirement of court approval.
- Indemnification may be restricted in bylaws.
- Mandatory indemnification if a director is found not liable.

32

Director liability

- Personal liability for unauthorized distribution of money or other assets if the director voted in favour.
- Relief from liability if directors reasonably relied on
 - professional advice,
 - factual statements from another director or a senior manager, or
 - any record, information or representation that provides reasonable grounds for the action
- Court may relieve a director from liability if, in the circumstances, the director acted honestly and reasonably.

33

Conflict of interest

- Directors must disclose direct or indirect material interests in proposed or existing contracts or transactions.
- Directors must disclose material interests in a matter that might put the director's interests in conflict with the director's duties to the society.
- Exclusions:
 - Remuneration or reimbursement for acting as a director
 - Indemnification
 - Purchase of D&O insurance
- Disclosures must be recorded.
- Members have a right to view disclosures.

34

Director removal

- Directors may be removed by special resolution (2/3 vote of members).
- Bylaws may provide for additional methods of removal.
- Unless the bylaws provide otherwise, a director removed by special resolution may be replaced by ordinary resolution to complete the remainder of the term of the removed director.

35

Disclosures re directors

- A society must disclose in its financials any remuneration paid to a director
 - in any capacity, and
 - regardless of the amount
- Disclosures of conflicts of interest must be accessible to members.

36



Director qualifications (November 2018)

- At least 18 years of age, unless regulations permit directors aged 16 or 17.
- A director of a society cannot:
 - be declared incapable by a court,
 - be an undischarged bankrupt, or
 - have been convicted of fraud or certain other criminal offences within last 5 years (unless they received a pardon)
- Additional qualifications may be set out in the bylaws.

37



Director consents (November 2018)

- Designation, election or appointment of a director is not effective unless:
 - The individual consents in writing; or
 - The individual is at a meeting where it occurs and does not refuse

38



Director remuneration (November 2018)

- Remuneration for being a director impermissible unless in bylaws.
- Reimbursement for reasonable expenses necessarily incurred while performing duties as a director is permitted unless bylaws say otherwise.
- Bylaws may restrict reimbursement by
 - Imposing conditions on payment
 - Limiting the amount of reimbursement payable
 - Prohibiting reimbursement

39



Board composition (November 2018)

- A majority of the directors of a society must not receive or be entitled to receive remuneration from the society under contracts of employment or contracts for services, other than remuneration for being a director.
- Does not apply to member-funded societies.

40

Directors of BC Cooperatives

- At least 3, with a majority of Canadian residents and at least one resident in BC.
- At least 80% must be members (or representatives of corporate members); non-members may only be directors if provided for in the Rules.
- Remuneration set by the members in a general meeting.
- Similar to societies with respect to consents and qualifications.
- Similar rules re conflicts of interest, but more detailed.
- Similar rules re indemnification.

41

Structuring Social Purpose Housing Ventures

The terrain for British Columbia not-for-profits in 2018

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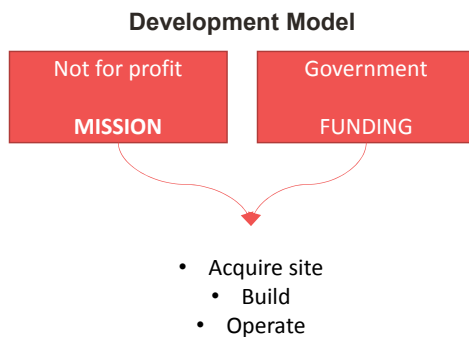
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New opportunities for not-for-profits

- BC: \$6.6 billion over 10 years
 - affordable housing to be delivered by BC Housing
- Canada: \$40 billion over 10 years
 - delivery mechanisms unclear
- Land costs at all-time high
 - sites continue in high demand
 - municipalities, churches, charities, not-for-profits may have land
- Developers forced to provide mixed housing
 - seeking non-profit partners or operators
 - demand social purpose partnerships

43

Conventional social housing partnerships, ca. 1980



Structured by:

- long term ground lease (maybe)
- loan, mortgage
- operating agreement
- tenancy agreements

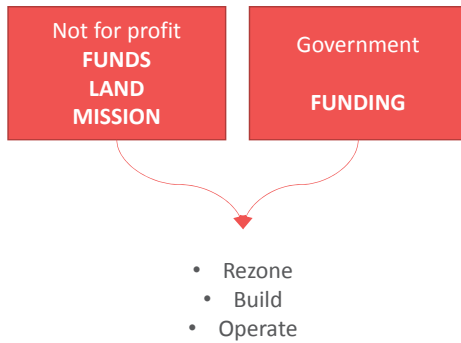
Contentious issues:

- land ownership vs lease
- NFP autonomy
- Long-term asset management

44

Modern housing partnerships, ca. 2018

Development Model



Structured by:

- loan, mortgage
- operating agreement
- tenancy agreements

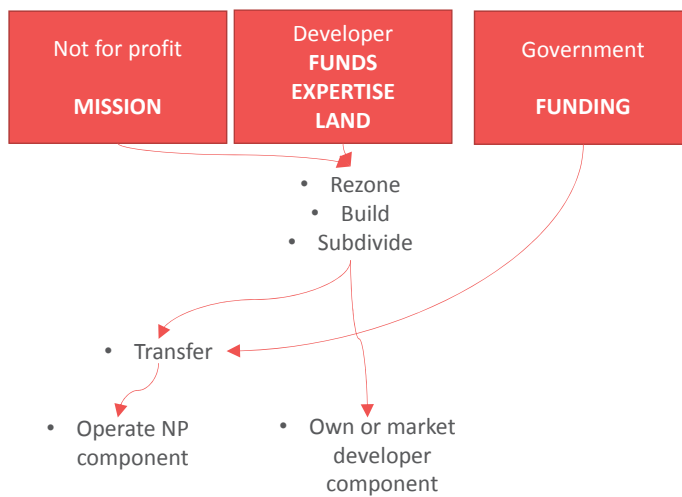
Contentious issues:

- land ownership vs lease
- NFP has greater autonomy
- long-term asset management

45

Modern housing partnerships, ca. 2018

Developmental Model



Structured by:

- development agreement
- airspace or strata
- loan, mortgage
- long term lease?
- operating agreement
- tenancy agreements

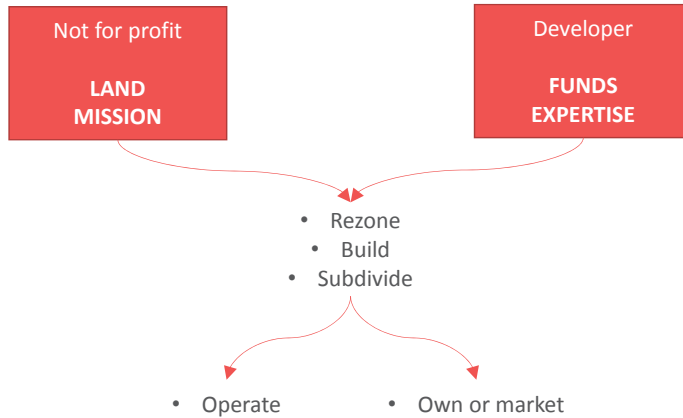
Contentious issues:

- ownership vs lease
- NFP autonomy
- Is the deal fair?

46

Modern housing partnerships, ca. 2018

Development Model



Structured by:

- loan, mortgage
- development agreement
- airspace or strata
- tenancy agreements

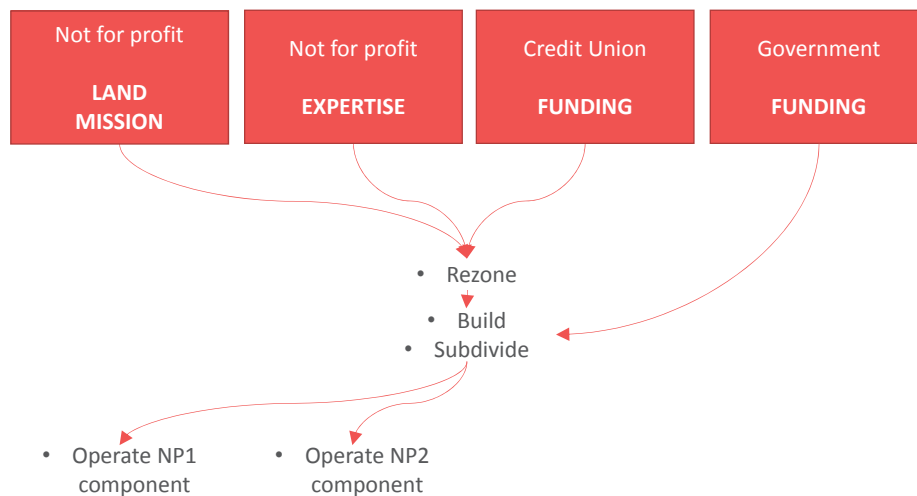
Contentious issues:

- risk allocation
- is the deal fair?
- no government oversight

47

Modern housing partnerships, ca. 2018

Development Model



Structured by:

- multiple loan documents
- development or partnership agreement
- airspace, strata or long term lease

Contentious issues:

- ownership
- surplus allocation

48

Key issues in social purpose ventures, 2018

- Mission alignment
- Protecting charitable/NFP status
- Risk allocation between private/NFP entities
- Surplus allocation/fairness
- Autonomy of NFP sponsors
- Long term asset management

49

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Planned Gifts: Case Law Updates

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Overview

1. Requirements for a valid gift
2. Gift void for Public Policy and the Cy-près Doctrine
3. Gifts to Witnesses (WESA, section 43(4))
4. Court Order Curing Deficiencies (WESA, section 58)
5. Multiple Wills

Requirements for a Valid Gift

- Teixeira v. Estate of Maria Markgraf et al. 2017 ONSC 427
- Teixeira v. Markgraf Estate, 2017 ONCA 819

Teixeira v Markgraf Estate, 2017 ONCA 819

Facts:

- Ms. Markgraf appreciated the kindness of her longtime neighbor, Mr. Teixeira.
- In addition to a gift in her will, Ms. Markgraf wrote a cheque to Mr. Teixeira for \$100,000 as an *inter vivos* gift.
- Mr. Teixeira attempted to cash the cheque but the bank account had insufficient funds in the account.
- Ms. Markgraf died. The bank accounts were frozen and the cheque returned.
- The executor of the Estate took the position that the *inter vivos* gift was an imperfect gift and was not enforceable.

Issue:

- Was the cheque a valid enforceable gift?

Teixeira v. Markgraf Estate, 2017 ONCA 819

Teixeira advanced multiple arguments for the gift to be valid:

- The cheque was payment for services rendered (contract)
- Delivery of the gift had been completed
- Estoppel

Elements of a Gift:

- Intention to donate
- An acceptance
- A sufficient act of delivery

Teixeira v Markgraf Estate, 2017 ONCA 819

Decision:

- Not an enforceable gift because:
 - The delivery requirement was not met.
 - “The donor must have done everything necessary and in his or her power to effect the transfer of the property.”
 - A cheque is not money nor is it a transfer of property. It is a direction by the drawer to the drawer’s bank to pay a sum of money to the payee.
 - A gift by cheque is not complete when the cheque is given to the donee. It is only complete when the cheque is cashed or has cleared.
- Cash your cheques right away!

Gift Void for Public Policy and the Cy-près Doctrine

- In the Estate of Victor Hugh Priebe, 2016 ONSC 1143

In the Estate of Victor Hugh Priebe, 2016 ONSC 1143

Facts:

- Will contains a provision to provide funds to a university for awards.
- One clause provides that recipients of the awards required to be “Caucasian (white) male, single, heterosexual” or “single, Caucasian white” and “not a feminist or a lesbian”.
- Express statement in will that if provisions were found contrary to public policy they were to be deleted.

Issue:

- Are the provisions contrary to public policy?
- Does the doctrine of *Cy-près* apply?

Planned Gifts: Case Law Updates57

In the Estate of Victor Hugh Priebe, 2016 ONSC 1143

Decision:

- Application of leading case *Canada Trust Co. v. Ontario Human Rights Commission*.
- Offending paragraph is void as being contrary to public policy.
- The doctrine of *Cy-près* can have no application because the Will contains an express provision as to the consequences of a declaration by a court that the qualifications for an award or bursary are void for public policy.
- The Will requires that the provision be deleted.

Planned Gifts: Case Law Updates58

Gifts to Witnesses

- Section 43(4) of *Wills, Estates and Succession Act*
- Re Bach Estate, 2017 BCSC 548
- Re Estate of Le Gallais, 2017 BCSC 1699

Wills, Estates, and Succession Act Section 43(4)

43(1) Unless a court otherwise declares under subsection (4), a gift in a will is void if it is to:

- (a) a witness to the will-maker's signature or to the spouse of that witness,

[...]

43(4) On application, the court may declare that a gift to a person referred to in subsection (1) is not void and is to take effect, if the court is satisfied that the will-maker intended to make the gift to the person even though the person or his or her spouse was a witness to the will.

Re Bach Estate, 2017 BCSC 548

Facts:

- The evening before he died, Mr. Bach signed a document that left his entire estate to his sister, Ms. Thibodeau.
- One of the witnesses of the will was the husband of his sister.

Issue:

- Should the court declare that the will is valid, despite being witnessed by the spouse of a beneficiary?

Re Bach Estate, 2017 BCSC 548

Decision:

- **First time for court to consider this provision in WESA.**
- Applied the same inquiry as for section 58 decisions.
- Question is whether the gift expresses the testamentary intentions of the will-maker.
- The Will was also witnessed by a doctor who provided evidence that Mr. Bach appeared to be mentally competent and capable of making decisions regarding the distribution of his financial assets.
- Mr. Bach had told multiple people in the preceding months that he intended to change his will to leave all of his estate to his sister.
- In the last day of his life, Mr. Bach asked to be taken to a notary to make a new will.
- Gift is valid.

Re Estate of Le Gallais, 2017 BCSC 1699

Facts:

- Will includes a charging clause which provides that a lawyer will act as executor and will also attend to legal work for the estate and “be entitled to the usual and proper charge for such legal work.”
- Lawyer, Ms. Isherwood, witnessed the signing of will
- The beneficiaries of the Estate were six charities.
- Ms. Isherwood billed approximately \$17,000 for legal fees and expenses.
- Three charities opposed.

Issue:

- Is the gift created by the charging clause void?

Re Estate of Le Gallais, 2017 BCSC 1699

Decision:

- What did the will-maker intend? The focus should not be on the lawyer's slip or mistake.
- Ms. Le Gallais and the lawyer, Ms. Isherwood had known each other for 40 years and Ms. Le Gallais had trust and confidence in the lawyer. Ms. Isherwood was subsequently appointed as Ms. Le Gallais' attorney, under an enduring power of attorney
- Ms. Le Gallais was a businesswoman and was capable of understanding the terms of her will.
- Ms. Le Gallais retained Ms. Isherwood for her mother's estate and so she would have some idea of the legal expense associated with Ms. Isherwood's work.
- Charging clause is to take effect.

Court Order Curing Deficiencies

- Section 58, *Wills Estates and Succession Act*
- Re Hadley, 2017 BCCA 311
- Skopyk Estate, 2017 BCSC 2335
- Litke Estate, 2017 BCSC 1079
- Horton v Bruce, 2017 BCSC 712
- Re Elphinstone Estate, 2017 BCSC 1404

Wills, Estates, and Succession Act Section 58

58(1) In this section, "**record**" includes data that

- (a) is recorded or stored electronically,
- (b) can be read by a person, and
- (c) is capable of reproduction in a visible form.

58(2) On application, the court may make an order under subsection (3) if the court determines that a **record, document or writing or marking on a will or document represents**

- (a) the testamentary intentions of a deceased person,
- (b) the intention of a deceased person to revoke, alter or revive a will or testamentary disposition of the deceased person, or
- (c) the intention of a deceased person to revoke, alter or revive a testamentary disposition contained in a document other than a will.

Wills, Estates, and Succession Act

Section 58

58(3) Even though the making, revocation, alteration or revival of a will does not comply with this Act, the court may, as the circumstances require, order that a record or document or writing or marking on a will or document be fully effective as though it had been made

- (a) as the will or part of the will of the deceased person,
- (b) as a revocation, alteration or revival of a will of the deceased person, or
- (c) as the testamentary intention of the deceased person.

58(4) If an alteration to a will makes a word or provision illegible and the court is satisfied that the alteration was not made in accordance with this Act, the court may reinstate the original word or provision if there is evidence to establish what the original word or provision was.

Planned Gifts: Case Law Updates

67

Section 58 – Estate of Young, 2015 BCSC 182

The key question is whether the document records a **deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death**. A deliberate or fixed and final intention is not the equivalent of an irrevocable intention, given that will, by its nature is revocable until the death of the maker. Rather, the intention must be fixed and final at the material time, which will vary in the circumstances.

Planned Gifts: Case Law Updates

68

Re Hadley, 2017 BCCA 311

Facts:

- Ms. Hadley had a properly executed will made in 2008. Four nieces were the main beneficiaries of 2008 Will.
- Journal entry dated September 1, 2014 found after testator had died. The entry was titled: *"This is my Last Will"*
- This "2014 Will" provides that only one niece and two friends are beneficiaries of her Estate. Three nieces were cut out.
- Other notes found from September 2014: "I want to make a new will as soon as I can."
- Ms. Hadley mentions to Executor (Canada Trust) she wants to change her will during an appointment on September 23, 2014.
- Appointment with lawyer could not be arranged as lawyer was going on holidays until October.
- Ms. Hadley dies on March 6, 2015.

Planned Gifts: Case Law Updates

69

Re Hadley, 2017 BCCA 311

First case for BC Court of Appeal to consider section 58

Key Issues:

- What is the scope of admissible evidence?
- Does the journal entry override her previous will?

Planned Gifts: Case Law Updates

70

Re Hadley, 2017 BCCA 311

Decision:

- Confirmed that extrinsic evidence of events that occurred before, when and after the document was created is admissible.
- Court agreed that Supreme Court analysis of evidence was thorough. The Court found that on the evidence, this was **not** a deliberate and final expression of the deceased's testamentary intentions.
- The court examined a variety of factors including:
 - Lack of explanation for the changes
 - Failure to mention the anticipated changes in her conversations with Executor and Lawyer. Deceased had the chance to express her wishes to them. She did not say she already made a new will (through her journal entries).
 - Estate was large and so she could have accommodated gifts to friends without disinheriting her nieces in the 2008 Will.

Planned Gifts: Case Law Updates71

Skopyk Estate, 2017 BCSC 2335

Facts:

- Mr. Skopyk had a properly executed will dated November 16, 1995.
- Unsigned, undated handwritten document was found pinned to the testator's bulletin board after his death.
- The document refers to Will dated November 16, 1995 and purports to change the distribution of the residue of the Estate.
- Changes included removal of a sister who had already since died. Other beneficiaries are the same.
- Document also purports to correct a typographical error in 1995 Will.
- In April 2017, after a heart attack, Mr. Skopyk told a niece that he was working on his will and that his wishes were different than his 1995 Will.
- Mr. Skopyk died on July 16, 2017.

Issue:

- Does the document from the bulletin board override the previous will?

Planned Gifts: Case Law Updates72

Skopyk Estate, 2017 BCSC 2335

Decision:

- The Court found that the document is a deliberate expression of Mr. Skopyk's wishes as to the disposition of his estate. The document was valid.
- The Court considered:
 - Document was pinned to a bulletin board so it was easy to find.
 - Distribution was rational on its face.
 - Language mirrored the 1995 Will.
 - Handwriting is similar as to a letter entered into evidence.
 - When facing serious health risk, Mr. Skopyk had the intention to change the distribution of his property on his death.

Litke Estate, 2017 BCSC 1079

Facts:

- Ms. Litke did not have a formal will.
- Hand-written and unwitnessed document was found in the deceased's home. The document was signed and set out how assets are to be distributed to relatives and charities. It appointed an executor.
- Logical structure.
- Document was titled "My Will and Testament" and inserted in a self-help guide.
- Document was dated December 21, 2009. Ms. Litke died August 13, 2016.

Issue:

- Is the hand-written document the final testamentary intention of Ms. Litke?

Litke Estate, 2017 BCSC 1079

Decision:

- The document was final testamentary intention of Ms. Litke.
- The court considered:
 - Signed and dated.
 - Well formed, attractive handwriting. Care taken.
 - Appointed executors.
 - Heading on the page.
 - Inside a book on making your own will.
 - Charitable bequests are conceptually consistent.

Horton v Bruce, 2017 BCSC 712

Facts:

- Ms. Shepherd had properly executed will from 1993.
- Draft will was found from 2011 which stated it revoked the 1993 Will
- 2011 will was stamped "DRAFT"
- Ms. Horton, niece, sought to use section 58 to cure only the revocation clause of the 2011 Will and then proceed under an intestacy.
- The original of the 1993 Will was not found.

Issue:

- Does section 58 of WESA permit that only part of a document or writing can be cured?

Horton v Bruce, 2017 BCSC 712

Decision:

- Section 58 refers to a “record, document, or writing or marking on a will”.
- The Court found that an ordinary reading of this provides that the legislature contemplated that a “part of a document or writing could be cured”
- Court considered:
 - Ms. Shepherd had possession of the original 1993 Will but no one could find the original. Presumption of destruction.
 - Ms. Shepherd had explained to her niece her reasoning for changing the distribution in her 2011 Draft Will.
- 1993 Will was revoked.

Re Elphinstone Estate, 2017 BCSC 1404

Facts:

- Ms. Elphinstone had properly executed will from 2008. This will divided the residue of the estate between 29 beneficiaries.
- Two days prior to her death, executor recorded cellphone videos of Ms. Elphinstone. Ms. Elphinstone purports to make additional dispositions of her estate, including bequeathing the main asset, a condominium to the executor.
- Before the court was the question whether executor should be removed due to lack of partiality.

Issue:

- Is a video recording a document that falls within the purview of section 58?

Re Elphinstone Estate, 2017 BCSC 1404

Decision:

- Executor was removed and the appointment of a professional trustee was required.
- No decision yet on section 58 issue. Set for a full day hearing on January 9, 2018.

Multiple Wills

- Re Estate of Norman Frank Berkner, 2017 BCSC 619

Multiple Wills

- Probate fee planning.
- In British Columbia, probate fees are charged 0.6% for gross value of estate between \$25,000 to \$50,000 and 1.4% on portion above \$50,000.
- Generally, one will for assets that require a grant of probate for transmission (e.g. real estate, investment accounts).
- Another will for assets that will likely not require a grant of probate for transmission of assets (e.g. private company shares, personal articles).
- Common use in Ontario (*Granovsky Estate* decision in 1998).
- Section 122 of WESA provides an applicant for probate only needs to disclose assets passing to him/her as personal representative.
- Key is to have different executors for each will.

Re Estate of Norman Frank Berkner, 2017 BCSC 619

Facts:

- Deceased had two wills, both dated January 2016
- Application for a grant of probate of the Primary Will

Issues:

- Is a will maker permitted to make more than one valid will?
- Is a personal representative required to probate a will?

Re Estate of Norman Frank Berkner, 2017 BCSC 619

Decision:

- Yes, you can have more than one will.
- No, a personal representative is not required to probate a will.
- Court can grant probate over only one will that is for something less than the entirety of the deceased's estate

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Societies Act Case Law Update

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Societies Act Cases

- *Societies Act* – s. 105 – Remedying Irregularities
 - Omission, defect, error or irregularity in conduct of activities or internal affairs
 - that results in contravention of Act, regulations; acting inconsistently to purposes; default under bylaws; or meetings or resolutions being ineffective
- Court can remedy defect
- similar to s. 85 under the old *Society Act*

85

Societies Act Cases

- *Societies Act* – s. 102 – Complaints by members/oppression
 - activities or internal affairs conducted, or powers of directors exercised, in a manner that is oppressive to member(s)
 - an act, or a resolution of members or directors, that is prejudicial to the member(s)
- Court has broad powers to make orders
 - Includes making monetary awards
- No similar section in old *Society Act*
- Company law principle

86

Bjorknas v. PBC Health Benefits Society

- Member proposal - s. 81 of *Societies Act*
- Tool for members to get their business items on the AGM
- Society must include proposal in AGM if receive:
 - a proposal signed by 5% of the members
 - At least 7 days before sending notice of meeting
- 5% threshold is a default
 - Could be reduced in bylaws (not less than 2 members)

87

Bjorknas v. PBC Health Benefits Society

- 2 members brought a petition under s. 105
- Argued that it was contrary to the constitution to *not* have a bylaw that reduced the threshold for a membership proposal
- Society had 500,000 members; 5% is 25,000
- Wanted a member proposal to add a special resolution at the AGM to remove the directors

88

Bjorknas v. PBC Health Benefits Society

- Court:
 - Constitution only contains purposes; had nothing to do with the threshold for member proposal
 - No irregularity
 - No ability to make an order
- Old s. 85 case law applies to new *Societies Act*

“..Not the function of the court to interfere in the affairs of the society...”

89

Nisga’a Lisims Government v. Nisga’a Valley Health Authority

- Section 105 application - irregularity
- bylaws required votes to be done by way of show of hands
- special resolution to replace the bylaws
- vote was conducted by ‘general consensus’
 - not a show of hands
- chair had described general consensus voting process at the meeting

90

Nisga'a Lisims Government v. Nisga'a Valley Health Authority

- Court:
 - Yes, defect in vote because did not comply with bylaws
 - Clear vote passed unanimously because method of voting explained and there was no opposition
- defect remedied - vote valid

91

Basra v. Shri Guru Ravidass Sabha (Vancouver)

- Religious society
- Bylaws: all memberships terminated December 31, 2016
 - Board would put in place process for renewing membership
- Mr. Bhatti: current member and director
- Board refused to renew membership
 - Because of text message sent several months before
 - Comments taken to be against religious teachings

92

Basra v. Shri Guru Ravidass Sabha (Vancouver)

- Court:
 - At time of text, could have removed by special resolution
 - Instead, waited 6 months to refuse to renew membership
 - rules of procedural fairness applied to membership renewal for a long-time member
 - Amounted to expulsion
- Religious society: refused to accept as member based on grounds fundamental to religious identity

93

Basra v. Shri Guru Ravidass Sabha (Vancouver)

- Required evidence; full and proper consideration by the full board
- Found:
 - s. 105: substantial irregularity - sufficient to reinstate membership
 - s. 102: oppressive
 - First case law on oppression ... (no reasoning!)
- No remedy awarded (parties to come to an agreement or go back to court)

94



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Questions?

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