

Act On Your Legal Obligations to Avoid Post-Death Disputes

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A recent case from the Ontario Superior Court of Justice, *Birnie v Birnie*, 2019 ONSC 2152, has several important lessons for Canadians when it comes to estate planning. The case is an important reminder to be aware of your existing legal obligations when making your estate plans. It is also a good reminder to revisit your estate plans after major life events, such as a separation. Finally, it again reminds us about the importance of clearly recording your intentions when preparing legal documents.

Background

In *Birnie*, the deceased and his former wife entered into a separation agreement in the context of a divorce. The agreement obligated the deceased to obtain a life insurance policy in the amount of \$500,000, naming his former wife as irrevocable beneficiary, as security for his spousal support obligations. We don't practice family law, but understand that this kind of arrangement is not out of the ordinary in separation agreements. The separation agreement also contained releases by the former spouses against each other's estates.

The deceased never obtained the insurance policy. He subsequently re-married. At his death, the deceased's estate was worth approximately \$1.6 million.

The deceased's former wife brought an application against the deceased's estate, seeking summary judgment in the amount of \$500,000 in satisfaction of the deceased's obligation to obtain a life insurance policy in that amount. The deceased's second wife, opposed the application both in her personal capacity and as the personal representative of the estate.

Issues for the Court

The main issue to be determined was whether the deceased's insurance obligation in the separation agreement was a "stand-alone" clause or whether its purpose was solely to "secure" future support payments for the former spouse.

If it was a stand-alone clause, the estate would be liable to the former spouse for the entire \$500,000. Conversely, if the clause was only intended to "secure" support payments, then the estate would not be liable to the former spouse since the deceased had been making the necessary support payments during his lifetime. The full amount of the insurance proceeds would remain estate property.

Decision

The Court ultimately held that the insurance obligation was a stand-alone clause, thus entitling the former spouse to the entire \$500,000. The judge found that the language in the agreement did not clearly indicate that the "sole" intention of the insurance clause was to secure support payments. The judge further held that there could be any number of other reasons to benefit a former spouse with such a clause, including "affection, appreciation, guilt or regret." Additionally, the absence of a "drawdown" clause whereby the deceased could reduce the amount of

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support he was obligated to secure over time further indicated the insurance obligation was a stand-alone provision.

And the lessons are...

The result in this case is a good reminder of the importance of clear and specific drafting, as well as the recognition of the impact your existing legal obligations may have on your estate plans. If you have any outstanding obligations at the time of your death, a court may find your estate liable for those obligations in priority to your intended beneficiaries.

If you are in a similar situation and would like to know how your existing legal obligations may impact the distribution of your estate, feel free to [contact us](#).

As always, thank you for reading!