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PRESERVING WEALTH FOR PEOPLE AND PRIVATE COMPANIES

A Brief Summary of the Post STEP Conference Session

By David W. Chodikoff

Immediately following the adjournment of the formal STEP Conference, a three hour Accredited CPD Professionalism session was held at the conference site. The program was entitled: "Practical Approach to Common Practice Management Issues – An Interdisciplinary Approach". The moderator was Pamela Cross of Borden Ladner Gervais LLP and the panellists included: Robin MacKnight of Wilson Vukelich LLP, Claude Rinfret of the Vancouver office of Deloitte & Touche LLP and me (David Chodikoff of Miller Thomson LLP).

Pamela Cross presented a thoughtful and comprehensive discussion of retroactivity and backdating and the challenges that face many professional advisors. Pamela covered the definition of backdating, identifying improper vs. legitimate backdating, the CRA policy in respect of backdating, professional responsibility obligations and other sanctions (deceit fraud, tax evasion and tax misrepresentation), the law in respect of backdating, disclosure of backdating as a possible means of mitigation and other practical challenges.

The second hour of the program was devoted to various case studies. In this section of the program, Pamela acted as the moderator while Robin and Claude offered their expert views on how to handle difficult and complex situations.

The final hour of the program was focused on rectification. I discussed the practical considerations of rectification. This talk focused on the definition, elements of rectification, the law, the CRA policy issues, and practical methods to rectify a problem.

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Volume 5, Issue 3 – July 2012

SPECIAL EDITION

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IN THIS ISSUE

CARSWELL®

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STEP Canada 2012 National Conference

By Paula Ideias BA, LLB, Carswell, a Thomson Reuters business

I. OVERVIEW

The Society of Trust and Estate Practitioners (Canada) held its 14th Annual National Conference (the Conference) on June 11-12, 2012 at the Metro Toronto Convention Centre. The Conference was well-attended with approximately 500 delegates from across Canada, the U.S., the U.K., Barbados, Bahamas and Australia, representing a broad spectrum of tax, trust and estate professionals and industries. The Conference consisted of many excellent presentations, where various practitioners gave their insight and professional perspectives. The concurrent workshops covered a multitude of topics, including multi-jurisdictional conflicts between family law and wills and estates, pensions and life insurance designations, international developments, charity and not-for-profit update, insurance update, 21-year deemed disposition planning, and provincial legislative changes. The panel discussions focused on what's new for trust and estate practitioners, the recent international scrutiny of private wealth, and estate planning for digital legacies. This article provides a high-level summary of some of the recent developments and other topics of interest to tax, trust and estate planning professionals that were discussed at the Conference.

The Society of Trust and Estate Practitioners (STEP) is an international organization for trust and estates professionals. Headquartered in London, England, it has more than 16,500 members worldwide in 66 countries. STEP Canada, founded in 1998, has almost 2,000 members with branches in the following cities and regions: Atlantic, Montreal, Ottawa, Toronto, Winnipeg, Calgary, Edmonton and Vancouver. STEP is a multi-disciplinary organization with experienced and senior practitioners in the field, including lawyers, accountants, financial planners, insurance advisors and trust professionals. They provide domestic and international advice on trust and estates, including planning, administration and related taxes.

II. CONFERENCE SESSIONS

1. Practitioners' Update

The practitioners' update contained an overview of what's new for estate and trust practitioners and their clients, including updates on trust and estate law, tax law and U.S. tax initiatives.

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A. Practitioners' Update – Estates and Trusts (Jordin Atin, Hull & Hull LLP)

There have been a number of statutory and case law changes in the past 12 months, which continue to make trust and estate law a dynamic and challenging practice area. The duties of fiduciaries have been reviewed in several cases over the past year, including the following three recent cases, one from the Court of Queen's Bench of Alberta, and two from the Ontario Superior Court of Justice, which focused on such duties: *Meier v. Rose*[1], *Hooper (Estate) v. Hooper*[2] and *Miller v. Miller and Veltman*[3]. Given the increase of separation, divorce and common-law relationships, the legal sphere has had to evolve in order to adapt to the times. The following cases were discussed, which reflect the courts' efforts to meet this changing pattern of matrimonial behavior: *Peri v. Doman Estate*[4], *Tenorio v. Redman Estate*[5], *Makarchuk v. Makarchuk*[6] and *McNamee v McNamee*[7].

There have been various statutory amendments to the Canada Pension Plan that will take effect over the next five years. There were also amendments to the *Estate Administration Tax Act* to empower the Minister to conduct audits in respect of an estate and its estate administration tax liability, which will take effect on January 1, 2013. As well, in force as of February 1, 2012, the *Wills and Succession Act (WSA)* consolidates Alberta's *Wills Act, Intestate Succession Act, Survivorship Act, Dependants Relief Act*, and section 47 of the *Trustee Act*. As a result, the *WSA* is now the primary statute in Alberta dealing with wills, intestacy, beneficiary designations, survivorship, dependant's support, and other succession issues. Furthermore, the *WSA* also includes consequential changes to Alberta's *Matrimonial Property Act, Administration of Estates Act,* and *Family Law Act*. It is anticipated that, in 2013, B.C.'s *Wills, Estates and Succession Act* will come into force, consolidating the *Wills Act*, *Wills Variation Act*, *Estate Administration Act*, and *Probate Recognition Act*, and will contain several key changes.

There have also been several cases dealing with life insurance policies, including *Love v. Love*[8], which dealt with the issue of whether a beneficiary designation under a life insurance policy can be changed by e-mail, and *Dinghra v. Dinghra*[9], which looked at the rule that, on the basis of public policy, a person who kills another cannot share in the deceased's estate. In other cases, the Court of Appeal in *Earl v. Gillesse*[10] confirmed that under section 58(2)(a) of the Ontario *Substitute Decisions Act*, the Court is permitted to appoint a 'time limited' guardian of the person. And finally, in *Hansen Estate v. Hansen*[11], the Ontario Court of Appeal clarified what constitutes a "course of dealing" sufficient to establish when a joint tenancy in property should be severed.

B. Income Tax Update (Paul Gibney, Thorsteinssons LLP)

Various measures from the 2012 Federal Budget (Budget 2012) were discussed in the income tax update, including the changes to the eligible dividend rules, the various reliving measures for registered disability savings plans, and the new restrictions for employee profit sharing plans and retirement compensation arrangements. As well, Budget 2012 introduced new enforcement tools to enhance compliance and disclosure by charities regarding political activities. These proposals are contained in the *Jobs, Growth and Long-term Prosperity Act.*[12]

The recent Supreme Court of Canada decision in *St. Michael Trust Corp., as trustee of the Fundy Settlement v. The Queen*[13] (also known as *Garron Family Trust*) was also discussed. In this case, the Supreme Court confirmed the Tax Court's decision that the proper test to determine the residence of a trust is the test that is used for corporate residency, which is the central management and control test. As a result, the residence of a trust will be the same as the residence of the trustee where the trustee carries out the central management and control of the trust and these duties are performed where the trustee is resident. This case is highly relevant for non-Canadian trusts with Canadian connections and domestic trusts where provincial residency is an issue. Unfortunately, the court did not provide a great deal of guidance as to how to apply the central management and control test. The speaker observed that it would be useful to have further guidance regarding how to determine what decisions are "major" decisions, the impact of a letter of wishes, what documentation trustees

1 2012 ABQB 82.
2 2011 ONSC 4140.
3 2011 ONSC 7239.
4 2011 BCCA 401.
5 2011 BCSC 1403.
6 2011 ONSC 4633.
7 2011 ONCA 533.
8 2011 SKQB 176.
9 2012 ONCA 261.
10 2011 ONCA 614.
11 2012 ONCA 112.
12 SC 2012, c 19.
13 2012 SCC 14.

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should prepare to evidence their control of the trust, and where meetings with beneficiaries should be held.

Several recent cases dealing with the general anti-avoidance rule (GAAR) were also discussed, including *McClarty Family Trust v. The Queen*,[14] which dealt with a capital gain resulting from the sale of shares by a family trust which was distributed to minor beneficiaries of the trust. The trust was reassessed on the basis that it received a deemed dividend under subsection 84(3). The Minister also claimed that GAAR applied because the transactions were designed to avoid tax under section 120.4. The Tax Court held that subsection 84(3) did not apply to the trust, and that the transactions were not avoidance transactions. The 2011 Federal Budget (Budget 2011) proposed to expand the scope of the "kiddie tax" in section 120.4 to include certain capital gains, and these changes were implemented in SC 2011, c 24 (Bill C-13).

Finally, it was mentioned that tax practitioners are still waiting for the Department of Finance to release the Technical Bill to implement the rules for non-resident trust (NRTs) and offshore investment fund properties (OIFPs), which are expected to be lengthy.

C. U.S. Tax Initiatives (Christopher Byrne, Christopher J. Byrne PLLC)

This session focused on some recent U.S. tax developments and initiatives that affect Canadian residents who have U.S. tax filing requirements.

US citizens must file a tax return reporting income on a worldwide basis, regardless of which country is the source of the income. Foreign income exclusions and foreign tax credits may be allowed to offset non-US source income. US citizens residing abroad still must file, even if such exclusions reduce taxable income to $0. Potential penalties include both failure to file penalties and failure to pay penalties; however, if no tax is due, no penalty is imposed. The possibility also exists for penalties for failing to file a Report of Foreign Bank and Financial Accounts (FBAR), which can be up to the greater of $100,000 or 50% of the value of the account where there was a wilful intent to avoid filing. Non-wilful violations, not due to reasonable cause, can be subject to a penalty of $10,000 per violation. If the IRS determines reasonable cause exists for not filing, no penalty will be imposed. Specifically, the IRS issued a Fact Sheet in December 2011 which provides guidance on US filing requirements and potential penalties for US citizens or dual citizens residing outside of the US, which provides in part that "…penalties will not be imposed in all cases……no FBAR penalty applies in the case of a violation that the IRS determines was due to reasonable cause."

Another recent US development is the Taxpayer Advocate Directive that was issued in August 2011 ordering the IRS to take certain actions relating to the way certain cases were handled under the 2009 US Offshore Voluntary Disclosure Program (2009 OVDP). The main issue brought up by the Taxpayer Advocate was that taxpayers were forced to either pay penalties that should not apply to them or opt out of the program and face examinations, potentially resulting in even harsher penalties. Taxpayers relied on statements in the 2009 OVDP that they would not be required to pay a penalty greater than what they would otherwise be liable for under existing statutes; however, the IRS later suggested that it would no longer consider whether existing statutes would allow for reduced penalties for participants in the program, except in limited circumstances. The Directive issued by the Taxpayer Advocate office in August 2011 demanded that the IRS take steps to fix the problem, and it is up to the IRS Commissioner to clear up this issue.

Finally, the IRS officially reopened the offshore voluntary disclosure program on January 9, 2012, announcing that the program will stay open indefinitely until the IRS announces otherwise. The program is essentially the same as the 2011 program, with the exception of the maximum penalty. Taxpayers wishing to participate in the program must submit all original and amended tax returns, with payment of tax and interest, for the prior eight years. The maximum penalty in the new program is 27.5%; however, some taxpayers may be eligible for a reduced penalty.

2. Private Wealth Under International Scrutiny (Richard Hay, Stikeman Elliott LLP)

This session considered some of the economic causes and consequences of the increased international scrutiny on private wealth, noting that many tax authorities around the world are taking a renewed interest in private wealth. It was observed that the renewed interest is likely the result of deteriorating government finances caused in part by the financial crisis, reduced tax collections, rising debt service costs for government borrowings, and rising public welfare costs. In addition, there has been a shift in global power from mature to emerging countries and from the private to the public sector, and finance is prized as a lucrative

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[14] 2012 CarswellNat 819 (TCC).

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and strategically important industry. The increased activity in policymaking, regulation and enforcement have elevated the scrutiny and risk for high net worth families with international interests as a result of growing and internationally coordinated programs on tax collection and enforcement.

Historically, international law has provided that no country is obliged to help another enforce its taxes. However, in 1998, the OECD Harmful Tax Practices Report called for cross-border exchange of information for enhanced tax enforcement. International financial centres accepted the OECD demands in 2002 in order to maintain access to clients, banking and securities markets. Currently, there are several multilateral programmes for tax information exchange and enforcement; for example, the OECD (Global Forum) provides information collection and exchange on request, the European Union Savings Tax Directive provides for an automatic exchange of tax information, and the U.S. *Foreign Account Tax Compliance Act* requires U.S. reporting of foreign accounts.

The OECD Program for Tax Information Exchange is organized to provide information exchange "on request", which endeavours to balance the needs of the state against individual rights to privacy. The OECD recognizes that competition and lowered trade barriers fuel economic growth and recognizes the right of self-financing states to design their own tax systems. The OECD provides certain protections for exchanged data and is conducting a parallel work stream outside the Global Forum. The Multilateral Convention on Tax Assistance provides for automatic and spontaneous information exchange on request, and paves the way for global cross-border tax enforcement. It is centrally administered by the OECD and the European Union and unanimously endorsed by the G20 countries.

In conclusion, the speaker noted that the increased scrutiny on high-net worth individuals may provide expanded opportunities for bankers, tax professionals and advisors, including opportunities to educate clients on planning and compliance requirements and expanding information exchange; to assist clients with voluntary disclosures to the CRA; to review client compliance, particularly on intergenerational transfers; and consider offshore business opportunities posed by the extension of "exempt surplus" treatment to tax information exchange agreement partners.

3. Effective Estate Planning for Digital Legacy Issues
(Jerrard Gaertner, Soberman Chartered Accountants LLP)

From the perspective of estate and testamentary planning, digital legacy issues include the identification and disposition of digital assets; addressing digital liabilities; securing and dealing with legal, personal and medical information; and ensuring the smooth unfolding of the post-mortem estate administration to minimize uncertainty, discomfort and legal expense to the beneficiaries. For the solicitor, estate planner or executor, achieving these objectives may be difficult given the variety of specialized skills involved and the sparse, rapidly evolving professional standards. In addition, estate professionals must remain aware of the professional risks associated with any digital legacy practice.

This session discussed some of the basic concepts, such as the concept of a digital identity, and why it is important for the executor to understand a testator's digital identity. Related concepts, such as a digital persona and digital footprint, were also discussed. The speaker explained some of the more common digital legacy issues that estate planners and executors must be prepared to deal with, including determining what information of the testator is kept in electronic form and how it may be accessed both before and after death; whether the testator's digital information is stored locally or in the cloud; who will control the deceased's computer(s) and passwords post-mortem; whether the executor will be expected to take possession of the testator's digital media after death to administer the estate; issues regarding jurisdiction, provenance, version and admissibility; making sufficient provisions for privacy, security, integrity of a testator's information; and whether personal matters are intended to be within the scope of the administration of the estate. Further, less common digital legacy issues may arise with respect to undeclared, controversial, encrypted or embarrassing documents. For example, executors may encounter testators who have undeclared business interests or offshore accounts, unusual funds transfers or participated in digital pursuits such as online gambling. As well, if the testator had digital currency assets such as Bit coin, the executor must consider issues surrounding the liquidity, taxation, recovery, disposition and volatility of these types of assets.

An executor may also have to deal with electronic intellectual property issues, such as ownership and disposition of Internet domain names. Issues commonly arise with these types of assets because the client may not think of intellectual property as an asset and may not list it when preparing a will or an estate plan.

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As a result, an executor may be unaware that the deceased owned a domain name, for example, until an email arrives for its renewal. The speaker suggested that planning for digital legacies requires a bifurcated estate planning process since the professional needs to plan for the digital asset (i.e.; information on a computer) separately from the hard asset (i.e.; the actual computer). A key element of a successful digital estate administration plan includes the preparation of an asset inventory containing the location of the electronic equipment, file names, Internet locations, email addresses, and social media information. Finally, it was suggested that the advisor have a dynamic password management protocol so that current passwords are available to the estate. This would entail post-mortem notification of data custodians, with a pre-agreement, if possible, for delivery to the executor.

III. WORKSHOPS

1. Charity and Not-For-Profit Update

A. Charities Legislative Developments (Karen Cooper, Carters PC)

Some of the more important legislative developments in the charitable sector over the past year were presented in this session. Both the Federal and Ontario government enacted new corporate legislation for the non-profit sector, the *Canada Not-for-Profit Corporations Act* (*CNCA*) and the Ontario *Not-for-Profit Corporations Act, 2010* (*ONCA*). The *CNCA* replaced Part II of *Canada Corporations Act* (*CCA*). Existing *CCA* corporations will be required to continue under the *CNCA* within 3 years of proclamation; failure to do so will result in dissolution of the corporation. Charities can make amendments to existing articles, letters patent or memorandum or articles of association at the time of applying for continuance.

Budget 2011 extended certain regulatory requirements of charities to other qualified donees, including Registered Canadian Amateur Athletic Associations (RCAAAs). Budget 2011 also introduced the concept of an "ineligible individual", which allows CRA to refuse or revoke registration of a charity or suspend ability to issue official donation receipts, if a director, a trustee, officer or equivalent official, or any individual who otherwise controls or manages the operation of the charity is an "ineligible individual". Budget 2011 also clarified the rules regarding charitable gifts returned to donors, extended the rules regarding gifts of non-qualifying securities to all charities; delayed the recognition of a gift of an option to acquire property until the option is exercised; and limited the tax exemption on the donation of flow-through shares. These amendments were contained in SC 2011, c 24 (Bill C-13).

Budget 2012 largely focused on measures dealing with the perceived lack of transparency and accountability concerning charities' political activities. New rules and sanctions involving political activities were introduced as the result of recent discussion that "foreign foundations" have been funding Canadian charities, and that Canadian charities, particularly environmental charities, have been using those funds for untoward political objectives. As a result, charities will be required to provide more disclosure concerning political activities, new sanctions apply where a registered charity exceeds the limits for political activities, and the definition of political activities has been revised. These proposals are contained in the *Jobs, Growth and Long-term Prosperity Act*.[15]

B. Social Enterprise in Canada (Robert Hayhoe, Miller Thomson LLP)

The speaker presented an interesting session on social enterprise organizations, which are becoming more and more prevalent in the business world. Essentially, a social enterprise is a business, program or venture that fulfills a social aim. Whether operated by a non-profit organization or by a for-profit company, a social enterprise has two goals: to achieve social, cultural, community economic or environmental outcomes; and to earn revenue. On the surface, many social enterprises look and operate like traditional businesses, but the defining characteristics of the social enterprise is that mission is at the centre of business, with income generation playing an important supporting role.

A social enterprise can be organized as a business corporation/ business trust, a tax-exempt non-profit corporation, a hybrid entity, or a registered charity. The requirements, limitations and rules for each form of entity were discussed. Typically, social enterprises are incorporated as a business corporation with shareholders since this form of organization provides the greatest flexibility in operations. Although incorporating as a business corporation means that the enterprise is taxable, it may be possible to operate the enterprise in ways that reduce or eliminate tax payable. In this type of structure, profits or revenues used for social aims may or may not be distributed to shareholders, which can be non-profit organizations or charities. A second option would be to organize a social enterprise as a tax-exempt non-profit organization. However since non-profit organizations must meet

[15] *Supra* note 12.

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the definition in paragraph 149(1)(l) of the *Income Tax Act*, and the CRA's administrative position is that a 149(1)(l) entity cannot have a profit purpose, this form of entity would be of limited use for social enterprises. A third option would be to organize a social enterprise as a hybrid corporation under the B.C. *Business Corporations Act*, called a Community Interest Corporation (CIC). This type of entity combines socially beneficial purposes and a restricted ability to distribute profits to shareholders within traditional business corporate law framework. The entity must have a community interest purpose, and a restricted ability to distribute profits. CICs are taxed like a corporation and cannot be a charity.

Finally, the viability of using a charitable structure for a social enterprise was discussed. Charities can earn revenue and operate profit-making activities, provided these activities are related to their otherwise charitable purposes; however, charities have a limited entitlement to carry on related business. The CRA requires a related business to be linked and subordinate to a charity's charitable purposes. Also, charities cannot distribute income to members. The speaker observed that, as a result of these restrictions, a charitable structure would likely not be appropriate for a social enterprise.

The related concept of "social finance" was also introduced. Social finance is a new type of investing aimed at mobilizing private capital to tackle societal challenges. Similarly, impact investing is the active investment of capital in businesses and funds that generate positive social and/or environmental impacts, as well as financial returns to the investor. The Canadian Task Force on Social Finance recommended that Canada's public and private foundations invest at least 10% of their capital in mission-related investments by 2020 and report annually to the public on their activity. However, the speaker cautioned that there may be legal issues surrounding whether such investments are appropriate under the *Income Tax Act*.

C. Endowments
(Siân Matthews, Siân M. Matthews PC)

The final session in the charity and not-for-profit update dealt with the topic of endowments. An endowment is a financial transfer by a donor to a charity, and the fund that is thereby established to fulfil the donor's charitable goals. There are various types of endowment gifts, including outright gifts, gifts made by trust, precatory trusts, conditional gifts, contractual transfers, donor advised funds, and gifts that are later internally restricted by the charity.

The speaker discussed the difference between making a gift and entering into a contract. Whereas a gift is a voluntary transfer of property made without consideration, a contract is an agreement between two or more persons recognized by law that gives rise to obligations that the courts may enforce. The speaker observed that practitioners tend to gloss over the legal concept of a gift, and commonly characterize contractual arrangements as common-law gifts. The large gifts to the University of Waterloo and Wilfred Laurier University from Jim Balsillie's Centre for International Governance were provided as recent examples. The schools are being threatened with a censure unless the terms of the gifts are rewritten because there are issues regarding whether the gifts are outright gifts (subject only to moral requirements to honour the donor's wishes) or contracts (which are subject to legally enforceable conditions). In addition, the speaker cautioned that using a precedent "contract" may disqualify a transfer from being a gift at law. The speaker noted that most endowment gifts that are made with terms or agreements are not legally binding on the donee charity; however, contractual transfers and special purpose charitable trusts (SPCTs) may be legally binding on a charity.

The difference between a gift and a conditional gift was also explained. Essentially, a gift made subject to a condition precedent is not a gift until the condition has been fulfilled, even if the property has been transferred, and no donation receipt can be issued until the gift vests. Conditional gifts offer enforcement protection for the donor, but receipting is an issue for these types of gifts. As well, a transfer to a charity by a court order cannot be considered to be a gift because, to qualify as a gift under charity law, a payment must be voluntary. A payment that results from a court order, even if the taxpayer was given a choice between making a payment and some other penalty, cannot be said to be voluntary. Therefore, if a company or individual is ordered by a court to give money to charity, the charity cannot issue an official donation receipt for the amount it receives.

The difference between a precatory trust and SPCT was also clarified. Precatory trusts are subject only to morally binding directions as to the purpose and terms of the gift. Although there are directions, terms or agreements with the donor, they are not legally binding and the charity owns the property transferred beneficially for its own charitable purposes. However, SPCTs are "true" trusts and the terms of the trust govern the use of the property and its income. The charity is not the owner of the property, but is the trustee, and unless statutory exceptions apply, the property must be treated like true trust property. Most endowment gifts do contain some type of donor direction as to how the gift is desired to be

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used; however, the charitable property either belongs beneficially to the charity or is held subject to a SPCT. There is no "grey" area where property is both owned beneficially by the charity and subject to some ongoing legal control by another person. The vast majority of gifts given to a charity and intended to be held in perpetuity are gifts outright to the charity. The provincial standards that are required to find a SPCT, the factors that may be relevant in determining whether an endowment gift is a true SPCT, and tax receipting for a SPCT were also discussed.

Finally, the various legal and tax issues surrounding pledge agreements and naming rights were discussed. With respect to naming rights, the CRA's position is that transfers in exchange for naming privileges may qualify as gifts and that naming rights have no value provided there is no associated "prospective economic benefit". However, as the legal basis for CRA's position is unclear, there is usually concern with respect to large gifts involving naming rights. The speaker also discussed whether naming rights can be considered an "advantage" under the proposed split-receipting rules for charitable gifts.

IV. ADDITIONAL WORKSHOPS

Following are additional workshops that were offered at the Conference but are not discussed above, along with a brief description of each.

Advanced Tax Planning – the Attribution Rules: Tips & Traps (Marina Panourgias, Deloitte & Touche LLP; Caroline Rhéaume, STEP Montreal)

The panel reviewed the attribution rules in sections 74.1-74.4, 75(2), 56(2), and 246(1), how and when they can apply, and planning tips on how to avoid them.

Multi-Jurisdictional Conflicts Between Family Law and Wills and Estates (Thomas Grozinger, RBC Wealth Management; Troy McEachren, Heenan Blaikie LLP)

The panel reviewed conflict of laws issues with respect to revocation of wills upon marriage, including which jurisdiction's law governs whether marriage revokes a will, having regard to new succession legislation in Alberta and anticipated new succession legislation in B.C. The panel also looked at how Quebec Civil Law deals with family law rights and succession in order to highlight the difficulties that could arise in cross-provincial situations.

Pensions and Life Insurance Designations – Tips and Traps (Robin Goodman, RBC Wealth Management Financial Services; Hélène Marquis, CIBC Private Investment Counsel; Christine Van Cauwenberghe, Investors Group)

This session looked at issues around beneficiary designations in second marriage and blended family situations and the intersection of tax law and provincial law regarding pensions and insurance. The speakers addressed recent cases dealing with beneficiary designations and commented on issues unique to Quebec.

Litigation, Compensation, and Financial Obligation (John Clegg, Scotia Private Client Group; Sandra Enticknap, Miller Thomson LLP; Archie Rabinowitz, Fraser Milner Casgrain LLP)

The panellists discussed Canada's current trends related to recent estate and trust litigation, with particular attention to the allocation of the legal costs, compensation awarded and resulting decisions. The speakers also addressed the myth that trust companies are expensive, the predictability of cost allocations, and summarized litigious issues being dealt with in a number of Canadian jurisdictions.

International Developments – A Global View (Christopher Byrne, Christopher J. Byrne PLLC; Richard Hay, Stikeman Elliott LLP)

France recently introduced reforms to its private asset laws, the U.K. has amended its rules relating to non-domiciliaries, the EU Savings Tax Directive has stalled, Switzerland has agreed with Germany and the U.K. to enforce their taxes directly against Swiss bank accounts, and the U.S. continues to aggressively regulate its tax system. The panel discussed how these changes may affect Canadian residents with assets or interests in these jurisdictions.

Insurance Update (Susan St. Amand, Sirius Financial Services; Glenn Stephens, PPI Advisory)

The panel reviewed the CRA comment on corporate beneficiary designations, in particular an Opco owning a policy and a Holdco being the beneficiary; transfers of life insurance policies to and from corporations; U.S. excise tax; new technical interpretations on vesting indefeasibly; "10/8" strategies; use of family shareholders agreements; and insurance issues for U.S. citizens.

Provincial Legislative Changes (Brian Cohen, Fraser Milner Casgrain LLP; Kathleen Cunningham; Nancy Golding, Borden Ladner Gervais LLP)

The panel reviewed recent and proposed legislation in B.C., Alberta and Ontario related to incapacity planning, succession and probate taxes using a tax case study to highlight the practical implications of the changes, compare legislative approaches in these three provinces, and identify important considerations for practitioners dealing with clients from these jurisdictions. ■