

ARE BENEFICIARY DESIGNATIONS TESTAMENTARY?

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Nature of beneficiary designations

- Orthodox position: testamentary
- My position: not testamentary
- Are will substitutes that are effective when made
 - Should be treated like other will substitutes
 - That appears to be effect of modern statutes and cases

Different Beneficiary Designations

- Under *Insurance Act*
- Under *SLRA Part III*
- Beneficiary entitled to sue trustee/administrator

Statutory Provisions

- *SLRA*, ss. 51-52
- *Pension Benefits Act*, s. 48(6)
- *Insurance Act*, ss. 190(1), 196(1)

Will definition problems

- *SLRA*, s. 1(1)(d) “will” includes “any other testamentary disposition”
- BC’s *WESA*, s. 1(1)(f): same, “except a designation under Part 5” (Benefit Plans)

Vigour and Effect

- Overzealous application of *Cock v. Cook*
- *MacInnes v. MacInnes*, 1935 SCC
- *Carson v. Wilson*, 1961 ONCA

Opposing Cases

- *Corlet v. Isle of Man*, 1937 ABCA
- *Wonnacott v. Loewen*, 1990 BCCA
- *Baird v. Baird*, 1990 PC
- *Re Danish Bacon Co.*, 1971 (H.C.)
- *Norman Estate v. Watch Tower*, 2013 BCSC

Revocability

- *Anderson v. Patton*, 1948 AB CA

Creditor Access

- Older cases
- *Amherst Crane Rental v. Perring*, 2004 ON CA

Attorney under power of attorney

- *Easingwood v. Cockroft*, 2013 BCCA
- *Testa v. Testa*, 2015 ONSC
- BC *WESA* and *Power of Attorney Act*
 - Attorney can make, later, or revoke designation with court authorization

Conclusion

- Modern statutes enacted to overcome *MacInnes*
- Modern case law recognizes that designations are not testamentary
- Decisory provision in statutes saying so desirable