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MISSION IMPRACTICAL: VARYING CHARITABLE TRUST PURPOSES, IMPRACTICALITY, AND THE *BOYS AND GIRLS CLUB* DECISION

By Stephen Hsia*

It's a familiar story. A charity receives a gift of property. The donor requires the charity to hold the property in trust for specific charitable purposes. Years later, the charity has other pressing needs and priorities. Many of the charity's other programs are underfunded. Let's say the cost of maintaining the trust property itself has also increased significantly.

Can the charity change the purpose of the trust and use the property for another purpose?

Under something called the "*cy-prés*" doctrine, courts can change the purposes of a trust if those purposes have become impossible or impractical to achieve.

An "impossible" purpose is often easy to spot. For instance, if the purpose of a trust is to pay for medical equipment and beds at a certain hospital but the hospital no longer exists, it is safe to say that it is impossible to carry out the trust's stated purpose.

But what if it is not *impossible* to fulfill the trust's purpose — just very *difficult*? Would those difficulties or challenges rise to the level of "impractical" and pass the *cy-prés* test?

A recent British Columbia court decision says "not so fast" and reminds charities that the threshold for proving impracticality remains a very high one.

In *Boys and Girls Club of Greater Victoria Foundation v. British Columbia (Attorney General)*,[1] the petitioner Foundation sought a

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cy-prés order from the BC Supreme Court to change the purposes of a trust in which the Foundation held land and two investment funds associated with the land.

The Foundation argued that the land (on which the Foundation's sister society ran a youth wilderness camp) was underused and costly to maintain. By contrast, the sister society ran other programs that were oversubscribed and in need of more funding. The Foundation wanted the court to vary the purposes of the trusts so that the Foundation could sell the land and repurpose the funds for its other charitable needs.

The Honourable Madam Justice Marzari declined to use the *cy-prés* doctrine to disturb the purpose of the trusts. In the court's view, the Foundation had not proved that it was impractical for it to continue to hold the land and funds for their original specific charitable purposes.

The decision will be instructive to charities seeking their own *cy-prés* orders to vary specific charitable trust purposes on grounds of impracticality. The key takeaways from Justice Marzari's reasons are:

- If holding trust property costs more than it brings in, impracticality may still not be proven, especially if a charity's other resources (which the charity holds for its general charitable purposes) could be used to pay for the cost of holding or maintaining the trust property.
- The fact that a charity has other pressing needs does not weigh significantly in the *cy-prés* analysis in cases where the trust funds do not exceed what is needed to fulfill the purposes of the trust.
- Impracticality requires more than a trustee's deeply held belief that the trust property could be used more productively for other charitable purposes. Impracticality also requires evidence of more than a decrease in the usefulness or cost-effectiveness of the trust property.
- Solid facts and evidence on a *cy-prés* application are paramount. The Foundation's case was undermined, in part, by its own documents which showed that camp enrollment was increasing and that the Foundation had more than $300,000 in other specific purpose trust funds available to pay the costs associated with the land.

The Foundation had unsuccessfully tried to convince the court that its situation was similar to that facing the Diocese in the New Brunswick Court of King's Bench decision of *L'Évêque Catholique Romain de Bathurst v. New Brunswick (Attorney General)*.[2] (For full disclosure, my law firm had acted for the Diocese.)

In *Bathurst*, the court approved a *cy-prés* plan where the Diocese would keep $1.5 million in existing trust funds (dedicated to training future priests) and reallocate more than $2.5 million from those same trust funds for the purpose of settling abuse claims.

In accepting the Diocese's impracticality argument, the New Brunswick ("NB") court noted the "unique combination of circumstances" that warranted *cy-prés* relief. Priest candidates had dwindled substantially in the last few decades, while the abuse claims threatened to bankrupt the Diocese entirely. The NB court found that the "primordial intention" of those who created the trusts was to have the Diocese continue its religious mission for as long as possible. The *cy-prés* plan would help the Diocese avoid a financial demise and was consistent with that intention.

The Foundation in *Boys and Girls Club* invoked *Bathurst* but could not clear the high hurdle of impracticality. Besides failing to give sufficiently persuasive evidence on its petition, the Foundation also tendered no information as to its very own financial situation and whether the Foundation's existence would be jeopardized if it continued to act as trustee with the existing purposes in place — as was the case in *Bathurst*.

Proving impracticality on a *cy-prés* application remains a high bar to overcome. As both the New Brunswick and British Columbia courts have said, the public must continue to have confidence that when a charitable purpose trust is established, only in limited and justifiable circumstances will a court intervene and change what the trust's settlor had intended. *Boys and Girls Club* is another decision reminding courts and charities about what impracticality is, or, as more and more unsuccessful litigants are discovering, what impracticality isn't.

1 2024 CarswellBC 695, 2024 BCSC 442 (B.C. S.C.) ["*Boys and Girls Club*"].
2 2010 CarswellNB 664, 2010 CarswellNB 711, 2010 NBQB 400 (N.B. Q.B.) ["*Bathurst*"].

THE NEED FOR ESTATE TRUSTEE POWERS TO BE SET OUT IN TRIBUNAL RULES AND PRACTICE DIRECTIONS

By Evan Pernica*

In *James v. Inspirah Property Management Ltd.*,[1] the Human Rights Tribunal of Ontario ("HRTO") found that applications cannot be brought by estate trustees. Instead, estate trustees are limited to maintaining applications that have already been commenced by a deceased.

Background

An estate trustee commenced an application before the HRTO on behalf of her deceased mother, alleging the respondents violated the deceased's rights under the *Human Rights Code* (the "*Code*").[2]

In response, the HRTO considered whether an estate or estate trustee has standing to bring such an application before the tribunal.

Analysis

Section 34 of the *Code* sets out that a person or their defined representative may apply to the HRTO. The enumerated representatives do not include an estate trustee:

> **Application by person**
>
> 34 (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2.

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1 2023 CarswellOnt 12411, 2023 HRTO 1159 (Ont. Human Rights Trib.).
2 R.S.O. 1990, c. H.19.

[. . .]

Application on behalf of another

(5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,

(a) would have been entitled to bring an application under subsection (1); and

(b) consents to the application.

Section 46 of the *Code* defines the term "person", and similarly fails to reference an estate or estate trustee:

Definitions, general

46 In this Act,

[. . .]

"person" in addition to the extended meaning given it by Part VI (Interpretation) of the *Legislation Act, 2006*, includes an employment agency, an employers' organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality, a board of police commissioners established under the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, and a police service board established under the *Community Safety and Policing Act, 2019*; ("personne")

Turning to the extended definition of "person" as set out in Part VI, section 87 of the *Legislation Act, 2006*,[3] the HRTO recognized that this definition merely provides for the inclusion of a corporation.

In light of the aforementioned provisions failing to reference an "estate" or "estate trustee", the HRTO then considered concurring language provided for in section 38(1) of the *Trustee Act*[4] that authorizes an executor or administrator to *maintain* an action for torts or injuries:

Actions for torts

Actions by executors and administrators for torts

38 (1) Except in cases of libel and slander, the executor or administrator of any deceased person may **maintain** an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages when recovered shall form part of the personal estate of the deceased; but, if death results from such injuries, no damages shall be allowed for the death or for the loss of the expectation of life, but this proviso is not in derogation of any rights conferred by Part V of the *Family Law Act*. *(emphasis added)*

Concluding Comments

Given the lack of language authorizing the HRTO to consider an application commenced by an estate trustee, the application was dismissed on the basis that estate trustees are only empowered to maintain applications commenced by a deceased prior to their death.

Notably, the within decision did not reference or consider Rule 9 of the *Rules of Civil Procedure*,[5] which authorizes an executor, administrator, or trustee to commence proceedings on behalf of an estate without joining beneficiaries as parties, except in limited situations:

Proceedings by or against Executor, Administrator or Trustee

General Rule

9.01 (1) A proceeding may be brought by or against an executor, administrator or trustee as representing an estate or trust and its beneficiaries without joining the beneficiaries as parties.[6]

Exceptions

(2) Subrule (1) does not apply to a proceeding,

(a) to establish or contest the validity of a will;

(b) for the interpretation of a will;

(c) to remove or replace an executor, administrator or trustee;

(d) against an executor, administrator or trustee for fraud or misconduct; or

(e) for the administration of an estate or the execution of a trust by the court.[7]

Regardless, the within decision highlights the paramount importance for rules and practice directions governing Ontario tribunals to explicitly set out the powers intended to be afforded to estate trustees.

Failing the inclusion of such language, there remains uncertainty about whether a deceased's potential rights are restricted as a result of legislative intention or omission.

BEQUEATHING YOUR TFSA

By Jordana Talsky*

A tax-free savings account ("TFSA") is a flexible savings option that can be used for various financial goals, such as saving for a major purchase, an emergency fund, or retirement savings. It offers a significant advantage in that all investment growth within the account is completely tax-free.

Probate Treatment

You are permitted to designate a beneficiary (or multiple beneficiaries) on your TFSA account.[1] Doing so allows the asset transfer directly to the named beneficiaries, outside of your estate, and thus bypasses the probate process. This means the asset moves into the hands of beneficiaries faster and without your estate paying probate taxes on the value of your TFSA.

Successor Holder vs. Beneficiary

It's important to note the difference between designating a *successor holder* and a *beneficiary* of your TFSA. **Only a spouse or**

3 S.O. 2006, c. 21, Sched. F.
4 R.S.O. 1990, c. T.23.
5 R.R.O. 1990, Reg. 194.
6 R.R.O. 1990, Reg. 194, r. 9.01(1).
7 R.R.O. 1990, Reg. 194, r. 9.01(2).

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1 Designate a Beneficiary, https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/tax-free-savings-account/death-a-tfsa-holder/designated-beneficiaries.html.

common-law partner can be named as a *successor holder* of a TFSA. The result of being a successor holder is that the TFSA effectively becomes the successor holder's TFSA and the account remains tax-free. There is also no impact on the successor holder's TFSA contribution room.

If your spouse named you as the beneficiary of their TFSA (rather than the successor subscriber), the account's value at the time of their death can be paid to you or transferred to your TFSA tax-free. However, if the TFSA increased in value after their death, that increase is considered a "Tax-Free Savings Account taxable amount" and must be reported on a T4A slip, to be included in your income for the year you received it. Note that if the transfer to your TFSA is completed by December 31 of the year following your spouse's death, the market value at the date of death is considered an "exempt amount" and does not affect your TFSA contribution room.

So, if you were named as either the successor holder or the beneficiary of a spouse's TFSA, both designations would avoid probate. However, only being named as the successor holder would avoid any tax implications. As a beneficiary, you might have to pay taxes if the account increased in value.

Estate as Beneficiary

If the beneficiary is designated as the "estate" or if no beneficiary is named on the TFSA account, the TFSA is still paid into the deceased's estate, but probate fees need to be paid to access the TFSA. Once available, the proceeds are distributed either according to a valid will or, in its absence, according to the intestacy laws of the deceased's jurisdiction. Any growth in the TFSA value after the date of death will be taxable to the estate.

Don't Forget

As part of your estate planning, ensure that all beneficiary designations are up-to-date and correctly documented with your financial institution to avoid any confusion or legal complications after your death.

CAREGIVER COMPENSATION: WHO IS ENTITLED?

By Trevor Moum*

Can I be compensated from an estate for the care I provided to a deceased person prior to their death?

The short answer is "yes." The court routinely awards compensation after-the-fact for services rendered in a variety of situations, and there is little preventing caregivers or powers of attorney for personal care from claiming compensation from an estate for caregiver services that were legitimately provided.[1]

The longer answer is that the court has struggled to establish a predictable way to assign value to these claims, and claimants have often been unsuccessful. These are difficult claims that require care and attention.

Before addressing these claims, it is first important to distinguish between compensation claims for work done as an attorney for property, as an attorney for personal care, and as a caregiver.

An attorney for property makes decisions with respect to an incapable person's property. They can typically do anything with respect to property that the incapable person could have done, except make a will. Compensation for an attorney for property is often set out in the granting document. If it is not, then O. Reg 26/95 provides that they are entitled to 3% of income and capital receipts, 3% of income and capital disbursements, and 0.6% per year of the annual average value of the assets being administered.[2]

An attorney for personal care is entitled to make decisions with respect to personal care, which includes healthcare, shelter, clothing, hygiene and safety. Acting as an attorney for personal care does not, on its own, oblige that person to provide care directly although in many cases the attorney for personal care will also act as a caregiver. Conversely, a caregiver is not necessarily an attorney for personal care.

Both caregivers and attorneys for personal care can claim compensation for the work they have legitimately performed, whether that be arranging and making decisions concerning care, or providing care directly. However, there is no statute or regulation to guide us on the value of that compensation and a review of the case law provides mixed and possibly conflicting results. A few key points, however, emerge from the chaos.

First, and perhaps predictably, the amount to be awarded must be "reasonable." Reasonableness is assessed with reference to the specific needs of the person, the qualifications of the caregiver, the value of the services to that person and the period over which the services were provided.[3] Reasonableness is also assessed with reference to ability to pay, so compensation must be proportional to means.[4]

Second, we have moral obligations to provide a certain level of care to our parents or children, and we are expected to fulfill those obligations gratuitously. Compensation, then, appears only to be available for care that goes over and above what we would otherwise provide out of natural love and affection.

In *Shibley Estate, Re,* for example, Justice Molloy wrote: "A parent is expected to provide care for a child without compensation."[5] In *Childs,* Justice Tranmer at the Superior Court of Justice wrote: "A child should not be paid to care for an ailing mother. Eileen Childs was not paid for raising her four children."[6]

Courts have used both a subjective and objective standard to assess what level of care is to be compensated. The objective standard bars compensation claimed for work that a loving relative in the

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1 *Brown, Re*, 1999 CarswellOnt 4628, [1999] O.J. No. 5851 (Ont. S.C.J.), additional reasons 1999 CarswellOnt 4629 (Ont. S.C.J.) [*Brown*].

2 *Substitute Decisions Act*, *1992*, S.O. 1992, c. 30; O. Reg. 26/95.

3 *Brown, supra* note 1 at para. 4(h).

4 *Kiomall v. Kiomall*, 2009 CarswellOnt 2246 (Ont. S.C.J.).

5 *Shibley Estate, Re*, 2004 CarswellOnt 5536 (Ont. S.C.J.) at para. 6.

6 *Childs v. Childs*, 2015 CarswellOnt 9627, 2015 ONSC 4036 (Ont. S.C.J.) at para. 33, additional reasons 2015 CarswellOnt 14291 (Ont. S.C.J.), affirmed 2017 CarswellOnt 9394 (Ont. C.A.), additional reasons 2017 CarswellOnt 11044 (Ont. C.A.), leave to appeal refused *Peter Childs v. Michael Childs, et al.*, 2018 CarswellOnt 8747, 2018 CarswellOnt 8748 (S.C.C.).

claimant's position would or should have provided gratuitously out of natural love and affection. The subjective standard bars compensation claimed after the fact for work provided with no expectation of compensation at the time it was performed.

In *Sasso v. Sasso*, for example, the claimant sought $198,850 for the care he provided to his father. His evidence was that he spent four hours a day on care, for seven and a half years. He described the care as "helping to feed, wash, shave, groom [the Deceased] and in shopping for and generally caring for [his] needs."[7] The claimant also lived with his father for some of those seven and a half years. Justice Deitrich, using an objective standard, was not satisfied that the caregiving services provided were "in excess of what a loving son living with his father, on a rent-free basis, in his father's residence, would have provided out of natural love and affection."[8]

In *Childs*, the Ontario Court of Appeal relied on the claimant's assertion that she would have provided the services to her mother even if she was not to be compensated, writing: "The claim in unjust enrichment fails for the simple reason that the applications judge found that Caroline had gratuitously provided the care in question for her mother and, indeed, was willing to continue to do so."[9]

Finally, a claimant needs clear, compelling, and corroborated evidence of the care that was provided.[10] It is remarkable how many of these cases fail because of an inadequate record.[11]

Ideally, contemporaneous and detailed notes indicating the time spent performing caregiving work and of the work that was completed will be provided, and that evidence will be corroborated by an independent source. In *Cheney v. Byrne (Litigation Guardian of)*, the claimants acted as attorneys for personal care. They did not provide care directly but arranged care and made decisions concerning care. They were lawyers who kept detailed time dockets of the work they did arranging care and were successful in their claim for compensation for that work.[12]

In the absence of contemporaneous and detailed notes, a compensation claim will be more challenging. However, in *Daniel Estate (Re)*, the court awarded compensation in the absence of time dockets, but on the basis of affidavits detailing the time spent and services performed, and a cost of care report provided by a para-legal, Certified Case Manager and Certified Canadian Life Care Planner.[13]

The notes above are intended as a non-exhaustive list of the factors you should consider before pursuing a claim for compensation. Understanding these issues as early as possible, and ideally while providing any care, is critical to building a strong case.

7 *Sasso v. Sasso*, 2021 CarswellOnt 7094, 2021 ONSC 3259 (Ont. S.C.J.) at para. 44, affirmed 2022 CarswellOnt 5835 (Ont. C.A.) [*Sasso*].
8 *Ibid.*, at para. 53.
9 *Childs v. Childs*, 2017 CarswellOnt 9394, 2017 ONCA 516 (Ont. C.A.) at para. 61, additional reasons 2017 CarswellOnt 11044 (Ont. C.A.), leave to appeal refused *Peter Childs v. Michael Childs, et al.*, 2018 CarswellOnt 8747, 2018 CarswellOnt 8748 (S.C.C.).
10 *Brown, supra* note 1.
11 See for e.g., *Ventura v. Ventura*, 2022 CarswellOnt 17218, 2022 ONSC 6351 (Ont. S.C.J.) at para. 119; *Sasso*, *supra* note 7 at para. 47; *Childs*, 2015 ONSC 4036, *supra* note 6 at para. 40; *Picone v. Mossetti*, 2023 CarswellOnt 1979, 2023 ONSC 1038 (Ont. S.C.J. [Estates List]) at para. 92; *Brown, supra* note 1 at para. 7.
12 *Cheney v. Byrne (Litigation Guardian of)*, 2004 CarswellOnt 2674 (Ont. S.C.J.).
13 *Daniel Estate (Re)*, 2019 CarswellOnt 6682, 2019 ONSC 2790 (Ont. S.C.J.).

HEADS UP: PITFALLS OF DYING INTESTATE WITH MINOR CHILDREN

By Nicholas André*

When a person dies without leaving a valid will, they have died "intestate". A valid will can provide for who should administer the estate, who should benefit from the estate, and the terms on which the beneficiaries inherit. If you die without a will in place, your estate will be governed by intestacy laws which may not reflect your wishes.

For example, in Ontario the *Estates Act*[1] provides to whom administration of an intestate estate should be granted (the married spouse or person who was in a conjugal relationship with the deceased immediately prior to his or her death, or next-of-kin), and the *Succession Law Reform Act*[2] governs who is entitled to inherit from the estate (typically a division among your spouse and/or children, as applicable).

What happens to a minor's inheritance?

Minors cannot be paid funds or be transferred property until they reach the age of majority, including gifts from an estate, regardless of whether there is a will, or proceeds payable from a life insurance policy or registered plan.

Typically, a will provides that a minor's share in the estate is to be held in trust by named trustees along with other terms as to when or for what reason payments from the trust may be made for the minor's benefit. The trust may also continue after the minor beneficiary attains the age of majority to protect against a young adult coming into significant amounts of money before they are financially mature enough to manage it.

However, an intestacy presents unique complications for a minor beneficiary. If a minor inherits on an intestacy, the above trust structure does not exist, and because the inheritance cannot be paid or transferred directly to the minor, few options are available.

Inheritance Under $35,000

In Ontario, if the inheritance or gift is equal to or less than $35,000 the funds can be paid to the minor's parent or guardian. In doing so, the executor of the estate is no longer liable for what happens to the funds.

Funds Paid into Court

For amounts greater than $35,000, a minor's inheritance can be paid into court and held by the Accountant of the Superior Court of Justice until the minor reaches the age of majority, which is 18 years in Ontario. The Accountant will invest the money at a rate to be determined dependent on current market conditions. For minors, money is automatically invested in the Office of the Public Guardian and Trustee's ("OPGT") Fixed Income Funds and interest is credited

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1 R.S.O. 1990, c. E.21.
2 R.S.O. 1990, c. S.26.

to the minor's account each month at a prescribed interest rate that is based on its earnings.

Notably, the returns from such investment may be less than what could have been earned if invested in the market by a trustee with the benefit of professional investment advice. Further, money held by the Accountant is charged 3% for each of monthly receipts and disbursements on capital and income, and a Care and Management Fee of 3/5 of 1% (0.6%) of the average annual value of the trust is charged monthly.

If the minor requires money before they reach 18, a request can be made to the Accountant for consideration, with the approval of the Children's Lawyer, whose Office represents the minor's interest in such matters. Approval is dependent on providing proof that the money paid out will be used for the direct benefit of the child, that the parents or caregivers are unable to meet the needs of the child without assistance, and submission of supporting documentation. While this is an established process, it is far more arduous, time consuming and expensive than having a trustee disburse funds in their discretion under a trust.

Appointment as Guardian of Property

Alternatively, an individual can apply to court to become guardian of the minor's property and can then receive the inheritance on the minor's behalf. However, this process is not merely a formality — a court application is required to obtain a court order appointing the person to be the legal guardian. Importantly, a minor's parent is not at law automatically considered the guardian of their minor child's property and must make a court application to be appointed.

The guardianship application process can be lengthy, costly, and quite cumbersome. The parents of a child are equally entitled to be appointed as guardians, however, when there is conflict the court considers the ability of the applicant to manage the property, the merits of the proposed management plan for the investment of the minor's funds and the views of the child in coming to a decision. Further, for a large inheritance, the court may require that an insured professional, like a trust company, act as guardian.

Guardianship applications require a management plan in a prescribed court form. The management plan sets out a detailed financial plan and a proposal of how the guardian will manage the minor's money. The Children's Lawyer must review and approve the plan. Family members of the minor must also be served as part of the application, which may result in a dispute and litigation if multiple individuals seek guardianship. During this process the minor's funds cannot be accessed which can be prejudicial and cause hardship to the child if such funds are needed immediately.

Moreover, the work does not stop when the guardian for property is appointed. The guardian must follow the approved management plan and can only spend the minor's money as directed in the court order or approved management plan.

Guardians also function as fiduciaries, and must keep detailed records of their accounts, and often are required to pass their accounts periodically before the court. If the guardian wants to deviate in any significant way from the approved management plan, court approval is necessary.

In the case of an intestacy, whether the funds are paid into court or if a guardian is appointed, when the minor reaches 18 years of age, their inheritance (or what remains) is not subject to any protective trust provisions and is paid to the minor in full to do with as they wish. That could mean a trip around the world, purchasing a luxury car, or paying for university tuition — what would you have done at 18?

As you can see, dying intestate when there are minor children or other beneficiaries creates serious problems and expense. Proper planning is critical to ensure that the financial safety net you leave behind for minor beneficiaries is properly structured; including provisions in your will or an insurance trust for insurance policy proceeds where a minor is a beneficiary.

DRAFTING TIPS FOR WILLS THAT INCLUDE AN OPTION TO PURCHASE CLAUSE

By Suzana Popovic-Montag*

When assisting clients who own a business, it is important for estate planning documents to address how that business will be handled after the client dies. In an ideal world, the client will have an opportunity to retire; however, in case the client dies unexpectedly, before a succession plan has been created for the business, let alone executed, it is advisable to include the client's instructions for their business in their will.

An option to purchase is a type of will clause that a client can use to provide a specific beneficiary or beneficiaries an option to purchase the client's business or business assets. In addition to specifying *who* may purchase the deceased's business, an option to purchase clause may also include terms for the sale, including the sale price.

It is important to draft an option to purchase will clause with care in order to minimize the risk of future estate litigation. Not only is it possible for other beneficiaries to challenge an option to purchase under a will, but depending on how the clause is drafted, it may also be necessary to seek the court's advice regarding the interpretation of the clause. The following tips could prove helpful for minimizing future court involvement.

Tip 1: If possible, do not refer to how a business is currently being operated.

If the will clause references how the business currently operates, it could be argued that the option to purchase is conditional on the business being carried on the same way after the testator dies and conversely, is no longer effective if the business operates differently at the time of death. For example, in *VanSickle Estate v. VanSickle*,[1]

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1 2022 CarswellOnt 13062, 2022 ONCA 643 (Ont. C.A.), reversing *Fletcher and Vansickle v. Vansickle*, 2021 CarswellOnt 12557, 2021 ONSC 5665 (Ont.

the deceased's will directed that "the farming business carried on by me" be sold to one of her sons. Litigation followed as to whether the clause was effective, as the deceased was renting out the farmland when she passed away and was not farming it herself. On appeal, the court concluded that the clause was effective. However, had the will simply included an option to purchase the farmland and farm equipment, without referencing the deceased's farming business, the litigation in this case may have been avoided.

Tip 2: Be mindful of the business' market value if the clause includes a purchase price.

If the client's will includes an option to purchase clause that permits the deceased's business or a business asset to be sold for a price much lower than the asset's current market value, other beneficiaries may be more inclined to challenge the clause. For example, in *VanSickle Estate*, the purchase price for the deceased's farmland was significantly lower than the current market value of the land. Had the option to purchase clause been ineffective, the other beneficiaries of the estate would have received more funds from the sale of the business. With this in mind, it may be advisable to use a formula to set the purchase price, rather than specifying the price in the will, to ensure that the sale price can fluctuate in accordance with changes in the market value of the business or business asset.

Tip 3: Consult a professional when creating a formula to set the purchase price.

If the client wishes to include a formula for determining the sale price in an option to purchase clause, it would be wise to consult with a financial professional who specializes in business valuations before the clause is finalized to ensure that the formula is clear. Otherwise, if part of the formula is unclear, making it possible to calculate more than one purchase price, it may be necessary to seek direction from the court. In *Muchmaker Estate (Re)*,[2] for example, the parties proceeded to court for direction as to how to apply the formula included in the deceased's will, as the will used (without defining) the term "earnings" and it was unclear whether the earnings of the business were to be "normalized" when setting the purchase price. The parties' dispute over the price was considered to be *bona fide*, as three competent accountants/business valuators had arrived at three different figures for the purchase price using the same formula set out in the will.[3]

Summary

For clients disposing of a business under their will, an option to purchase clause can be an excellent tool for ensuring that the business ends up in good hands. To prevent such a clause from becoming the subject of litigation or a court application, however, it could be handy to keep the following suggestions in mind:

1. When drafting an option to purchase clause for a business or business asset, do not refer to how the business is currently being operated unless the client only intends the bequest to be effective *if* the business is still being operated in the same manner at the time of death.
2. Ensure that the purchase price for the business correlates in some way with its fair market value. Otherwise, with the passage of time, the purchase price attached to an option to purchase may end up being far below the fair market value of the business, giving other disgruntled beneficiaries reason to challenge the clause.
3. If an option to purchase clause includes a formula for setting the purchase price, consult a professional business valuator or accountant to ensure that the formula is clear.

S.C.J.), leave to appeal refused *Joan Pizzey, et al. v. Howard Vansickle, et al.*, 2023 CarswellOnt 4273, 2023 CarswellOnt 4274 (S.C.C.) [*VanSickle Estate*].

2 2019 CarswellOnt 255, 2019 ONSC 59 (Ont. S.C.J.), affirmed *Loran v. Weissmann*, 2019 CarswellOnt 19961, 2019 ONCA 962 (Ont. C.A.).

3 *Ibid.*, at para. 21.

LOVE OVER BLOOD: ONTARIO COURT GRANTS ENTIRE ESTATE TO COMMON-LAW PARTNER IN *BOLTE V. MCDONALD ESTATE*

By Tiansheng Wen*

In the recent case of *Bolte v. McDonald Estate*,[1] the Ontario Divisional Court had to decide who should receive the estate of a person who passed away without leaving a will. The deceased had lived with his common-law partner for over 20 years, but he also had a daughter from a previous relationship. When he died at 61-years-old, his estate included a house, a pension, and a life insurance policy.

The matrimonial home was sold, and approximately $300,000 in net proceeds were placed into trust. His pension was valued at about $915,000, and he had named his common-law partner as the beneficiary for the pension's survivor benefits. Additionally, he had a $53,000 life insurance policy, with his daughter listed as the beneficiary.

Throughout the years, the deceased had minimal contact with his daughter due to her addiction issues. Occasionally, he provided her with small sums of money. The daughter had three young children with special needs.

After the deceased's death, his common-law partner sought financial support from his estate through the *Succession Law Reform Act*[2] ("*SLRA*"). However, the daughter's estate, represented by a trustee, opposed this claim. Initially, a judge awarded the entire estate to the common-law partner, which the daughter's estate then appealed.

The Ontario Divisional Court upheld the initial decision, awarding the entire estate to the common-law partner. The court considered several factors, including the longstanding relationship between the deceased and his partner, and the distant relationship he had with his daughter and grandchildren. The court referenced a previous case, *Pigott Estate v. Pigott*,[3] which provided guidelines for

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1 2023 ONSC 3429, 2023 CarswellOnt 9809, 87 E.T.R. (4th) 231 (Ont. Div. Ct.).

2 R.S.O. 1990, c. S.26.

3 1998 CarswellOnt 2875, 25 E.T.R. (2d) 12, 71 O.T.C. 201 (Ont. Gen. Div.).

deciding if grandchildren should be considered dependents under the *SLRA*:

- Whether the grandchildren cohabitated with the deceased;
- Whether the deceased contributed financially to their day-to-day needs;
- Whether the deceased had decision-making power regarding the children's names, schooling, or discipline;
- Whether the deceased treated them similarly to his own children;
- Whether the deceased had continued access or visitation;

This case emphasized factors such as whether the deceased had a "settled intention" to treat the grandchildren as children of his family.

Ultimately, the judge determined that the common-law partner had a stronger claim to the estate than the daughter's estate or grandchildren. The decision highlighted the deceased's lack of involvement with his grandchildren and the enduring relationship with his partner. The ruling was seen as reasonable and consistent with legal standards, prioritizing the partner's claim over the more tenuous claims from the daughter's estate.

This case underscores the importance of having a will and clearly outlining intentions for one's estate to avoid complex legal battles.

"Oh, yeah? Well, my dad's child support payments are bigger than your dad's."

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(g) **Logiciels complémentaires tiers**. Il se peut que vous ayez à fournir une licence pour un logiciel tiers afin d'utiliser certains de nos produits et services. Des conditions supplémentaires peuvent s'appliquer au logiciel tiers.

(h) **Limites**. Sauf avec l'autorisation expresse contraire mentionnée dans l'Accord, vous ne pouvez pas : (i) vendre, concéder en sous-licence, distribuer, afficher, stocker, copier, modifier, décompiler ou désassembler, manigancer, traduire ou transférer notre propriété en totalité ou en partie, ou en tant que composant de tout autre produit, service ou matériel ; (ii) utiliser notre propriété ou celle de nos fournisseurs tiers pour créer des œuvres dérivées ou des produits concurrents ; ou (iii) permettre à des tiers d'accéder, d'utiliser ou de bénéficier de notre propriété de quelque manière que ce soit. L'exercice des droits légaux qui ne peuvent être limités par un accord n'est pas exclu. Si vous fournissez des services de vérification, fiscaux, comptables ou juridiques à vos clients, cette Section 1 (h) ne vous empêche pas d'utiliser nos produits au bénéfice de vos clients dans le cours normal de vos activités. Sauf disposition expresse du présent Accord, nous conservons tous les droits et vous n'avez aucun droit sur nos produits, nos services et nos données.

(i) **Services**. Nous fournirons les services avec des compétences et des soins raisonnables. Les services professionnels applicables à votre commande, le cas échéant, sont décrits dans le document de commande ou un énoncé des travaux.

(j) **Sécurité**. Chacun de nous utilisera et exigera de tout processeur de données tiers d'utiliser les sauvegardes organisationnelles, administratives, physiques et techniques standard de l'industrie pour protéger les renseignements de l'autre partie. Chaque partie informera l'autre conformément à la loi applicable si cette partie a connaissance de l'accès non autorisé de tiers au contenu de l'autre partie et s'efforcera raisonnablement de remédier aux vulnérabilités de sécurité identifiées.

2. SERVICES DE RENSEIGNEMENTS

(a) **Licence**. Dans le cadre normal de votre activité et à des fins commerciales internes, vous pouvez uniquement visualiser, utiliser, télécharger et imprimer des données de nos services de renseignements à des fins individuelles et distribuer, de manière ponctuelle, irrégulière et ponctuelle, des extraits limités de nos données. De tels extraits et les données téléchargées, imprimées ou stockées ne peuvent atteindre une quantité telle qu'ils ont une valeur commerciale indépendante et l'utilisation de ces données comme substitut à tout service (ou partie substantielle) fourni par Thomson Reuters, nos filiales ou nos fournisseurs tiers est interdite. Thomson Reuters et le fournisseur de contenu tiers, le cas échéant, doivent être cités et crédités en tant que source d'utilisation ou de distribution des données. Les avis de droits d'auteur doivent être conservés sur les documents transmis ou imprimés. L'accès à certaines données peut être restreint en fonction de la portée de votre licence.

(b) **Distribution supplémentaire**. Vous pouvez également distribuer nos données : (i) aux utilisateurs autorisés ; (ii) au gouvernement et aux autorités de réglementation, sur demande spécifique ; et (iii) à des tiers conseillers, dans la mesure nécessaire, pour vous conseiller et à condition qu'ils ne soient pas concurrents de Thomson Reuters. Les lois applicables dans votre juridiction peuvent autoriser des utilisations supplémentaires.

3. LOGICIEL INSTALLÉ

(a) **Licence**. Vous pouvez installer et utiliser notre logiciel et notre documentation uniquement à des fins professionnelles internes. Les licences logicielles comprennent les mises à jour (correctifs de bogues, correctifs, versions de maintenance) et ne comprennent pas les mises à niveau (nouvelles versions ou versions qui comprennent de nouvelles fonctionnalités ou des fonctionnalités supplémentaires) ou les API, sauf mention expresse dans le bon de commande. Votre bon de commande détaille les installations autorisées, les utilisateurs, les emplacements, l'environnement d'exploitation spécifié et d'autres autorisations. Vous pouvez utiliser notre logiciel en code exécutable uniquement. Vous pouvez faire des copies nécessaires de notre logiciel uniquement à des fins de sauvegarde et d'archivage.

(b) **Livraison**. Nous livrons notre logiciel en le rendant disponible pour le téléchargement. Lorsque vous téléchargez notre logiciel et notre documentation, le cas échéant, vous les acceptez conformément à l'Accord.

4. LOGICIEL HÉBERGÉ DE THOMSON REUTERS

(a) **Licence**. Vous pouvez utiliser notre logiciel hébergé uniquement à des fins commerciales internes.

(b) **Livraison**. Nous livrons notre logiciel hébergé en vous fournissant un accès en ligne. Lorsque vous accédez à notre logiciel hébergé, vous acceptez de l'utiliser conformément à l'Accord.

(c) **Contenu**. Notre logiciel hébergé est conçu pour protéger le contenu que vous téléchargez. Vous autorisez Thomson Reuters à utiliser, stocker et traiter votre contenu conformément à la loi applicable. L'accès et l'utilisation de votre contenu par Thomson Reuters, nos employés et nos sous-traitants seront dirigés par vous et limités dans la mesure nécessaire pour fournir le logiciel hébergé, y compris la formation, l'assistance à la recherche, le soutien technique et d'autres services. Nous pouvons supprimer ou désactiver votre contenu si requis par les lois applicables et, dans de tels cas, nous déploierons des efforts raisonnables pour vous en informer. Si votre contenu est perdu ou endommagé, nous vous aiderons à restaurer le contenu du logiciel hébergé à partir de votre dernière copie de sauvegarde disponible.

5. FRAIS

(a) **Paiement et taxes**. Vous devez payer vos frais dans les 30 jours suivant la date de facturation dans la devise indiquée sur votre bon de commande. Si vous êtes un abonné non gouvernemental et que vous ne payez pas les frais qui vous sont facturés, vous êtes responsable des frais de recouvrement, y compris des honoraires d'avocat. Vous devez également payer les taxes et les droits applicables, autres que les taxes sur les revenus, en plus du prix indiqué, sauf si vous fournissez une preuve valide que vous êtes exempté. Les litiges relatifs aux factures doivent être notifiés dans les 15 jours à compter de la date de la facture.

(b) **Modifications**. Sauf indication contraire mentionnée dans le bon de commande, nous pouvons modifier les frais de nos produits et services à compter du début de chaque période de renouvellement en vous informant au moins 30 jours à l'avance.

(c) **Utilisation excessive**. Vous devez payer des frais supplémentaires si vous dépassez la portée d'utilisation spécifiée dans votre bon de commande, selon les tarifs qui y sont spécifiés ou nos tarifs standard actuels, selon le montant le plus élevé. Nous pouvons modifier les frais si vous fusionnez, acquérez ou êtes acquis par une autre entité, entraînant un accès supplémentaire à nos produits, à nos services et à nos données.

6. VIE PRIVÉE

Chacun de nous, à tout moment, traitera, protégera et divulguera les informations nominatives reçues à la suite du présent Accord (« Informations nominatives ») conformément à la loi applicable, et déploiera des efforts raisonnables pour s'entraider dans le cadre de l'enquête et du traitement de toute réclamation, de toute allégation, de toute action, de toute poursuite, de tout litige concernant la destruction, la perte, la modification, la divulgation ou l'accès non autorisés ou illicites aux Informations nominatives. Vous reconnaissez et acceptez le transfert et le traitement des Informations nominatives dans les régions géographiques nécessaires afin que Thomson Reuters remplisse nos obligations. S'il y a lieu, des conditions supplémentaires peuvent s'appliquer à l'Accord, y compris les conditions du Règlement général sur la protection des données (2016/679) (RGPD) disponibles au www.tr.com/privacy-information.

7. CONFIDENTIALITÉ

Les renseignements confidentiels reçus des parties ne seront divulgués à personne, sauf dans la mesure requise par la loi ou dans le cadre de l'Accord. Si un tribunal ou un organisme gouvernemental ordonne à l'une ou l'autre des parties de divulguer les renseignements confidentiels de l'autre, celle-ci sera rapidement avisée afin qu'une ordonnance de protection appropriée ou un autre recours puisse être obtenu, à moins que le tribunal ou l'organisme gouvernemental n'interdise l'avis préalable. Cette section doit être disponible pendant trois (3) ans après la résiliation de l'Accord ou jusqu'à ce que les renseignements ne soient plus considérés comme confidentiels en vertu de la loi applicable, selon la première éventualité.

8. GARANTIES ET EXCLUSION

LES GARANTIES DE CETTE SECTION SONT EXCLUSIVES AUX ÉTATS-UNIS ET EXCLUENT TOUTES LES AUTRES GARANTIES, CONDITIONS OU CLAUSES (EXPRESSES OU IMPLICITES), Y COMPRIS LES GARANTIES DE PERFORMANCE, DE QUALITÉ MARCHANDE, DE NON-VIOLATION, D'ADÉQUATION ET D'ACTUALITÉ. PAR LE PRÉSENT ACCORD, AUCUNE PARTIE NE S'EST FIÉE À LA DÉCLARATION, LA REPRÉSENTATION, LA GARANTIE OU L'ACCORD DE L'AUTRE PARTIE, SAUF CEUX QUI SONT EXPRESSÉMENT CONTENUS DANS LE PRÉSENT ACCORD.

(a) **EXCLUSION DES RESPONSABILITÉS. DANS TOUTE LA MESURE PERMISE PAR LES LOIS APPLICABLES, NOUS NE GARANTISSONS OU NE CONSTITUONS OU N'INCLUONS AUCUNE AUTRE CONDITION QUE LES PRODUITS OU SERVICES SERONT LIVRÉS EXEMPTS DE TOUTE INEXACTITUDE, DE TOUTE INTERRUPTION, DE TOUT RETARD, DE TOUTE OMISSION OU DE TOUTE ERREUR, OU QUE CEUX-CI SERONT CORRIGÉS. NOUS NE GARANTISSONS PAS LA VIE D'UNE URL OU D'UN SERVICE WEB TIERS.**

(b) **RENSEIGNEMENTS. NOS PRODUITS D'INFORMATION SONT FOURNIS « TELS QUELS » SANS AUCUNE GARANTIE, CONDITION OU CLAUSE D'AUCUNE SORTE.**

(c) **LOGICIEL. NOUS GARANTISSONS QUE NOS PRODUITS INFORMATIQUES SERONT CONFORMES À NOTRE DOCUMENTATION PENDANT 90 JOURS APRÈS LA LIVRAISON.**

(d) **EXCLUSION. VOUS ÊTES SEUL RESPONSABLE DE LA PRÉPARATION, DU CONTENU, DE L'EXACTITUDE ET DE L'EXAMEN DES DOCUMENTS, DES DONNÉES OU DES SORTIES PRÉPARÉS OU RÉSULTANT DE L'UTILISATION DE TOUT PRODUIT OU SERVICE, AINSI QUE DES DÉCISIONS OU DES ACTIONS PRISES EN FONCTION DES DONNÉES CONTENUES DANS OU GÉNÉRÉES PAR LES PRODUITS OU SERVICES. EN AUCUN CAS, NOUS OU NOS FOURNISSEURS TIERS NE POURRONS ÊTRE TENUS RESPONSABLES DES MONTANTS IMPOSÉS PAR TOUTE AUTORITÉ GOUVERNEMENTALE OU RÉGLEMENTAIRE.**

(e) **ABSENCE DE CONSEILS. NOUS N'OFFRONS PAS DE CONSEIL D'ORDRE FINANCIER, FISCAL, JURIDIQUE ET PROFESSIONNEL VOUS PERMETTANT D'ACCÉDER ET D'UTILISER NOS PRODUITS, NOS SERVICES ET NOS DONNÉES. VOS DÉCISIONS RELATIVES AUX PRODUITS OU SERVICES, OU À VOS INTERPRÉTATIONS DE NOS DONNÉES SONT DE VOTRE RESPONSABILITÉ.**

9. RESPONSABILITÉ

(a) **LIMITE. TOUTE RESPONSABILITÉ DES FOURNISSEURS OU DE SES TIERS, PENDANT TOUTE UNE ANNÉE CIVILE POUR LES DOMMAGES DÉCOULANT DE, OU RELIÉS À L'ACCORD, Y COMPRIS POUR NÉGLIGENCE, NE DÉPASSERA PAS LE MONTANT QUE VOUS AVEZ PAYÉ DANS LES 12 MOIS ANTÉRIEURS POUR LE PRODUIT OU SERVICE QUI EST LE SUJET DE LA RÉCLAMATION DE DOMMAGES. AUCUNE PARTIE NE SAURAIT ÊTRE TENUE RESPONSABLE DE DOMMAGES INDIRECTS, ACCIDENTELS, PUNITIFS, SPÉCIAUX OU CONSÉCUTIFS, OU DE PERTES DE DONNÉES ET DE BÉNÉFICES (DIRECTES OU INDIRECTES), MÊME SI CES DOMMAGES OU CES PERTES ONT ÉTÉ PRÉVUS OU PRÉVENUS.**

(b) **Responsabilité illimitée.** La Section 9 (a) ne limite pas la responsabilité de l'une ou l'autre partie pour (i) une fraude, une déclaration frauduleuse, une faute intentionnelle ou un comportement qui démontre un mépris inconsidéré des droits d'autrui ; (ii) la négligence causant la mort ou des blessures personnelles ; ou (iii) une violation des droits de propriété intellectuelle. La Section 9 (a) ne limite pas votre responsabilité en ce qui concerne la Section 9 (d) ou pour les demandes de remboursement découlant de cette section ; ou de payer les frais sur le bon de commande et tous les montants pour l'utilisation des produits et services qui dépassent les autorisations d'utilisation et les restrictions qui vous sont accordées.

(c) **Propriété intellectuelle de tiers**. Si un tiers vous poursuit en prétendant que nos produits, nos services ou nos données, excluant toute partie de ceux-ci fournit par nos fournisseurs tiers, enfreignent leurs droits de propriété intellectuelle et que votre utilisation de ces produits, de ces services ou de ces données se conforme aux conditions générales mentionnées dans l'Accord, nous vous défendrons contre la réclamation et les dommages-intérêts que le tribunal accorde finalement contre vous ou qui sont compris dans un règlement approuvé par Thomson Reuters, à condition que la réclamation ne résulte pas de : (i) une combinaison de tout ou d'une partie de nos produits, de nos services ou de nos données avec des technologies, des produits, des services ou des données qui ne sont pas fournis par Thomson Reuters ; (ii) la modification de tout ou d'une partie de nos produits, de nos services ou de nos données autrement que par Thomson Reuters ou nos sous-traitants ; (iii) l'utilisation d'une version de nos produits, de nos services ou de nos données, après que nous vous ayons informé d'une obligation d'utiliser une version ultérieure ; ou (iv) votre violation de cet Accord. Par notre obligation dans cette Section 9 (c), vous êtes conditionné (A) d'aviser rapidement Thomson Reuters par écrit de la réclamation ; (B) de fournir les renseignements que nous demandons raisonnablement ; et (C) d'autoriser Thomson Reuters à contrôler la défense et le règlement.

(d) **Vos responsabilités**. Vous êtes responsable (i) de vous conformer à cet Accord ; (ii) d'utiliser correctement nos produits et services conformément à toutes les instructions d'utilisation ; (iii) de respecter les exigences techniques minimales recommandées ; (iv) des modifications que vous apportez à nos produits, à nos services ou à nos données ; (v) de votre combinaison de nos produits, de nos services ou d'autres biens avec tout autre matériel ; (vi) de mettre en place et de maintenir une protection adéquate et appropriée contre les virus ou les logiciels malveillants et des systèmes de sauvegarde et de récupération appropriés et adéquats ; (vii) d'installer les mises à jour ; (viii) des réclamations présentées par des tiers en utilisant ou en recevant le bénéfice de nos produits, de nos services ou de nos données par vous, sauf les réclamations couvertes par la Section 9 (c) ; et (ix) des réclamations résultant de votre violation de la loi ou de la violation de nos droits ou de ceux de tiers. Vous devez nous rembourser les pertes que nous subissons en raison de votre non-respect de ces responsabilités ou autrement en lien avec ces responsabilités. Nous ne serons pas responsables du non-fonctionnement de notre produit en raison de votre logiciel tiers, de votre dysfonctionnement matériel, de vos actions ou de votre inaction. Si nous apprenons que notre produit a mal fonctionné en raison de l'un de ces problèmes, nous nous réservons le droit de vous facturer notre travail d'enquête sur la défaillance. À votre demande, nous vous aiderons à résoudre le problème moyennant des frais à convenir.

10. DURÉE, RÉSILIATION

(a) **Durée**. Les conditions de renouvellement des produits et des services sont décrites dans votre bon de commande. Sauf indication contraire mentionnée dans le bon de commande, l'Accord sera automatiquement renouvelé annuellement, sauf si l'un d'entre nous donne un préavis écrit d'au moins 60 jours à l'autre partie avant la fin de la période en cours.

(b) **Suspension**. Nous pouvons, sur préavis, résilier, suspendre ou limiter votre utilisation de tout ou d'une partie de nos produits, de nos services ou d'autres biens si (i) vous êtes invité à le faire par un fournisseur tiers, un tribunal ou un organisme de réglementation ; (ii) vous devenez ou êtes raisonnablement susceptible de devenir insolvable ou affilié à l'un de nos concurrents ; ou (iii) s'il y a eu ou qu'il est raisonnablement probable qu'il y aura : une violation de la sécurité ; un manquement à vos obligations en vertu de l'Accord ou d'un autre accord entre nous ; une violation de notre Accord avec un fournisseur tiers ; ou une violation des droits de tiers ou des lois applicables. Notre avis précisera la cause de la résiliation, de la suspension ou de la limitation et, si la cause de la suspension ou de la limitation de la résiliation est raisonnablement susceptible d'être corrigée, nous vous informerons des mesures que vous devez prendre pour rétablir le produit ou le service. Si vous ne prenez pas les mesures ou si la cause ne peut être résolue dans les 30 jours, nous pouvons suspendre, limiter ou résilier l'Accord en totalité ou en partie. Les frais demeurent payables en totalité pendant les périodes de suspension ou de limitation découlant de votre action ou inaction.

(c) **Résiliation**. Nous pouvons résilier tout ou une partie de l'Accord en lien avec un produit ou un service en cours de suppression. Chacun de nous peut résilier l'Accord immédiatement après un avis écrit si l'autre commet un acte de violation substantielle et ne parvient pas à remédier à la violation matérielle dans les 30 jours suivant son avis. Tout défaut de paiement d'un montant lorsqu'il est dû selon le présent Accord constitue une violation substantielle à cet effet.

(d) **Effet de la résiliation**. Sauf dans la mesure où nous en avons convenu autrement, à la résiliation, tous vos droits d'utilisation se terminent immédiatement et chacun de nous doit désinstaller ou détruire toutes les propriétés de l'autre et, sur demande, le confirmer par écrit. La résiliation de l'Accord (i) ne vous décharge pas de votre obligation de payer à Thomson Reuters les montants que vous devez, y compris

la date de résiliation ; (ii) ne touche pas d'autres droits et obligations accumulés ; ou (iii) ne résilie pas les parties de l'Accord qui, par leur nature, devraient continuer.

(e) **Modifications.** Nous pouvons modifier les présentes conditions générales de temps à autre en vous informant par écrit au moins 30 jours à l'avance. Vous pouvez demander des négociations de bonne foi concernant les conditions modifiées. Si les parties ne parviennent pas à un accord mutuel sur les conditions modifiées dans les 30 jours, vous pouvez résilier l'accord immédiatement après l'avis écrit.

11. FORCE MAJEURE

Nous ne sommes pas responsables des dommages ou des manquements à nos obligations en vertu de l'Accord en raison de circonstances indépendantes de notre volonté. Si ces circonstances entraînent des défaillances matérielles dans les produits ou les services et se poursuivent pendant plus de 30 jours, l'un ou l'autre de nous peut résilier tout produit ou tout service concerné sur avis à l'autre.

12. DROITS DES TIERCES PARTIES

Nos sociétés affiliées et nos fournisseurs tiers bénéficient de nos droits et de nos recours en vertu de l'Accord. Aucun tiers ne dispose de droits ou de recours en vertu de l'Accord.

13. GÉNÉRAL

(a) **Affectation**. Vous ne pouvez pas affecter, déléguer ou transférer l'Accord (y compris vos droits ou vos recours) à quiconque sans notre consentement écrit préalable. Nous pouvons céder ou transférer l'Accord (y compris l'un de nos droits ou recours) en totalité ou en partie à une société affiliée ou à toute entité qui succède à la totalité ou à la quasi-totalité des actifs ou des activités associées à un ou plusieurs produits ou services, et nous vous informerons de toute affectation ou de tout transfert. Nous pouvons donner en sous-traitance l'un des services à notre seule discrétion. Toute affectation, toute délégation ou tout autre transfert en violation de la présente Section 13 (a) est nul.

(b) **Commentaires**. Vous accordez à Thomson Reuters un droit perpétuel, irrévocable, transférable et non exclusif d'utiliser tous les commentaires, toutes les suggestions, toutes les idées ou toutes les recommandations que vous fournissez relativement à l'un de nos produits ou services de quelque manière et à quelque fin que ce soit.

(c) **Conformité à l'Accord**. Nos représentants professionnels ou nous-mêmes pouvons examiner votre conformité à l'accord pendant toute la durée de l'Accord. Si l'examen révèle que vous avez dépassé l'utilisation autorisée permise par l'Accord, vous paierez tous les frais impayés ou sous-payés.

(d) **Droit applicable**. Sauf indication contraire mentionnée dans le bon de commande, l'Accord sera régi par les lois de la province de l'Ontario et les lois fédérales du Canada qui s'y appliquent, et chacun de nous se soumet irrévocablement à la compétence exclusive des tribunaux de la province de l'Ontario et tous les tribunaux compétents pour entendre les appels contre ceux-ci et régler tous les litiges ou réclamations découlant de ou relié à l'Accord.

(e) **Préséance**. L'ordre de préséance décroissant est le suivant : termes de licence tiers contenus dans la Section 1 (f) de ces conditions ; le bon de commande applicable ; et les autres dispositions de l'Accord.

(f) **Essais.** Tous les essais de nos produits et services sont soumis aux présentes conditions générales, sauf avis contraire de notre part. L'accès à nos produits et services pour les essais ne peut être utilisé qu'à des fins d'évaluation.

(g) **Soutien fourni.** Pour aider à résoudre les problèmes techniques liés aux services, Thomson Reuters peut fournir un accès téléphonique ou en ligne à son service d'assistance, ou fournir des outils d'auto-assistance. Des renseignements supplémentaires sur le soutien fourni par Thomson Reuters sont disponibles au http://thomsonreuters.com/support-and-training ou comme prévu par Thomson Reuters.