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STEP Inside

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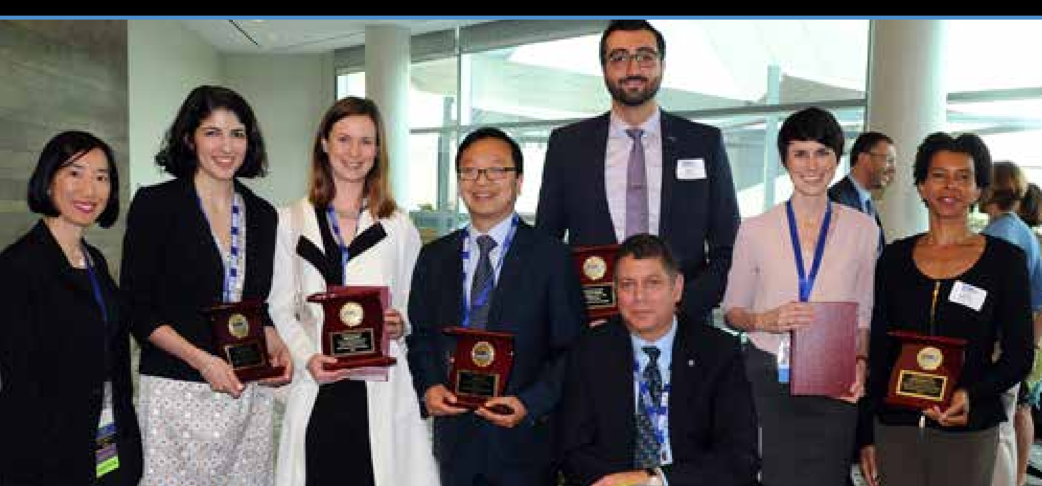

STEP Inside

STEP Inside is published three times a year by the Society of Trust and Estate Practitioners (Canada), an organization of individuals from the legal, accounting, corporate trust and related professions who are involved, at a specialist level, with the planning, creation, management of and accounting for trusts and estates, executorship administration and related taxes. STEP Canada has branches in the Atlantic region, Montreal, Ottawa, Toronto, Winnipeg, Edmonton, Calgary, and Vancouver; and three chapters in London and Southwestern Ontario, the Okanagan Valley, and Saskatchewan.

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An Overview of STEP Canada's 19th Annual National Conference

We are not sure what superhuman powers the Conference Committee members tap into to make the STEP Canada national conference better every year, but they did it again in 2017. You know that you have a save-the-date conference when you reach the maximum number of both sponsors and exhibitors, and when the Monday night social event is a sell-out weeks in advance. As one attendee succinctly put it: "the best conference going."

Seventy-one excellent public speakers enlightened an astounding 724 conference goers. We broke our own attendance record, again. As in the last six years, attendance at our conference was the highest of any STEP conference anywhere in the world. Every presentation left the attendees feeling satisfied and at times somewhat terrified – a truly enjoyable experience!

Tax intellectuals challenged themselves in sessions like New Rules Regarding the Small Business Deduction (Keung/Pryor) and Practitioners' Update: Tax (Brown). One observation was overheard more than once: if section 55 of the *Income Tax Act* makes Catherine Brown nauseous, it is far too complicated for the rest of humanity.

Deep thinkers in trust law were able to

- update their knowledge in the always-reliable Practitioners' Update: Trust and Estate Law (Matthews/Michelin), in which attendees came to realize that Quebec has fascinating estates law cases and joint ownership is still a minefield;
- discover ways in which trusts affect the family businesses into which they are commonly dropped in Non-Tax Benefits and Challenges of Trusts in a Family Enterprise (Hoffstein/Radu/Shannon); and
- seek the guidance of trust gurus in Discretionary Trusts: Practical Concerns (O'Sullivan/Bonora/Waters – yes, Donovan Waters, author of *Waters' Law of Trusts in Canada*).

There was something to interest all tax enthusiasts in Taxation of Trusts and Their Beneficiaries: Rarer Tips and Traps (Chow/Ross/Roth), and those who like to terrify themselves found Risk Management Issues in Estate and Trust Administration (Fensom/Grozinger/Nicolini) particularly stimulating.

These are only a few of the many, many conference highlights; each one of the 21 conference sessions was exciting, informative, and highly praised by those who attended it.

In between the sessions, there were spectacular networking opportunities and other encounters leading to personal and professional growth. Monday's lunch included End-of-Life Care in Canada: A New Reality, a presentation by Dr. Jeff Blackmer that covered a challenging topic of interest to everyone in the room.

At Tuesday's lunch, well-deserved praise was heaped on some of the many volunteers who make STEP Canada the vibrant organization that it is today. The Michael Cadesky Volunteer of the Year Award was presented to Tim Grieve.

Congratulations to the Conference Committee, co-chaired by Christine Van Cauwenberghe and Brian Cohen, for another incredible national conference. All of your hard work paid off, and 724 attendees were delighted to reap the benefits!

The following are some comments shared with us by conference goers:

- "The conference is always an impressive congregation of the brightest tax minds; it offers an unsurpassed sharing of knowledge and ideas."
- "This is the one conference that I attend every year. It provides me with great technical content."
- "I enjoyed everything – very well organized with top-quality information."
- "Excellent content and speakers with fabulous networking opportunities."
- "The conference was extremely well organized, especially given the large attendance. The most troubling aspect was choosing which concurrent session to attend since they were all so great."

Regardless of the estate or trust issue that may be challenging you at the moment, you are bound to find a paper or slide from this conference to shed light on it.

Save the dates for next year's conference – May 28 and 29, 2018 – to be held once again at the Metro Toronto Convention Centre. ■

Trusts in a Family Enterprise: The Non-Tax Benefits and Challenges

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Specialists are trained to introduce trusts into a family enterprise in the context of a specific transaction – an estate freeze, for example. However, traditional approaches to inter vivos and testamentary trusts in family enterprise structures can lead to unfortunate and unintended consequences. A transactional tax-focused approach to trust planning can result in various non-tax considerations being left unaddressed, and governance and education opportunities being overlooked. This article focuses on two commonly overlooked non-tax considerations: (1) conflicts of interest, and (2) business/ownership governance. Non-tax opportunities for advisers in the context of multigenerational family trusts are also discussed.

Conflict of Interests

Family business succession structures often include trusts, either holding common shares on an estate freeze or holding freeze shares after the death of the freezor in a spousal trust or a trust for the next generation(s). Often, there are overlapping trustees and directors. Conflicts inevitably arise (especially when there are blended families) and, if not addressed from the outset, can give rise to costly and acrimonious litigation. The potential for conflict can stem from the differences between trust law and corporate law and can involve business decisions to expand the business by reinvesting profits; decisions regarding the form of distributions; and trust decisions involving investments, having regard to the differing interests of successive beneficiaries and the intention of the settlor.

How do trustees exercise their powers as shareholders? How do they make decisions as directors, keeping the interests of the business in mind but also being alert to the needs of the recipients of corporate distributions? Many of these potential conflict situations can be avoided, or at least reduced, with a clear plan, guidelines with respect to what to take into consideration in making decisions at various levels, and a shareholders' agreement and other conflict resolution and governance mechanisms. It is important that professionals canvass these matters with their clients before incorporating these structures into a family enterprise; it is also important that professionals guard against getting into conflict-of-interest situations themselves. It is so easy in family settings to lose sight of who the client actually is.

Governance

Governance issues must be properly addressed to alleviate many of the problems that arise in common estate freeze structures involving trusts that own shares of a family business. Board members need direction and education to properly oversee the growth of the business and to ensure proper succession. Although a legal board of directors will exist, often this board may not be capable of addressing issues such as succession, strategy, valuation, and the possible sale of the business. Directors need to make informed decisions to be principled stewards of family wealth. Directors and officers of operating and holding companies (and trustees of trusts) need to have an in-depth understanding of their duties and obligations under the applicable legislation, and they need to understand and comply with their fiduciary duties. Early on, members of the next generation should be prepared for their eventual assumption of key roles (such as directors, officers, and trustees) through the introduction of independent board members or advisory board members for the family business.

The core duties of directors and officers are outlined in section 122(1) of the Canada Business Corporations Act, and in similar legislation enacted in the provinces and territories, in which it is stated that every director or officer of a corporation in exercising his or her powers and discharging his or her duties shall

a. act honestly and in good faith with the view to the best interests of the corporation; and
b. exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Directors are also required to comply with applicable statutes, regulations, articles, bylaws, and unanimous shareholders' agreements (USAs) and should discharge their duties in accordance with statutory and common law, which includes the concepts of the duty of care and the duty of loyalty.

Directors depend on information from management to make informed decisions. The use of experts is key to support management's information in some cases, and directors need to test and question the information that they receive on a regular basis. Directors' decisions do not have to be perfect, and, if directors have discharged their duties, simple errors in judgment will not lead to liability. This concept is known as the "business judgment rule." Courts have long been wary of substituting their own business determinations for those of directors. The clearly articulated judicial view is that boards of directors are in a far better position than the courts to make informed business decisions. The courts have focused on process: did the board spend the appropriate time and resources in examining, deliberating, and coming to a reasonable conclusion on the issue? (See Peoples Department Stores Inc. (Trustee of) v. Wise, [2004] 3 SCR 461.) In summary, the business judgment rule accords deference to decisions made by directors, as long as the decisions lie within a range of reasonable alternatives and the directors followed proper process by acting prudently and on a reasonably informed basis.

Advisory boards and independent directors should be considered in the family business context. Basic governance skills, including an understanding of financial statements and financial literacy, is critical. A board charter with terms of reference for directors (including the board chair) and possibly an audit committee charter are often warranted. A conflicts-of-interest policy, a standard code of ethics, and a privacy policy should also be adopted to provide guidelines for directors.

It is important to have an advanced USA (or next generation USA) in place for the intended beneficiaries of the shares of an operating or holding company and to educate next-generation shareholders on the purpose and key elements of an advanced USA. It is also important to have an independent board and external advisers (or an advisory board). A thorough understanding of the responsibilities, requirements, and obligations of all generations is crucial to family governance, and all of this can be addressed in an advanced USA. A family governance charter may also be advisable to promote family harmony in dealing with the succession issues that will inevitably arise.

> Board members need direction and education to properly oversee the growth of the business and to ensure proper succession.

Trust Opportunities: Beyond the Usual

The saying "plans that affect us, but do not involve us, are not for us" reflects the fact that problems arise when family members are not included in discussions about business succession and governance. When structures are put in place in the absence of consultation with the next generations, families miss the opportunity of incorporating interesting and new ideas. In more extreme situations, poor communication can also lead to false assumptions, resentment, conflict, and in some cases prolonged and expensive litigation.

In the context of family business governance, the introduction of advisory or fiduciary boards, family meetings, and ownership councils can seem overwhelming. Further, there are many wealthy families that do not own a family business; perhaps the business has been sold and the proceeds invested in family enterprise assets, such as vacation homes, rental properties, investment portfolios, and art and other collections. In these circumstances, a family trust can provide a context and structure in which to introduce the family to governance concepts. For example, a trust advisory committee (similar conceptually to a non-fiduciary advisory board) can develop an educational framework that could include the following topics: beneficiary rights and obligations, working with professionals, making investments, and basic financial literacy at age-appropriate levels. The advisory committee may also support the lay trustees (often the parents) in reinforcing family values (through philanthropic initiatives, for example) and explaining why certain policies are reflected in the trust deed (such as a requirement to have a cohabitation or prenuptial agreement to be eligible to receive trust distributions). ■

Taxation of Trusts and Their Beneficiaries: Rarer Tips and Traps

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Providing income tax advice about trusts is becoming more and more complicated. This article contains highlights of a discussion that took place at the concurrent session of STEP Canada's 19th national conference chaired by Brian Cohen. After the conference, on July 18, 2017, the federal government proposed significant changes to the *Income Tax Act*, which for obvious reasons were not covered in the presentation and have not been addressed in this article.

For more detailed information, interested readers should refer to the notes contained in the power point presentation and the accompanying paper by Grace Chow for the donation and non-resident trust discussions, which were provided to attendees of the conference.

Six topics were covered in the presentation and are summarized below in the order presented.

Taxation of Personal Trust Income

Because most personal trusts are now subject to income tax at the highest marginal rate applicable to individuals, planning to minimize tax may mean ensuring that the income of the trust is taxed in the hands of the beneficiaries. If income is not actually paid to the beneficiaries before the end of the taxation year, it is important to ensure that the income is legally payable so that the amount is included in the income of the beneficiaries under subsection 104(13) and deductible by the trust from its income under subsection 104(6). The Canada Revenue Agency (CRA) has provided guidelines concerning when it considers income to have been made legally payable before the end of the trust's taxation year. Best practices are as follows:

> Charitable giving is a good planning tool to mitigate the taxes payable by a deceased person and his or her estate.

- Before the end of the year, the trustees should make a decision about income distribution and generate written evidence of their decision – for example, by way of a trustee resolution. The decision should be irrevocable and without condition; the amount distributed to each beneficiary must also be established, whether as a dollar amount or a percentage of the income. It is acceptable that the actual dollar amount is determined after the end of the year because of information not available before the end of the year.
- Written notice of the decision should be provided to each beneficiary (or to the guardian if the beneficiary is a minor).
- If the amount is not actually paid once it is known (shortly after the year-end), a written demand promissory note should be delivered to the beneficiaries once the amount is known.

When dealing with life income trusts (spousal or common-law partner trusts, alter ego trusts, and joint partner trusts), depending on the terms of the trust, all of the income for tax purposes may not be automatically payable to the life interest beneficiary before the end of the year. The requirement in the Act that the life interest beneficiary must be entitled to all of the income of the trust refers to income for trust law purposes, not income for tax purposes. Most life interest trusts do not contain terms varying the requirement in the Act. Income for trust law purposes does not include items such as capital gains, stock dividends and stated capital increases. If the intent is to tax all of the trust's taxable income in the hands of the life interest beneficiary, the steps noted above may need to be taken for a portion of the taxable income.

Treatment of Donations Made by Estates

Charitable giving is a good planning tool to mitigate the taxes payable by a deceased person and his or her estate.

For deaths occurring after 2015, new rules apply to allow more flexibility in claiming the donation credits. When the new rules were introduced, they were available only for donations made by a graduated rate estate (GRE), which by definition has a 36-month limit. The government has extended the time limit for making donations to 60 months for an estate that otherwise meets all of the conditions of being a GRE. This allows more time for an estate to make the donations and be eligible for the flexibility in using the donation credits. There are, however, additional limitations in claiming the credits if the donation is made after 36 months. The donations can still be claimed by the deceased in the year of death and the immediately preceding year and by the estate in the year that the donations were made and the five following years. If the donations were to be carried back to be claimed by the estate in a preceding year, they can be claimed by the estate only for the years in which the estate was a GRE (within the 36-month period).

Loss-Restriction Events: What Are They and How Do They Apply to Trusts?

The loss-restriction event (LRE) rules in the Act, which restrict a corporation's ability to trade in tax attributes with arm's-length persons, were extended to trusts in the 2013 federal budget. The rules apply as a result of a change in the beneficiaries of a trust rather than a change in the trust's controlling trustees; an LRE occurs when a person becomes a "majority-interest beneficiary" of the trust, or a group of persons becomes a "majority-interest group of beneficiaries." The consequences of an LRE occurring include a deemed year-end for the trust, and a restriction against using non-capital losses from property sources or capital losses incurred by the trust following the LRE, or carrying back non-capital losses from property sources or capital losses incurred by the trust following the LRE to a prior period. After an LRE, a trust can carry forward or back non-capital losses from a business carried on by the trust only if the trust carried on the same business before and after the LRE for profit or with a reasonable expectation of profit, and only to the extent of the trust's income from the same or a similar business carried on by the trust. The adjusted cost base of property held by a trust that is greater than its fair market value (FMV) at the time of the LRE is reduced to FMV, and the amount of the writedown is deemed to be a capital loss in the trust's taxation year ending at the time of the LRE. However, the trust can elect to be deemed to dispose of any capital property with a FMV that is higher than its tax cost to step up the tax cost of the properties and to use expiring losses.

The application of the LRE rules to discretionary trusts is unclear; while a discretionary beneficiary is deemed to be a majority-interest beneficiary in determining whether a person and a trust are affiliated (paragraph 251.1(4)(d)), this deeming rule does not apply for the purposes of the Act, or specifically for the purposes of the LRE rules in section 251.2. The policy underlying the rules appears to have been intended to prevent the acquisition of specified investment flowthrough trusts with accrued losses by corporations, a policy concern that does not apply to discretionary family trusts. If the deeming rule in paragraph 251.1(4)(d) applies for the purposes of the LRE rules, anomalous results could arise; for example, a family trust held for the benefit of the issue of the settlor could be considered to have an LRE every time a new beneficiary is born.

There are numerous other instances in which the LRE rules may apply in anomalous or unexpected circumstances in the context of trusts. For example, the trust instrument may be unclear whether the trustees are permitted to pay or make payable any income of the trust for the taxation year ending on the LRE for the purposes of paragraph 104(6)(b); it may therefore be uncertain whether income of the trust for the taxation year ending on an LRE is taxable in the hands of the trust or the beneficiaries. The exercise of discretion by a trustee to add a charity or more distant relative of a beneficiary could result in a change in majority-interest beneficiaries and thereby result in an LRE. Similarly, an LRE may occur when a person becomes a beneficiary of the trust by virtue of marriage or as a result of changes in the FMV of property owned by the trust that fluctuates regularly, because the majority-interest beneficiary definition is based on the FMV of trust interests. In addition, a change in the shareholder of a corporate beneficiary can give rise to an LRE to the trust when the beneficiary becomes a subsidiary of an unaffiliated person, even though the corporate beneficiary remains the same, by virtue of an indirect transfer rule in paragraph 251.2(4)(a).

> … an LRE may occur when a person becomes a beneficiary of the trust by virtue of marriage or as a result of changes in the FMV of property owned by the trust that fluctuates regularly, because the majority-interest beneficiary definition is based on the FMV of trust interests.

Planning for the 21-Year Rule with Non-Resident Beneficiaries

Planning for the deemed disposition of trust property on its 21st anniversary may be getting more complicated when non-resident beneficiaries are involved. Because of subsection 107(5), which denies the tax-deferred rollover of most property to a non-resident beneficiary, over the years strategies had been developed, including the following:

- making the distribution to a Canadian corporation owned by the non-resident beneficiary,
- making the distribution to a Canadian corporation owned by a new Canadian trust (the so-called 42-year plan), and
- vesting all interests in the trust indefeasibly.

Each of these options presented complications and hurdles in ensuring that the tax-deferred rollover rule in subsection 107(2) would apply (for the first two strategies) and in ensuring that the trust was not a "trust" as defined in subsection 108(1) for the purposes of the 21-year deemed disposition rule (for the third strategy).

At the 2016 Canadian Tax Foundation (CTF) round table, the CRA announced that it would apply the general anti-avoidance rule to the second strategy on the basis that the continued holding of the original trust property in a new trust structure defeated the purpose of subsection 104(5.8). This position was confirmed at the conference round table in June 2017. In its verbal response at the 2016 CTF round table, the CRA also indicated that it might have concerns with the first strategy, although this position was not articulated in the CRA's written response.

Without the first two strategies, there may be few choices left when planning for non-resident beneficiaries. If the third strategy is not available (if, for example, the conditions in the trust definition in subsection 108(1) cannot be met, including circumstances in which the non-residents' interests in the trust are greater than 20 percent), non-tax-planning strategies may need to be considered – for example, excluding the non-resident beneficiary from the trust distribution while compensating him or her with other family assets. This kind of planning will not be feasible in all situations

Anomalies in the Application of the Non-Resident Trust Rules

A factually non-resident trust is deemed to be a resident of Canada if the trust has a resident contributor or a resident beneficiary at the trust's year-end. It is not uncommon for someone moving to Canada to have pre-existing non-resident trust structures. The expectation is that these non-resident trusts may become deemed-resident trusts when the person moves to Canada. However, the date when a trust is deemed to be a resident may surprisingly occur well before a person becomes resident in Canada. If a non-resident trust has no beneficiary who is resident in Canada, the deemed-residence start date is January 1 of the year of the move, which could precede the person's actual arrival in Canada. If a non-resident trust has beneficiaries who are resident in Canada and a contribution is made within five years of the contributor moving to Canada, the deemed-residence start date is January 1 of the year in which the contribution is made. This could occur years before a person became resident in Canada. Careful planning will be required to avoid nasty results.

Taxation of the Disposition of an Income or Capital Interest in a Trust

The adjusted cost base of a beneficiary's capital interest in a trust is generally deemed to be equal to the greater of (1) the adjusted cost base otherwise determined for the purposes of the Act, which is typically nil, unless there has been a step-up in basis as a result of an LRE or on immigration or emigration; and (2) the cost amount of the interest, which is equal to the beneficiary's proportionate share of the tax cost to the trust of its property plus any money on hand, minus the liabilities of the trust. The disposition of a capital interest to a third party therefore results in a capital gain when the proceeds of disposition exceed the greater of the beneficiary's proportionate share of the cost amount to the trust of its assets and the beneficiary's adjusted cost base of the capital interest. If the capital interest is disposed of to a non-arm's-length person, the beneficiary is deemed to receive proceeds of disposition equal to FMV.

On the disposition of an income interest, the beneficiary is required to include the proceeds of disposition in computing income and may deduct the cost of the interest. The cost of an income interest is deemed to be nil, unless it is acquired from a person who was the beneficiary immediately before the acquisition of the interest, or the cost of the interest was increased on the emigration or immigration of the beneficiary. When the income interest is disposed of to the trust, the trust is deemed to have disposed of the property distributed to the income beneficiary for proceeds equal to its FMV, and the beneficiary is deemed to acquire the property at a cost equal to FMV but is not required to include the FMV of the property received from the trust as proceeds of disposition of the income interest. ■

Department of Finance Proposals Will Have Monumental Impact on Trust and Estate Planning

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As most most practitioners are now aware, the proposed tax changes and consultation paper released by the Department of Finance on July 18, 2017 will fundamentally affect almost all tax-planning structures for private enterprises. These changes will demand a complete rethink of current strategies. Broadly speaking, the amendments cover four main areas: (1) the expansion of the kiddie tax rules to apply to related adults under the new tax on split income (TOSI) regime; (2) the denial of the lifetime capital gains exemption (LCGE) for TOSI capital gains, gains accrued in the hands of a trust (with limited exceptions), and gains accrued in the hands of a minor; (3) the denial of capital gains treatment on corporate distributions; and (4) an increase in the tax rate on corporate passive income by 30.7 percent. These proposed measures are broad and extremely complicated, and this article attempts to demonstrate the ways in which they will change trust and estate planning in Canada.

Inter Vivos Trust and Estate Planning

A cornerstone of estate freeze and inter vivos trust planning is the ability to get income (dividend income in most cases) and capital gains into the hands of family members in lower tax brackets. This planning technique will be significantly hampered by the proposed changes. Generally speaking, the new TOSI regime will apply whenever a business has two or more related individuals who own 10 percent or more (or who are connected to the business as determined by a myriad of criteria). Income or capital gains earned by these individuals from the business will be subject to the top marginal tax rate (over 50 percent in some provinces) without the benefit of basic personal credits, unless the income or gains do not exceed a "reasonable" amount that would be paid by an arm's length business to the individual. The determination of what is considered to be reasonable takes into account the functions performed, the assets contributed, the risks assumed, and the historical remuneration of each individual in respect of the business. This determination is burdensome and subjective because these factors are often intertwined and conflicting in a family business context. If the Canada Revenue Agency (CRA) challenges the reasonableness of income or gains, the taxpayer will have the burden of disproving the CRA's assertion, most likely years after the fact.

Existing structures in which non-active spouses and children (adults or minors) hold shares in an underlying business (either directly or through family trusts) will generally no longer be effective in achieving tax minimization through income and capital gains splitting. Although the proposals are purportedly aimed at "high-income" individuals, small business owners and estates are equally affected. For example, an Alberta couple who each earn $35,000 of non-eligible dividends from their private corporation currently pay approximately $2,200 of combined personal tax. Under the proposed rules, the family's personal tax burden would increase to approximately $10,500, an almost five-fold increase in personal tax, if the dividend paid to one of the spouses is found to be unreasonable.

A common tax objective of holding private businesses in family trust structures is the multiplication of the LCGE through dispositions of qualified small business corporation shares and qualifying farm or fishing property. The proposals will almost completely eliminate this strategy because any capital gains that are not considered

> The proposals also introduce a new anti-avoidance regime that broadly targets a "significant reduction or disappearance" of corporate assets when one of the purposes is to reduce the tax payable by an individual shareholder.

to be reasonable or that are accrued in the hands of minors or most trusts will become ineligible for the LCGE.

Because the proposed TOSI regime and the LCGE restriction will be effective for 2018 and subsequent years, 2017 represents a last chance for income and capital gains sprinkling among inactive family members. There are transitional provisions available for claiming the LCGE under existing rules during 2018: deemed disposition for adults and actual arm's-length dispositions for minors. It is proposed that the LCGE criteria be amended to shorten the 24-month requirements to 12-months to make the 2018 transitional relief more widely available. However, any purification or reorganization necessary to take advantage of this relief must generally be accomplished before the end of 2017 since the subject shares must be owned continuously from the end of 2017. Therefore, any planning necessary to take advantage of the transitional relief cannot be delayed. This puts taxpayers and their advisers in a precarious position: should they be proactively planning to deal with proposals that may or may not become law? If these rules are to be enacted, practitioners hope that the Department of Finance will provide more time for planning.

In the case of 2018 deemed dispositions, a proper valuation must be carried out because significant penalties will apply for designating an amount of proceeds that is 10 percent higher than the fair market value determined by the CRA. Beyond the 2018 election, since the portion of gains accrued in the hands of minors and trusts must be carved out when determining entitlement to the LCGE, a valuation may need to be obtained whenever a minor shareholder turns 18 or a trust or estate distributes private corporation shares to a beneficiary, adding significant costs and complexity.

The fundamental reasons for undertaking estate freezes and establishing inter vivos trusts (for example, freezing value subject to tax on death, passing future growth to the next generation, and maintaining control over family assets) remain valid. However, the proposals remove many of the tax advantages that arise under the current rules.

Post Mortem Trust and Estate Planning

Several of the proposed measures have a much broader application than the Department of Finance's consultation paper suggests. There are provisions that apply retroactively (as far back as 1985 in some cases) and affect everyday transactions, such as tax-deferred rollovers of shares of private corporations.

In particular, subtle changes have been proposed that will prevent taxpayers from extracting tax-paid basis in private corporation shares. In a standard rollover situation, promissory notes can be issued as consideration up to the amount of the tax-paid cost base. This underlying concept is employed in the estate-planning context as the pipeline strategy. This planning has been endorsed by the CRA and used for years to avoid double taxation when a taxpayer dies owning private corporation shares. This strategy attempts to limit tax on the value of the corporation to the capital gain realized on the death of the shareholder (which is taxed at the rate of up to 27 percent in some provinces and territories). However, the proposals eliminate this planning tool. What is left for post mortem planning? If the estate is able to meet the very stringent timeline and limitations of the subsection 164(6) strategy, dividend tax treatment of up to 46.97 percent can be achieved. When it is not possible to use subsection 164(6) (for example, when an estate is close to or beyond its first tax year on July 18), double taxation will arise. Hopefully, Finance will relax the requirements of subsection 164(6) and grandfather existing estates.

The proposals also introduce a new anti-avoidance regime that broadly targets a "significant reduction or disappearance" of corporate assets when one of the purposes is to reduce the tax payable by an individual shareholder. If applicable, the capital dividend account balance of the corporation will be deemed to be reduced before the payment of the capital dividend, and the amount received or receivable by the shareholder will be deemed to be a taxable dividend.

The capital dividend account is a very useful tool in minimizing tax in an estate that owns private corporation shares. Effective estate planning has been used to maximize the inheritance of beneficiaries and the funds available for donation. However, a strict textual interpretation of the application criteria for these anti-avoidance provisions suggests that they may even deny the addition of death benefits from corporate-owned life insurance policies to the capital dividend account. This would make life insurance funds taxable to estates at a rate as high as 46.97 percent, and in some cases leave the estate and beneficiaries with slightly more than half of what they had expected. It is not unreasonable to anticipate that such a seismic shift in the estate-planning landscape could render some estates illiquid and cause severe financial hardship for others and their beneficiaries. Finance will hopefully provide clarification on how this new anti-avoidance rule will apply in practice.

Conclusion

With the October 2, 2017 consultation deadline now past, the Department of Finance issued a Press Release on October 3rd stating that it has "listened to small business owners, professionals and experts during the consultation on tax planning using private corporations, and will act on what it has heard." Over 21,000 submissions have been submitted to Finance, and now we will have to wait and see what, if any, changes they are willing to make to these proposals. At the same time, advisers need to review their clients' structures to help them understand the potential implication of these proposals, and consider implementing any proactive planning that is required to allow them to sprinkle income and capital gains in 2017, and to avail themselves of the 2018 transitional relief provisions. Unfortunately, the proposed measures, together with recent tax changes to the small business deduction and subsection 55(2), will add significant costs and complexity for business owners and may produce devastating effects for estates and beneficiaries across Canada. ■

IN THE HEADLINES

SPOUSES IN SEPARATE HOUSES REVISITED: CONNOR ESTATE

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Historically, a statutory standard of "living together in a marriage-like relationship" has generally been interpreted by the courts to require cohabitation. However, British Columbia case law has been extending this boundary. In *Richardson Estate (Re)*, 2014 BCSC 2162, two people were found to be spouses even though they resided in different municipalities. Additionally, the issue of people being spouses even when living in separate houses has recently been revisited in Connor Estate, 2017 BCSC 978.

In *Connor Estate*, a 2017 decision of the BC Supreme Court, the applicant, Mr. Chambers, applied for a declaration that he was the spouse of the deceased, Ms. Connor, within the meaning of section 2 of the BC *Wills, Estates and Succession Act* (WESA), despite never having lived in the same dwelling as Ms. Connor. Ms. Connor died intestate, was not legally married, had no children, and had been predeceased by both of her parents and her only full sibling. Under the applicable rules of intestacy, if Ms. Connor had a spouse at the time of her death, her entire estate would pass to the spouse. If she did not have a spouse within the meaning ascribed in WESA, her estate would be divided among five half-siblings, whom she apparently did not know.

All evidence showed that although Mr. Chambers and Ms. Connor had had an intimate and sexual relationship for over 21 years, they had never lived together in the same home. Indeed, at the beginning of the relationship and throughout most of it, Mr. Chambers was married with two children. Mr. Chambers did not separate from his wife until three years before Ms. Connor's death. However, Mr. Chambers and Ms. Connor visited each other frequently and spoke or texted almost every day. Mr. Chambers would routinely sleep at Ms. Connor's home one or two times a week. Mr. Chambers claimed that he stopped doing so in 2012 because Ms. Connor had become a hoarder and it had become difficult for him to stay in the house. They continued to have an intimate relationship after his separation and spent the night together once or twice a week at his home or while travelling.

There was extensive evidence from several friends of both Mr. Chambers and Ms. Connor, as well as members of their families and colleagues, that showed that the two presented themselves as a couple and clearly had great love and affection for one another. The evidence showed that they often presented themselves in public as husband and wife. Ms. Connor had made Mr. Chambers the beneficiary of her substantial registered retirement savings plan in 2008, and she had told him that she had a will that left almost everything to him. No will was ever found.

WESA section 2(1) states that two persons are the spouses of each other for the purposes of the Act if they were married to each other or if they lived with each other in a marriage-like relationship for at least two years.

The court found that Mr. Chambers was the spouse of Ms. Connor, even though the two had never lived together and despite the fact that several of the *Molodowich* factors (from *Molodowich v. Penttinen* (1980), 17 RFL (2d) 376 (ONDC) were not present in their relationship. Nevertheless, the court found that that there was overwhelming and uncontroverted evidence that the two loved each other deeply in a long-term intimate relationship, which was "far more than mere friendship or even so-called 'friendship with benefits.' "

In the judgment, the court confirmed that the *Molodowich* factors are not a checklist, and it is not necessary to tick each box (including the "living under the same roof" factor) in order for two people to be found to be spouses, as long as other sufficient evidence exists.

This case clearly expands the common understanding of who may be considered to be a spouse under WESA. Advisers should be aware of this new development, which may open the door for claims of spousal status, either on intestacies or in wills variation claims, by individuals who had a relationship with but who did not cohabit with the deceased.

CASE COMMENT
LEGAL EXPENSES: A NOVEL INDEMNIFICATION ARGUMENT

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Recently, the Alberta Court of Queen's Bench considered a "somewhat novel application for indemnity for legal expenses" in *Lindsay Estate (Re)*, 2017 ABQB 452.

The application was made by Petronella Thomas, one of the personal representatives of the estate of Charles Leroy Lindsay. The application was novel because it was made during the administration of the estate, rather than at the end of it as part of a passing-of-accounts application. Additionally, the claim was for both current and future legal expenses. The expenses were incurred in a civil action for losses and damages against Ms. Thomas and another personal representative for negligence, breach of fiduciary duties, and breach of trust as a result of their alleged mismanagement of the estate. The civil action was underway at the time of the indemnity application. Further, Ms. Thomas was seeking indemnity without providing the accounts to the beneficiaries for their comments or approval.

The beneficiaries argued that the application was premature and that the indemnity issue could not be determined until the civil action was resolved. They also argued that they had a right to review the legal accounts to determine that the expenses were reasonably and properly incurred in the administration of the estate. It was further argued that there should be no reimbursement for the legal expenses incurred by Ms. Thomas to defend herself personally in the civil action.

The Will allowed the trustees to retain lawyers and other professionals "to give advice relating to matters in [the] estate." There was also an indemnity clause stating that the trustees "may be indemnified from [the] estate without incurring personal liability."

> The court refused the application of Ms. Thomas, finding that she had not discharged the onus of proving the propriety of the expenses that she had already incurred, and that the matter of future legal expenses could not be prejudged.

In arguing her position, Ms. Thomas cited *Goodman Estate v. Geffen*, [1991] 2 SCR 353, at paragraph 75:

> The courts have long held that trustees are entitled to be indemnified for all costs, including legal costs, which they have reasonably incurred. Reasonable expenses include the costs of an action reasonably defended.

Ms. Thomas also referred to *Gault v. Gault*, 2015 ABCA 157, for the proposition that legal expenses incurred for defending claims against estate assets are of the same character as expenses incurred in preparing tax returns, which are recoverable if reasonable.

Counsel and the court considered comments by Professor Albert Oosterhoff in "Indemnity of Estate Trustees as Applied in Recent Cases" (April 2013), 41 ADV Q 123-47. Professor Oosterhoff criticized the conclusion that "executors may not pay themselves litigation costs without prior court approval or beneficiaries' consent." In light of section 25 of the Trustee Act, Professor Oosterhoff expressed the view that "estate trustees are not required to wait for court approval or beneficiary consent before reimbursing themselves from estate assets for expenses they have incurred." However, the "expenses and costs must have been reasonably and properly incurred." Although Professor Oosterhoff noted that this issue usually arises on a passing-of-accounts application, it can also arise on an application for advice and directions.

The court refused the application of Ms. Thomas, finding that she had not discharged the onus of proving the propriety of the expenses that she had already incurred, and that the matter of future legal expenses could not be prejudged. The court also found that the timing of the application was not appropriate, stating that the matter should be addressed as part of a passing-of-accounts application, in which the court would be in a position to determine that "legal fees incurred to defend [Ms. Thomas's] actions as Estate Trustee in the Civil Action [were] reasonable and proper expenses incurred in the administration of the Estate and therefore reimbursable." Also, the court noted that "input" would be needed from the beneficiaries and the other trustees concerning the legal expenses claimed.

The court further noted that if Ms. Thomas paid her legal expenses from the estate's funds before a passing-of-accounts application, she ran the risk of having to repay the funds. The court's comment suggests that this course of action might be an option for trustees in similar circumstances; however, beneficiaries might be concerned that the personal representative would not be able to repay the funds when required. The other concern is that providing the personal representative with such a war chest might extend litigation and add significantly to costs.

ONTARIO LAND TRANSFER TAX REVIEW ANNOUNCED

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On July 14, 2017, the Ontario Ministry of Finance announced a review of the land transfer tax applicable to unregistered dispositions of beneficial interests in land for the stated purposes of improving "administrative effectiveness and enforcement" and ensuring "the integrity and equity of the [land transfer tax] system."

At present, when there is an unregistered disposition of a beneficial interest in land, tax is payable and a return must be filed by the person who acquires the beneficial interest in land or whose interest is increased. The ministry has a longstanding administrative lookthrough approach to partnerships and trusts; for example, each partner of a partnership is regarded as having a beneficial interest in the property of the partnership. Accordingly, the issuance or transfer of interests in partnerships or trusts that own or acquire Ontario real property is considered to be the acquisition of a beneficial interest in land by the unitholder, partner, or beneficiary. There is potential Ontario land transfer tax liability, depending on the value of the consideration and the reporting obligations. The foregoing is subject to a limited number of exemptions – for example, the de minimis 5 percent partnership interest exemption was amended in 2016, retroactive to 1989.

The ministry announced that there will be two phases of the review. The consultation period in phase 1 was originally scheduled to end on August 28, 2017, but was extended to September 8, 2017. The ministry stated that it was seeking comments on a proposed approach to facilitate compliance with the reporting and payment of land transfer tax required under section 3 of the Land Transfer Tax Act with respect to unregistered dispositions. This proposal relates only to certain widely held investment vehicles and not generally to all unregistered dispositions. Under the proposal, liability for collecting and paying land transfer tax in the case of

> ... when there is an unregistered disposition of a beneficial interest in land, tax is payable and a return must be filed by the person who acquires the beneficial interest in land or whose interest is increased.

certain widely held vehicles may rest with the vehicle itself, rather than the unitholders or partners.

Two groups of vehicles are proposed:

1. Group 1 vehicles include specified investment flowthrough trusts and mutual fund trusts. It is proposed that these vehicles themselves be subject to land transfer tax on the acquisition of an interest in land. Transactions involving interests or units of group 1 vehicles will no longer be looked through.
2. Group 2 vehicles include Ontario limited partnerships with more than 50 arm's-length unitholders. The lookthrough approach will continue to apply to these vehicles, but the onus of collecting the land transfer tax will rest with the vehicles themselves. A different minimum number of unitholders (other than 50) may be determined after the consultation.

No changes are proposed in the case of vehicles that are neither corporations nor individuals and do not fit within the widely held focus of group 1 or group 2 vehicles. Thus, the current rules and practices will continue to apply to the typical discretionary family trust or estate and family partnership structures.

One aspect of the phase 1 review that has received little comment is the statement that there will be new disclosure rules at the time of registration, requiring the disclosure of persons, trusts, partnerships, and other vehicles for whose benefit land is held. As an example, the consultation document states that a nominee will be required to disclose the legal names and business registration numbers of the partnerships or trusts for whose behalf the nominee holds title. The reference to a "business registration number" is unclear. While an Ontario partnership will have an Ontario business registration number as a result of the formalities for registration of a partnership or limited partnership in Ontario, a trust will not necessarily have such a number. It is also unclear whether this proposal will be limited to disclosure of partnerships or trusts that are beneficial owners, or will extend to all beneficial interests of any person or entity in which a nominee holds title.

The disclosure proposal is interesting in light of the reporting requirements that came into effect on April 24, 2017 as a result of the addition of section 5.0.1 to the *Land Transfer Tax Act*. Section 5.0.1 requires every transferee (whether in a registered or unregistered disposition) to provide the minister "with such additional information as may be prescribed about the transferee and the conveyance or disposition." To date, the prescribed form applies only to purchases of residential homes and agricultural lands. Information regarding beneficial owners is required, but the form contemplates individual beneficial owners and corporate beneficial owners only. It does not contemplate partnerships or trusts. The new section 5.0.1 additional reporting requirements came into force at the same time as the non-resident speculation tax and was widely considered to be the means of facilitating assessment and enforcement.

Presumably, the consultation proposal may result in an extension of the section 5.0.1 reporting requirements to partnerships and trusts as beneficial owners.

Phase 2 of the consultation process will involve a more extended review of land transfer tax "in the modern real estate context." No details have yet been provided.

LIFTING THE VEIL ON PROFESSIONAL SECRECY IN WILL CONTESTATIONS

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The Quebec Court of Appeal recently considered the circumstances in which professional secrecy and notary-client privilege can be breached in the case of *Tanzer v. Spector*, 2017 QCCA 1090.

Doreen Spector and Issie Tanzer were married in 1995. In April 2013, at the age of 83, Issie executed a Will before a notary in which he made a bequest of $100,000 to Doreen and granted her a usufruct of the home where the couple had resided during their marriage. In October 2013, Issie executed a second Will before a different notary in which he removed Doreen as an heir and named the children of his first marriage as the liquidators and sole heirs of his estate.

Issie died in September 2014, following which Doreen sought the nullity of the October Will for undue influence and a declaration that Issie's sons were unworthy of inheriting.

To support her position, Doreen sought the court's permission to examine Notary Malus, a long-term legal adviser whom Issie had consulted in July 2013 to draft a new Will. Notary Malus had prepared several drafts of the Will but ultimately refused to execute it. Doreen sought to examine Notary Malus to uncover the circumstances in which the Will consultation took place and the reasons why Notary Malus refused to execute the Will. Invoking notary-client privilege, the liquidators and heirs of the estate objected to the proposed examination of Notary Malus.

The Quebec Superior Court dismissed the defendants' objections and held that professional secrecy could be set aside if the resulting evidence could assist the court in determining the testator's final wishes. On this basis, the court authorized Doreen to examine Notary Malus out of court.

Unfortunately, Notary Malus died before he could be examined. However, he had prepared a sworn statement in which he answered questions that Doreen had presented to the court. This statement was sealed and filed with the court pending an appeal of the lower court's decision by the liquidators and heirs of Issie's estate.

> The right to professional secrecy is a right of public order that is included in the *Quebec Charter of Human Rights and Freedoms*. It is a civil right, a personal right, and an extra-patrimonial right.

In its review of the case, the Quebec Court of Appeal explained the fundamental importance of professional secrecy in our justice system. The right to professional secrecy is a right of public order that is included in the *Quebec Charter of Human Rights and Freedoms*. It is a civil right, a personal right, and an extra-patrimonial right. It ensures that individuals have access to legal professionals with whom they can be honest and speak frankly. Given the vital importance of this right, the court stressed that the veil of professional secrecy must be lifted only in limited and clearly defined situations in which such a breach is absolutely necessary. In all cases, the testimony that sets aside the protection of professional secrecy must be in the interests of justice. In the context of Will contestations in which allegations of undue influence and incapacity are made, the court can permit the examination of the notary, provided that the allegations are serious and the scope of the examination is limited to prevent a fishing expedition by the applicant.

It is well established, in both the common- and civil-law traditions, that once a testator has died, the notary who prepared and finalized the contested Will can testify in respect of the Will's preparation, the notary's observations, and the testator's confidential communications with the notary. In *Tanzer v. Spector*, the Court of Appeal confirmed that the exception to professional secrecy that applies to acting notaries could also extend to notaries who are consulted to draft a Will but who do not complete the mandate.

Doreen sought Notary Malus's testimony to shed light on Issie's state of mind and his true intentions with respect to the administration of his estate. The court accepted this argument as a valid reason to set aside the professional secrecy governing Notary Malus's relationship with Issie. The court held that there is a need for transparency in the context of Will contestations in the event of allegations of undue influence and captation. It was therefore in the interests of justice to lift the veil of professional secrecy on Notary Malus and Issie's communications.

NEW BRUNSWICK POWERS OF ATTORNEY: A STATE OF FLUX

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In June 2017, the Power of Attorney Action Group was formed to publicly press the government of New Brunswick to draft unified and standalone power-of-attorney legislation, echoing similar calls by the New Brunswick branch of the Canadian Bar Association. Currently, New Brunswick is the only province or territory without such legislation, causing inconsistency and confusion among both draftspersons and attorneys.

At present, two separate statutes address the granting of powers of attorney. The creation of powers of attorney for financial and property matters is governed by sections 58.1 to 58.7 of the *Property Act*, while the creation of powers of attorney for personal (health) care is governed by sections 40 to 44 of the *Infirm Persons Act*. While both statutes provide the legislative authority for appointment of an attorney, the subject of powers of attorney forms a minor part of each Act. Both statutes lack clear guidelines and are relatively silent concerning the role and responsibilities of an attorney and the framework for addressing abuse by an attorney. Instead, these matters are governed primarily by the common law. On a practical level, there is no standardized power-of-attorney form, leaving draftspersons to their own devices. Most practitioners in New Brunswick draft two powers of attorney (one for property and one for personal care); however, some practitioners combine both powers of attorney in a single document with separate headings, indicating the separate nature of and source of legislative authority for each power.

Further muddying the waters, the *Advance Health Care Directives Act* was given royal assent by the legislature of New Brunswick in late 2016. This statute provides a framework that is effectively similar to a power of attorney for personal care for individuals to appoint a "health care proxy" and to document their wishes about medical treatment, including statements of values and beliefs in the event of incapacity. Creating these health care directives does not require the assistance of a lawyer (they need not be made under seal), and in practice the directives are primarily for the use of medical professionals to conveniently formalize proxies and directives at the patient's bedside.

This statute provides a framework that is effectively similar to a power of attorney for personal care for individuals to appoint a "health care proxy" and to document their wishes about medical treatment, including statements of values and beliefs in the event of incapacity.

The *Advance Health Care Directives Act* specifically provides that a power of attorney for personal care under the *Infirm Persons Act* is not a health care directive, although many draftspersons include health care directions in a power of attorney for personal care. Unlike a power of attorney for personal care, a health care directive cannot appoint joint proxies, only alternative or subsequent proxies. The Act further states that should multiple health care directives exist, or if a health care directive contradicts the terms of an existing power of attorney for personal care, the provision in the most recent document will prevail. Given the informal nature of a health care directive, this may lead to a situation in which an individual inadvertently revokes all or substantially all of a previous formal power of attorney for personal care. Notwithstanding a potential revocation, there is an overlap in the law when a decision regarding health care can be made by an attorney appointed under a power of attorney for personal care and by a proxy appointed under a health care directive.

From a practical standpoint, some practitioners in New Brunswick are now having their clients execute three documents: a power of attorney for property, a power of attorney for personal care, and an advanced health care directive, in an effort to ensure that the power of attorney for personal care and the advanced health care directive do not contradict each other.

The Law Reform Branch of the Office of the Attorney General noted in its most recent issue of *Law Reform Notes* (May 2017) that it is considering developing new powers-of-attorney legislation. It also noted that the commentary that it has received indicates that members of the bar favour a single piece of legislation that explicitly states the law surrounding powers of attorney in preference to the current situation in which a few short sections of multiple Acts are interpreted in light of principles established under the common law.

On the basis of a review of the legislation found in other provinces and territories, any new legislation should, at a minimum, explicitly address the following matters:

- persons who can appoint and be appointed as an attorney;
- the power-of-attorney document;
- activation and termination of an attorney's authority;
- the duties, powers, and liabilities of attorneys;
- the remuneration of attorneys;
- challenging an attorney's authority or actions;
- termination of the power;
- recognition of powers of attorney from other jurisdictions; and
- retroactivity of the legislation to cover existing appointments.

The Office of the Attorney General of New Brunswick has responded publicly to the Power of Attorney Action Group, indicating that it is exploring the reformation of the province's power-of-attorney legislation; however, no further details or timelines have been provided. Stay tuned. ■

CHAIR'S MESSAGE

RUTH MARCH

It is my honour to be writing my first chair's message to the 2,500 valued members of STEP Canada. In my professional life, I am a director of Estate Planning, Tax Services for KPMG, practising from Halifax, Nova Scotia, and I am no stranger to STEP. Since joining our organization in 2001 for the launch of STEP Atlantic, I have witnessed tremendous growth in membership and brand awareness, and extraordinary developments in our educational programs. I hope that you, as members, are all experiencing increased business development opportunities and professional recognition from colleagues and employers as a result of this growth.

Thank you for your confidence in electing me as your chair for the next two years. I'm not sure that I timed my assumption of this office particularly well, with the challenges that lie ahead for all of us as a result of the July 18, 2017 legislative proposals. However, kidding aside, I am confident in the strategy that the STEP Canada Public Policy Committee and the Tax Technical Committee have assembled and continue to execute.

Very soon after the release of the proposals, STEP Canada organized a full-day symposium, bringing together leaders from areas such as legal, accounting, economics, wealth management, education, real estate, insurance, and agriculture to discuss the proposals and reach conclusions about them. Our discussions culminated in a summary of our conclusions, which will form the framework of multiple submissions to the Department of Finance.

Members of STEP received updates and information about our actions in this regard, and we can expect further updates while the Department of Finance consultation process continues.

Over the next two years of my tenure, I will endeavour to continue to guide our organization in the positive and progressive direction that we have set, expand on initiatives such as advocacy and public policy projects, and welcome more French-speaking practitioners into our programs and membership. Much of this will, of course, need the support and dedication of my fellow board members and our national committees. I will be working closely with the National Executive Committee, consulting with the Committee of Past Chairs, and collaborating with the leadership of STEP Worldwide as we continue to learn from each other and to unite our Canadian membership with the larger global dimension of our organization.

A quick review of our 18th national conference in June reveals another record-breaking turnout of 724 professionals. For the first time ever, the sponsorship opportunities sold out. I am sincerely grateful to so many new and returning sponsors who are supporting our organization at both national and regional events. I cannot stress this point more sincerely: the support that STEP receives from these sponsors is a critical resource that has allowed us to expand, create, and improve all events, including technology, facilities, apps, webcasting, travel for special guest speakers, and administration. As a result, STEP is now the leading professional association and leading educator of the trust and estate industry in Canada.

My sincere thanks also go to all of the speakers who expertly prepared and delivered their presentations to our attendees. I would be remiss not to give special thanks to the 2017 Program Committee, led by Co-chairs Brian Cohen and Christine Van Cauwenberghe, and to Janis Armstrong, Michael Dodick, and our fabulous staff members at STEP Canada whose hard work made the conference a success.

All STEP members should be marking their calendars now for the 2018 national conference, scheduled for Monday, May 28 and Tuesday, May 29. The conference promises to be another first-class gathering, and a very special 20th anniversary gala event is being planned for the Monday evening.

In 2017 and 2018, STEP Canada is entering the francophone and civil-law areas of Canada with both the diploma and the certificate in estate and trust administration (CETA) program translated into French and adapted for civil law. Much excitement is building about our French offering to this group of trust and estate practitioners.

The cross-country tour of our second full-day course, Taxation at Death and Post Mortem Planning, began on Thursday, September 14 with a sold-out registration of 45 in Vancouver. Registration for all the other course dates and locations is strong with weeks, and in some cases months, before the course is to be presented. My thanks go to Chris Ireland, who authored the course with contributions from Bill Fowlis and Melanie Zimmerman.

STEP Canada's eight regional branches and three regional chapters have done an excellent job in planning wonderful educational programming for the September 2017 to June 2018 season. Over the summer, the Member Services team at the national office has used the Cvent registration platform to launch branch webpages to streamline the registration process, including providing reports to branch executives about delegate numbers and other data. We expect to host more than 80 regional events during the season and predict that attendance and sponsorship will continue to increase as our membership grows. A good number of non-member practitioners continue to attend our events as well.

I'd like to congratulate Tim Grieve on his election to the STEP Worldwide Council, and my thanks also go to Kathleen Cunningham, Tim's predecessor, for representing STEP Canada so well. Tim will serve alongside the two other Canadian Council representatives, Nancy Golding and Bill Fowlis.

Congratulations are also in order for the Canadian Private Client Award finalists: Miller Thomson, Toronto (Charity Team of the Year); Hull & Hull, Toronto (Contentious Trusts and Estates Team of the Year: Midsize Firm); Borden Ladner Gervais, Ottawa (International Legal Team of the Year: Large Firm and Private Client Legal Team of the Year: Large Firm). Although we were disappointed not to return from the United Kingdom as winners in these categories, it is truly an honour to be included among the finalists in such a distinguished group of entrants.

In closing, I wish to extend my heartfelt thanks to the hundreds of volunteers who have dedicated thousands of hours to STEP Canada. Every single contribution, combined over the last 19 years, has brought STEP to today's level of success and influence. I encourage everyone to engage in some form of volunteer work for STEP to maximize the benefit of this extraordinary network. There has never been a better time to get involved in our organization.

On behalf of myself and the other members of the Executive Committee – Deputy Chairs Pamela Cross and Chris Ireland, Treasurer Christine Van Cauwenberghe, and Secretary Rachel Blumenfeld – we look forward to the next two years of serving you, our membership. ■