

But for the Plan

(Estates: The Joint Account May Not Belong to the Named Survivor)

Our client Mrs. B (not her real name) was the Executor (Estate Trustee) of the Estate of her late brother Mr. C (not his real name). Mr. C's Will provided that his Estate was to be divided equally among certain family members named in the Will. Mr. C was unmarried at the time of his death.

During the course of administering Mr. C's Estate our client was advised by the bank that there was an account of \$80,000.00 in the names of Mr. C and another adult family member (not a spouse). The bank also advised that the account was a "joint account with right of survivorship" and that the money in the account now belonged to the "surviving adult on the account".

This particular "surviving adult" was a family member that had been specifically excluded as a beneficiary in Mr. C's Will. The \$80,000.00 in the account was the proceeds of Mr. C's pension buy-out. It had been deposited to the account approximately one week before his death.

Based on the information that our client provided to us confirming that Mr. C was the sole source of the money deposited into the bank account, we advised her that, in our opinion, the funds were subject to a "resulting trust" in favour of Mr. C's Estate and did not belong to the surviving joint owner.

Our client then instructed us to bring a Court application. The Judge agreed that the money in the bank account belonged to Mr. C's Estate, not to the surviving joint owner, and ordered the bank to pay the account proceeds to the Estate.

But for the Plan, the family members named in the Will may never have recovered the \$80,000.00 to which they were lawfully entitled.