CITATION: Kukna Estate v. Giasson, 2026 ONSC 1842
COURT FILE NO.: CV-24-00033909-00ES
DATE: 20260326

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ANN-MARIE MILLS in her capacity as estate trustee for the ESTATE OF SIEGFRIED ERNEST KUNKA, also known as ERNEST SIEGFRIED KUNKA Applicant	Eric Florjancic, for the Applicant
– and –	
Angele Giasson Respondent	Joshua D.A. Laplante, for the Respondent
	HEARD: August 11, 2025

REASONS FOR JUDGMENT

HORVAT J.

OVERVIEW

[1] Ann-Marie Mills, in her capacity as Estate Trustee for the Estate of Siegfried Ernest Kunka, (the "Estate"), seeks direction from this court regarding accounts held at the Windsor Family Credit Union ("WFCU") under Tax Free Savings Account contract 600000913 (the "TFSA") and Registered Retirement Income Fund contract 11001769 (the "RRIF"). Mills and her brother, Michael Olar, are the beneficiaries under the Estate. Siegfried Ernest Kunka, also known as Ernest Siegfried Kunka ("Ernie"), was their stepfather. Ernie designated his friend, the respondent, Angele Giasson, as the beneficiary under both the TFSA and the RRIF.

[2] Mills argues that under the principles of resulting trust established by the Supreme Court of Canada in *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, the funds held in the TFSA and the RRIF should revert to the Estate. In the alternative, Mills argues that the

designation of Giasson as the beneficiary of the TFSA and the RRIF was made under undue influence and should be set aside.

[3] For the reasons that follow, I find that beneficiary designations made under TFSAs and RRIFs are not gratuitous *inter vivos* transfers and the presumption of resulting trust under *Pecore* does not apply. Given my finding that the beneficiary designations for registered accounts are testamentary dispositions, the burden is on Mills, the party challenging the designation, to prove on a balance of probabilities that Ernie intended for the TFSA and the RRIF to transfer to the Estate upon his death. Alternatively, Mills must prove that there was undue influence with respect to Ernie's decision to designate Giasson as beneficiary of the TFSA and the RRIF.

[4] Mills has not met that burden on the evidentiary record before me. The designation of Giasson as beneficiary of the TFSA and the RRIF stands.

[5] As a result, I make the following orders:

(a) The RRIF and the TFSA shall be paid by WFCU to Giasson, or to whom Giasson directs.

(b) This application shall be and is hereby dismissed.

BACKGROUND

[6] Rose Marie Olar ("Marie") and Ernie were common-law partners for over thirty years. Ernie was the stepfather to Marie's two children, Mills and Olar.

[7] On October 21, 2021, Marie and Ernie made spousal wills leaving their assets to each other with a further gift over to Mills and Olar.

[8] On November 13, 2021, Marie passed away. Ernie received Marie's life insurance policies, TFSA, and RRIF by right of survivorship and as the designated beneficiary.

[9] Following Marie's death, Ernie was deeply saddened and began spending time with friends, including Robert Stach, family, support groups, neighbours, and his church congregation. Ernie also started spending time with Giasson who he had been friends with decades prior.

[10] On January 6, 2022, Ernie changed his will to replace Marie with Mills and Olar as his sole beneficiaries and estate trustees. Ernie also added Stach as alternate estate trustee and as a contingent beneficiary.

[11] On March 2, 2022, Ernie changed his will again to gift Stach his car. Sometime between March 3, 2022, and April 30, 2022, Ernie ended his friendship with Stach.

[12] On September 21, 2022, Ernie transferred funds to Giasson to assist her with her credit card debt.

[13] Sometime before December 1, 2022, Ernie changed his insurance from single to family coverage to include Giasson under his insurance benefits. Ernie and Giasson maintained separate residences, however, they would spend the night at each other's homes. Giasson changed her mailing address for certain institutions to Ernie's home. She moved some of her belongings into Ernie's home.

[14] In January 2023, Ernie listed Giasson as his spouse on the TFSA and in March 2023, Ernie listed Giasson as his spouse on the RRIF. Ernie named Giasson as the designated beneficiary on the RRIF and the TFSA, changing the designation from Mills and Olar. Giasson did not make any financial contributions to the TFSA or to the RRIF.

[15] Sometime in 2023, Ernie and Giasson opened a joint account and a joint safety deposit box at WFCU. The joint account has a zero balance.

[16] On April 26, 2023, Ernie changed his will with the assistance of a lawyer to remove Stach and add Giasson as a contingent beneficiary. The will does not mention the TFSA or the RRIF. It continued to name Mills as the estate trustee and Mills and Olar as equal beneficiaries.

[17] In early August 2023, Giasson and Ernie travelled to Toronto to visit his sister. Upon returning from the trip, Ernie was admitted to hospital. On August 6, 2023, Ernie passed away.

[18] Neither Mills nor Olar challenge Ernie's will. Mills and Giasson signed a joint direction to WFCU to hold the RRIF and TSFA pending the outcome of this application.

LAW AND ANALYSIS

[19] The issues to be determined are:

(a) Are the TFSA and/or the RRIF subject to a resulting trust in favour of the Estate?

(b) Was it Ernie's intention to benefit the Estate with the TFSA and/or the RRIF?

(c) Was Ernie unduly influenced by Giasson such that the TFSA and/or the RRIF should revert to the Estate and Giasson set aside as the designated beneficiary?

The TFSA and the RRIF are not subject to a resulting trust in favour of the Estate

[20] Mills argues that the presumption of a resulting trust applies to the TFSA and the RRIF. This presumption would cause both to revert to the Estate and shift the onus to Giasson to prove that Ernie intended to gift the TFSA and the RRIF to her on his death. Mills relies on *Pecore* and the decision of this court in *Calmusky v. Calmusky*, 2020 ONSC 1506. For the reasons that follow, I disagree with Mills and the decision in *Calmusky*, and I distinguish *Pecore* on the facts. In my view, no presumption of resulting trust applies to registered accounts with beneficiary designations, such as the RRIF and the TFSA.

[21] The Supreme Court of Canada's decision in *Pecore* was decided in the context of an *inter vivos* gift, specifically, a father adding his adult child as an account holder on a joint bank account. The only mention of registered accounts with beneficiary designations made in *Pecore* occurs in the recitation of facts at para. 13 (see also para. 73 of *Pecore*):

> The lawyer who drafted the will testified that he asked Paula's father "about such things as registered retirement savings plans, R.R.I.F.s, registered pension plans, life insurance, and in each case satisfied [him]self that they were not items which would pass as the result of a will and so that they needn't be included in the will" (*ibid*., at para. 37). There was no discussion about the joint investment and bank accounts.

[22] Unlike a TFSA or a RRIF, the joint bank account in *Pecore* was not registered, there was no ability to designate a beneficiary, and the adult child had access to the funds in the account the moment that she was made a joint account holder, while her father was still alive. This is distinguishable from a registered account with a beneficiary designation, where the party designated as the beneficiary has no access to the funds until the death of the designator.

[23] In 2020, this court applied *Pecore* to a beneficiary designation for a RIF in *Calmusky*. In that case, there was a dispute between two brothers over their father's estate, which included a joint bank account and a RIF. The court found that the presumption of a resulting trust applied to both the joint bank account and the RIF. This led to the RIF reverting to the estate on the father's death. In coming to this conclusion, Lococo J. focused on the evidentiary challenges that arise in determining a deceased's intention. His Honour stated at para. 56:

> In both cases, the same evidentiary challenge arises – the difficulty in determining the deceased transferor's intention at the time he transferred legal (as opposed to beneficial) entitlement to the funds, whether the transfer is effective immediately (the joint accounts) or on the transferor's death (the RIF): see *Pecore*, at para. 5, In these circumstances, it makes sense from a policy perspective that the evidentiary burden be on the transferee or designated RIF beneficiary, since the transferee/RIF beneficiary "is better placed to bring evidence of the circumstances of the transfer": *Pecore*, at para. 26. On that basis, I agree with the trial judge's *obiter* comments in *McConomy* that the principles in *Pecore* should apply to the RIF designation as well.

[24] A year after *Calmusky*, McKelvey J. considered and rejected the idea that a resulting trust would apply to a beneficiary designation on a registered account in *Mak (Estate) v. Mak*, 2021 ONSC 4415. His Honour stated at para. 44:

> In my view, however, there is good reason to doubt the conclusion that the doctrine of resulting trust applies to a beneficiary designation. First, the presumption in *Pecore* applies to *inter vivos* gifts. This was a significant

> factor for the Court of Appeal in *Seguin*, and similarly is a significant difference in the context of a resulting trust. Further, the decision of this Court in *Calmusky* has been the subject of some critical comment. As noted by Demetre Vasilounis in an article entitled "A Presumptive Peril: The Law of Beneficiary Designations is Now in Flux", the decision in *Calmusky* is, "ruffling some feathers among banks, financial advisors and estate planning lawyers in Ontario". In his article, the author comments that there is usually no need to determine "intent" behind this designation, as this kind of beneficiary designation is supported by legislation including in Part III of the *Succession Law Reform Act* (the "SLRA"). Subsection 51(1) of the SLRA states that an individual may designate a beneficiary of a "plan" (including a RIF, pursuant to subsection 54.1(1) of the SLRA.)

[25] I agree with McKelvey J. that the whole point of a beneficiary designation "is to specifically state what is to happen to an asset upon death" and that the presumption of a resulting trust does not apply to a beneficiary designation under a RRIF: *Mak Estate*, at para. 46. Further, a beneficiary designation is distinguishable from an *inter vivos* gift as was at play in *Pecore* given that the transfer of the gift is not made until after the death of the transferor.

[26] The Nova Scotia Supreme Court considered *Pecore/Calmusky* and *Mak Estate* in *Fitzgerald Estate v. Fitzgerald*, 2021 NSSC 355, preferring the reasoning in *Mak Estate*. In finding that no resulting trust applied to a TFSA, Murray J. highlighted the following differences between registered accounts with beneficiary designations such as a TFSA and the joint accounts as in *Pecore*:

(a) TFSAs are not jointly held.

(b) TFSAs are not transferred *inter vivos* during the transferor's lifetime.

(c) TFSAs remain in the transferor's name until it is transferred on the transferor's death and the transferee has no access to the registered funds until that time.

(d) The transferor has sole authority over the funds until death.

(e) There is a contract that binds the institution where the funds are held to pay the registered funds to the designated beneficiary upon the transferor's death.

(f) There is no fiduciary aspect with a TFSA designation as with joint accounts in *Pecore*

Fitzgerald, at paras. 103-107, 109, and 116.

[27] In addition to these differences, in the case of registered accounts such as TFSAs and RRIFs, as opposed to joint accounts, the transferor may change the designated beneficiary

at any time prior to the transferor's death on their own accord. In my view, the fact that the beneficiary of a registered account such as a TSFA or a RRIF gains no *inter vivos* control over or ownership of the account until the account holder dies is the most persuasive distinguishing feature of a registered account versus a joint account such as the one in *Pecore*.

[28] The position that registered accounts with designated beneficiaries should not be subject to a resulting trust under the principles in *Pecore* is further supported by Part III of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 ("SLRA"). Section 51(1) of the SLRA permits a "person who is entitled to designate another person to receive a benefit payable under a plan on the participant's death" to make that designation (or revoke it) either by signed instrument or by will. A "plan" is defined in s. 50 to include retirement savings plans, RRIFs and TFSAs: Ontario Regulation 54/95, s.2. Under s. 53, an institution administering the "plan" must pay it out in accordance with the s. 51(1) beneficiary designation upon the plan owner's death.[1]

[29] In my view, the legislation clearly signals that registered accounts are meant to be treated according to their beneficiary designations and not as part of a resulting trust for the benefit of the estate.

[30] In *Amherst Crane Rentals Ltd. v. Perring* (2004), 241 D.L.R. (4th) 176 (Ont. C.A.), leave to appeal refused [2004] S.C.C.A. No. 430, the Court of Appeal for Ontario considered whether the proceeds of an RRSP devolve directly to the designated beneficiary or form part of the estate in the context of whether creditors of the estate who remain unpaid have any claim against the proceeds of the RRSP. Both the application judge and the Court of Appeal denied the creditor's claim and found that RRSPs do not form part of the estate of the deceased but instead transfer directly to the designated beneficiary. The Court of Appeal focused on ss. 51 and 53 of the SLRA finding that s. 53 operated to vest the funds held in an RRSP directly to the designated beneficiary, and thus bypassing the estate, on the account holder's death: *Amherst Crane*, at paras. 1, 3-4, 34-35.

[31] The Court of Appeal further found that if an RRSP was considered part of the estate, then s. 72(1)(g) of the SLRA -- which includes any amount payable under a designation of beneficiary under Part III, including RRSPs, RRIFs and TSFAs, in the value of an estate for dependants' relief -- would be rendered meaningless. The court found that the only conclusion that can be reached by the existence of s. 72(1)(g) is that the proceeds from an RRSP would not ordinarily form part of an estate: *Amherst Crane*, at paras. 20-22.

[32] *Amherst Crane*'s interpretation of a registered account beneficiary designation as a testamentary disposition as opposed to a resulting trust was affirmed more recently by the Court of Appeal in *Alger v. Crumb*, 2023 ONCA 209, 167 O.R. (3d) 275. This decision grapples with the s. 52 revocation clause in Part III of the SLRA as it pertains to a RRIF and TFSA at issue. In dealing with that, Feldman J. effectively separates registered

[1] See also, *Fitzgerald*, at paras. 37-39 and 118-119 where Murray J. considered similar Nova Scotia legislation.

accounts with beneficiary designations by instrument as defined by Part III, from testamentary dispositions by will that would be subjected to a general revocation.

[33] The court draws on *MacInnes v. MacInnes*, [1935] S.C.R. 200, finding that the "designation of a beneficiary under an employee benefit plan to receive the proceeds of the plan on death is a testamentary disposition, the test being whether the intent of the maker was that the gift be dependent on the maker's death": *Alger*, at para. 24. Feldman J.A. concluded that the designation of beneficiaries through instruments like RRIF and TFSA plans are testamentary dispositions that require express revocation under Part III, as opposed to a general revocation. This further signals a clear distinction between registered accounts with designated beneficiaries, only available upon the death of the account holder, with other testamentary dispositions that are subject to a presumptive resulting trust.

[34] *Calmusky* did not consider either the provisions of the SLRA or the Court of Appeal's decision in *Amherst Crane*, and was decided prior to *Alger*.

[35] Although decided before *Pecore*, in my view and given its consideration in *Alger*, *Amherst Crane* remains binding authority on this court on the issue of registered accounts with designated beneficiaries under Part III of the SLRA. *Pecore* was decided in the context of an *inter vivos* gift, while *Amherst Crane* and *Alger* closely mirror the accounts at issue in the present case. Part III of the SLRA remains substantially the same as it did at the time of *Amherst Crane* and the analysis is not affected by the minimal amendments to the wording of ss. 51 and 53.

[36] In these circumstances, in my respectful view, the decision in *Amherst Crane* is to be preferred over *Pecore* when registered accounts with beneficiary designations, as defined in Part III of the SLRA, are at issue. As the Federal Court of Appeal stated, quoting *Amherst Crane*: "[t]he Ontario Court of Appeal confirmed, for Ontario, 'that RRSPs do not form part of the estate of the deceased but instead devolve directly to the designated beneficiary'": *Enns v. Canada*, 2025 FCA 14, 501 D.L.R. (4th) 562, at para. 23.

[37] Given my finding that no resulting trust applies to the TFSA or the RRIF, the onus is then on Mills to establish that Ernie's intention was to benefit the Estate with proceeds from the TFSA and the RRIF: *Mak Estate*, at paras. 46 and 47.

It was not Ernie's intention to benefit the Estate with the TFSA and the RRIF

[38] Mills has failed to adduce any evidence that Ernie intended for either the TFSA or the RRIF to form part of the Estate. The position that Mills appears to put forth is that the life insurance proceeds from Marie's death funded the TFSA and RRIF and that this legacy was intended to be shared by Mills and Olar. On cross-examination, when asked why Olar believes that he is entitled to the funds held in the TFSA and the RRIF, Olar answered:

> I think we're entitled to everything because one, it was my mom and dad's money, not Angele's or Bobby's [Stach's] money. And my mom would be rolling in her fucking grave right now if she knew what he was doing at the time before he died.

[39] Ernie received Marie's estate on her death. Those funds then became Ernie's to do with as he wished. Mills has no legal entitlement to that money simply because it was Marie's prior to her death and its passing to Ernie.

[40] I must determine Ernie's actual intention with respect to the TFSA and the RRIF, not what Mills or Olar believed his intention should be or what they believed that they were entitled to.

[41] There is no evidence before me to establish that Ernie intended for the RRIF or the TFSA to pass to the Estate. If Ernie's intention was for the RRIF or the TFSA to benefit the Estate, then he would not have amended the designated beneficiary to name Giasson. Additionally, Ernie made no mention of the TFSA or the RRIF in his will. This signals an intention for those two registered accounts and the designation of Giasson as beneficiary to remain separate from the will, particularly since he had only updated those accounts three months prior to updating his will. The only conclusion that can be reached on the record before me is that Ernie's intention was for both the TFSA and the RRIF to transfer to Giasson on his death.

[42] A separate issue that must be considered is Mills' assertion that Ernie was unduly influenced by Giasson into changing the beneficiary designations to name her.

Ernie was not unduly influenced by Giasson

[43] The burden lies with Mills to establish undue influence on a balance of probabilities given that she is alleging the undue influence and attacking the RRIF and TFSA beneficiary designations: *Mak Estate*, at paras. 39-41; *Seguin v. Pearson*, 2018 ONCA 355, 141 O.R. (3d) 684, at paras. 10-11; *Gironda v. Gironda*, 2013 ONSC 4133, at para. 79; *Taylor-Reid v. Taylor*, 2016 ONSC 4751, at paras. 82-83.

[44] The threshold to prove undue influence is a high one. The bar has been described as one of "outright and overpowering coercion of the testator" and in a situation where the "will of the testator was actually overwhelmed so as to make it not their own": *Seguin*, at para. 11; *Gironda*, at para. 79; *Laur v. Estate of Rosemary Eileen Ball et al*, 2025 ONSC 1366, at paras. 138-143.

[45] When undue influence is alleged, the court must consider all the circumstances, including the history of the parties' relationship, to determine whether undue influence is, or could be, present. Factors that may indicate undue influence, include but are not limited to where the testator:

(a) is dependent on the beneficiary for emotional and physical needs.

(b) is socially isolated.

(c) has experienced recent family conflict.

(d) has experienced recent bereavement.

(e) has made a new will not consistent with prior wills.

(f) has made testamentary changes simultaneously with changes to other legal documents such as powers of attorney.

(g) is increasingly isolated.

(h) makes substantial pre-death transfers of wealth to the respondent.

(i) makes express yet unfounded concerns that they are running out of money.

(j) fails to provide a reason or explanation for their testamentary changes.

(k) uses a lawyer previously unknown to them and chosen by the respondent.

(l) permits the respondent to be involved in meetings with the lawyer, including conveying instructions to the lawyer concerning the will.

(m) makes statements that they are afraid of the respondent.

Gironda, at paras. 77 and 80; *Laur*, at paras. 142-143, citing *Tate v. Gueguegirre*, 2015 ONSC 844, at para. 9.

[46] Based on the evidence before me, the only factor present in the relationship between Ernie and Giasson is (h), that Ernie made certain substantial pre-death transfers of funds to Giasson. In September 2022, Ernie gave Giasson $21,300 to assist her with credit card debt. Sometime in 2023, Ernie and Giasson opened a joint account and safety deposit box at WFCU. Giasson's evidence was that she and Ernie each placed cash in the safety deposit box to save for a cruise or a trip and the joint account had not been used. Just prior to his death, Ernie purchased a washer and dryer for Giasson; however, Mills canceled the purchase after Ernie passed.

[47] While Giasson accepted gifts from Ernie while he was alive, there is no evidence that she asked for these gifts. There is also no evidence that she asked or pressured Ernie to designate her as his beneficiary on the TFSA and the RRIF. There is no evidence that she interfered in his estate planning. Ernie invited Giasson to join him at a meeting with his lawyer, however, Giasson refused to accompany him to the lawyer's office. There is no evidence in the record, apart from speculation, that at any point Giasson actively participated in being designated as Ernie's beneficiary or that Giasson told Ernie what to do with his property. In contrast, there are emails in the record that disclose that Mills attempted to encourage and influence Ernie's decisions with respect to his assets and finances.

[48] The evidence that Mills seeks to rely on shows that Giasson was honest with Ernie about their relationship. Ernie's diary entries and his correspondence with Mills reveals that he was very aware, and disappointed, that Giasson was not prepared to move as quickly as he would have liked in their relationship. Ernie proposed to Giasson three times, but she was

clear that she was not prepared to proceed that quickly in their relationship despite reciprocating his love and affection. Had Giasson been attempting to influence Ernie's decision, and interfere with his Estate, marrying him would have been a logical and easy option for her. She, however, rejected his proposals. In these circumstances, it is difficult to conclude that Giasson took advantage of or manipulated Ernie.

[49] In my view, there is no evidence before me that rises to the level where I could conclude on a balance of probabilities that the designation of Giasson as the beneficiary for the RRIF or the TFSA was made as a result of undue influence. At best, the evidence that Mills relies on is speculative. In addition to affidavits filed by Mills and Olar, the beneficiaries under the will, Mills also relies on affidavit evidence from Ernie's neighbour and a friend of Ernie's to support her allegation that Giasson unduly influenced Ernie.

[50] Ernie's neighbour speculates in her affidavit about the relationship between Ernie and Giasson. She states she was concerned that Giasson was having a "major influence" on Ernie and that she "manipulated" Ernie. The neighbour offered no evidence in support of her opinion, and during cross-examination admitted that she only interacted with Ernie and Giasson on one occasion. In my view, this is opinion evidence and is unreliable.

[51] Similarly, Ernie's longtime friend, who is Ernie's neighbour's sister, believed that Ernie's mental and emotional state deteriorated following Marie's death, that he struggled with his memory, and that Ernie was taken advantage of and manipulated by Giasson. Ernie's friend, however, also offered no evidence in support of her opinion and only observed the two of them together on one occasion. In my view, this is opinion evidence and is unreliable.

[52] While Mills opined in her affidavit that Giasson was abusive and mistreated Ernie, Mills had only been in Giasson and Ernie's presence together once. Olar made a similar claim in his affidavit; however, he had never witnessed any mistreatment or abuse. The opinions appear to be based exclusively on emails that Ernie had sent to others describing his wish for a more romantic relationship with Giasson beyond friendship. After reviewing these emails, in my view, they show that Ernie wished for Giasson to be more influential in and over his life, but it was Giasson who placed boundaries on their relationship. The emails do not show that Giasson overwhelmed Ernie's will in any way.

[53] The emails that Mills relies on indicate that Ernie was lonely and potentially depressed following Marie's passing in November 2021, which would be expected after the death of a spouse. There is no evidence to support the assertion that Ernie was vulnerable or susceptible to undue influence. Mills also argues that Ernie had memory issues and early onset dementia, that he abused alcohol and expressed thoughts of suicide. Again, there is no evidence to corroborate Mills' speculation concerning Ernie's capacity. While there is reference to a possible mini stroke that Ernie may have had in February 2023 in Mills' affidavit, there is no evidence, medical or otherwise, that speaks to this or what potential symptoms Ernie may have been suffering prior to, during, or following this medical incident. There is no medical or expert opinion evidence to corroborate the allegation that Ernie suffered from memory issues or that challenges Ernie's capacity.

[54] Mills does not challenge the will or Ernie's capacity to leave her and Olar his principal asset, his home. She only challenges his decision to designate Giasson as the beneficiary on the TFSA and the RRIF. She offers no evidence from Ernie's bank or the representative of the bank who was present at the time that Ernie changed the designation to Giasson on both accounts.

[55] Mills also argues that there was a pattern of Ernie being taken advantage of following Marie's passing, including by Stach, as confirmed in correspondence that Ernie exchanged with Mills. There is no evidence from Stach and Stach was not given an opportunity to respond to the financial abuse allegations made by Mills. I make no findings with respect to Stach on this application. In my view, however, given the fact that Ernie felt taken advantage of by Stach, Ernie arguably would have had a heightened self-awareness about being taken advantage of by others and in fact took actions to protect himself. This was shown by Ernie changing his will to exclude Stach, an intentional choice to protect his Estate, and effectively the eventual inheritance to Mills and Olar. In any event, that Ernie may have been taken advantage of by Stach is not evidence that there was undue influence by Giasson.

[56] Allegations were made by Mills about Giasson participating in misrepresentations to obtain insurance coverage. Mills argued that Giasson should not benefit as the designated beneficiary on the TFSA or the RRIF as a result of these misrepresentations. There is conflicting evidence before me with respect to the insurance designation. I am not prepared to make any finding with respect to whether or not misrepresentations were made without a more complete record and *viva voce* evidence. In any event, whether misrepresentations were made is not an issue before me.

[57] Mills' evidence does not appear to amount to anything more than speculation. There is no evidence before me that Ernie did not make the designations of his own free will. There is no evidence from the WFCU regarding the RRIF, the TFSA, or the circumstances surrounding the change in beneficiary designation to Giasson. It is clear to me that Ernie was fully aware of the status of his relationship with Giasson, he could think and make decisions on his own, he actively planned and organized various aspects of his life, he led an active life, he was in regular contact with several different people, and he was not isolated. Even considering all the circumstances that Mills points to, the evidence simply does not support that there was "outright and overpowering coercion" of Ernie or that his will "was actually overwhelmed so as to make it not [his] own."

[58] In my view, there is no evidence before me that rises to the level where I could conclude on a balance of probabilities that the designation of Giasson as the beneficiary for the RRIF or the TFSA was made as a result of undue influence. At best, the evidence that Mills relies on is speculative. Mills has failed to meet the high bar required for a finding of undue influence.

CONCLUSION AND COSTS

[59] For these reasons, I make the following orders:

(a) The RRIF and the TFSA shall be paid by WFCU to Giasson, or to whom Giasson directs.

(b) The application shall be and is hereby dismissed.

[60] Giasson is entitled to her costs of this application. She requests her costs payable by Mills in her capacity as Estate Trustee. Given that the issue of whether a resulting trust applies to the TFSA and the RRIF was arguable and unsettled, evidenced by the conflicting decisions of this court and the fact that neither lawyer provided me with the Court of Appeal for Ontario decisions that I ultimately relied on, in my view, this litigation was reasonably necessary to ensure the proper administration of the estate, and Giasson's costs should be paid out of the Estate and not by Mills personally: *Geffen v. Goodman Estate*, [1991] 2 SCR 353 at 390-391; *McGrath v. Joy*, 2022 ONCA 119 at paras. 91-96.

[61] If the parties are unable to resolve the quantum, Giasson may deliver her written costs submissions of up to three pages (excluding any costs outline, bill of costs, or offers to settle) within 30 days, and Mills may deliver her responding submissions on the same terms within 30 days following.

_____

Jacqueline Horvat
Justice

Released: March 26, 2026

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Applicant

– and –

Angele Giasson

Respondent

REASONS FOR JUDGMENT

Horvat J.

Released: March 26, 2026