STEP Canada Connection

Toronto Branch Newsletter

ADVISING FAMILIES ACROSS GENERATIONS

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Message from the Chair, STEP Toronto

Greetings STEP Toronto!

Happy New Year! We are grateful to have capped off an eventful year in 2024 and look forward to exciting events for 2025. Thank you to everyone who attended our annual Blue Monday event on January 20th! It was a wonderful evening catching up and welcoming in the new year. Our first two fall local bundle programs, namely: "Insurance Audits: When It's Time to Have Your Client's Insurance Plan Reviewed", and "Communicating with Clients: Discussion Regarding Use of Language When Speaking to Clients About Gender, Illness, and Mental Illness" were very well-received. And as a reminder, there are four more to come: "Have You Done Your Succession Planning: Succession Planning for Professionals - How to Advise Yourself and Your Professional Clients" (January 27, 2025); "Family Trusts and Family Law: Family Lawyers Answer Our Burning Questions" (February 24, 2025); "How to Plan for Assets Across Canada: A Deep Dive into What to do When Your Clients Own Assets in BC, Quebec, and Nova Scotia (March 24, 2025)"; and "The Estate Planner's Window to the World: What to do When Your Clients Own Assets Abroad?" (April 21, 2025). Please note that registration for the bundle is still available giving registrants access to all six programs, the first two of which have already been archived for replay.

It is also great to see so many who continue to participate in the Stepping Out to Lunch programs, whether at the online sessions, or in-person meetings, or both. The discussions are always excellent and I am grateful to members of our executive who skilfully moderate, and am equally appreciative of our diligent volunteer notetakers.

In November, I, along with my counterparts in the other branches across the country and the rest of the STEP Canada Board of Directors, participated in a two-day strategy meeting where we reviewed and discussed the survey results that so many of you took the time to complete. Thank you for the feedback! The results provided a foundation for some great discussions. Stay tuned to hear about some action items that will arise from the sessions.

Also in November, we held a very successful student event at the Rec Room where great fun, food and conversation abounded. Thanks to Alexandra Firsov for spearheading this!

And as always, with the diligence and dedication provided by our Newsletter Committee, our newsletter continues to deliver quality and informative articles. We are always looking for additional content. If you have articles of interest for publication, please send to Andreea Muth at amuth@pallettvalo.com.

In closing, I would like to thank the members of this year's Board for devoting so much time and effort to ensure that STEP Toronto's fall activities came off so well. Next up is our Branch Bundle CPD on January 27, 2025.

Until then, on behalf of the Toronto Branch Executive and the entire Board I wish all of you a healthy and happy new year!

Warmly,

Ian Lebane, Chair, STEP Toronto

In this Newsletter

STEP Toronto Executive

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In Case You Missed It, November 18th, 2024: Communicating with Clients: Discussion Regarding Use of Language When Speaking to Clients About Gender, Illness, and Mental Illness

Summary by: Harinder Singh, Pallett Valo LLP

Estate planning professionals often encounter sensitive topics that require not only technical expertise, but also empathy, inclusivity, and foresight. Moderated by Marni Pernica, Partner at Aird & Berlis LLP, this panel featured three speakers—Demetre Vasilounis (Associate at Fasken LLP), Margaret O'Sullivan (Managing Partner at O'Sullivan Estate Lawyers), and Dr. Chantal Perrot (Physician Advisor at Dying with Dignity)—each approaching challenging client conversations from a distinct vantage point. Through their insights, attendees learned strategies to engage clients on complex issues, understand their unique personal circumstances, and draft plans that reflect evolving social, legal, and medical considerations.

Demetre began by exploring best practices for communicating with clients facing difficult decisions. He emphasized clearly defining the advisor-client relationship at the outset to manage expectations and boundaries. Recognizing that emotions often surface in estate planning matters, Demetre outlined the importance of listening attentively, educating clients on legal realities, and distinguishing between legal advice and emotional support. He then delved into drafting wills that acknowledge changing social norms, focusing on inclusive language and sensitivity to beneficiaries' differing gender identities. By adopting gender-neutral terminology and clarifying pronouns, practitioners can ensure a respectful and accurate reflection of all family members, including LGBTQ+ individuals, while being mindful of unique issues such as assisted reproduction and surrogacy arrangements.

Next, Margaret addressed the topic of mental health and the societal taboos that still hinder open discussion. She noted that one in five Canadians will experience a mental health issue, making it vital for practitioners to anticipate and navigate these scenarios. Margaret highlighted the advisor's role in helping clients acknowledge and confront family mental health challenges—sometimes the most difficult step. By providing a safe, confidential environment and projecting confidence in tackling these sensitive matters, professionals can guide clients toward strategies that address long-term care needs, diminished capacity concerns, and support for vulnerable beneficiaries. The goal is not only to suggest options but to empower clients to make informed decisions that offer peace of mind, both now and in the future.

Finally, Dr. Chantal Perrot introduced the complex landscape of Medical Assistance in Dying (MAiD). She offered a brief history of MAiD's legal development in Canada, explained current eligibility criteria, and discussed the practical implications of recent legislative changes, including the concept of "waiver of final consent." While mental illness as a sole underlying condition for MAiD is currently excluded, Dr. Perrot noted that this may change in the coming years. She also emphasized that capacity is central to end-of-life decision-making, and that estate planning documents should clearly reflect clients' values and principles over time. As end-of-life options evolve, Dr. Perrot encouraged advisors to prompt clients to articulate their values and health care preferences in their powers of attorney and wills. Including details about end-of-life care, from palliative measures to conditions under which a client might consider MAiD, can ensure that future medical decisions align with a client's long-held values. With Quebec pioneering advance directives for MAiD and forthcoming consultations on broader legislative shifts, it is increasingly important for estate planners to remain informed and proactive.

The panel concluded with a question-and-answer segment.

From inclusive drafting and mental health considerations to navigating cutting-edge medical decision-making frameworks, the panel highlighted the importance of empathy, clarity, and adaptability in estate planning. As traditional approaches give way to more nuanced client conversations, advisors who embrace these evolving dynamics can deliver not just legal solutions, but also genuine reassurance in uncertain times.

Highlights from STEP-ping Out To Lunch – December 11th, 2024

Prepared by Pritika Deepak, Associate, Fasken Martineau DuMoulin LLP

Highlights from the STEP-ping out to Lunch that was held in person on December 11th, 2024 included discussions about:

- Best practices when dealing with estate assets that involve real property in Ontario which is occupied by persons who are not beneficiaries of the estate
- Whether a successor holder can be added to an in-trust-for account
- Canadian tax treatment of funds received from the European Union which, in substance are similar to a pension, but are not taxable in the European Union
- Appointing attorneys and protectors in a power of attorney for property
- STEP Canada's ongoing involvement with STEP Worldwide to create a global representative power of attorney document

STEP Toronto presents…

The STEP Toronto Branch is excited to offer its members and delegates all 2024-2025 programs via **on-demand** broadcast. Don't miss this opportunity to interact with the speakers during the live Q&A on the broadcast date.

STEP Toronto Event: January 27, 2025 – Have You Done Your Succession Planning: Succession Planning for Professionals – How to Advise Yourself and Your Professional Clients

This program will offer practical advice on preparing for potential future absences from your practice, including retirement. It will address key topics such as:

- *Organizing your files and communicating with clients,*
- *Managing your finances to ensure long-term protection,*
- *Understanding the process and tax implication of selling your practice, and*
- *Planning for a smooth succession.*

Speakers: **Henry Shew**, CPA, CA, LLM, CPA (WA), Macc, TEP; Markham: Our Family Office

Adam Morke, CPA, CA, TEP; Toronto: Stern Cohen LLP

Event Date: January 27, 2025 at 12:00 – 1:30PM ET

Location: Branch Bundle Attendee Hub/Event App

On-demand viewing is available only for Branch Bundle registrants. Access is provided 3 business days after the event.

Article: Post-Marriage Contracts Have Become Popular

By Steve Benmor, B.Sc., LL.B., LL.M. (Family Law), C.S., Founder and Principal Lawyer, Benmor Family Law Group.

Marriages, like any partnership, can face unexpected challenges. When financial and personal dynamics evolve, couples may find themselves exploring Post-Marriage Contracts as a means to re-define their commitments, avoid greater financial risks and safeguard their interests.

Here are some common reasons why couples opt for Marriage Contracts after they have been married.

Financial strains can place immense pressure on a marriage. Couples grappling with mounting debts, differences in spending habits, or changes in financial circumstances may turn to Post-Marriage Contracts to re-establish financial expectations and alleviate tension.

Consider Sarah and Mark who had been married for five years, but over time, financial stress began to chip away at their relationship. They both had full-time jobs, but they came from very different financial backgrounds and had contrasting approaches to money.

Sarah was more of a saver, preferring to budget tightly and avoid unnecessary spending. Mark, on the other hand, had a more relaxed attitude toward money. He enjoyed splurging on gadgets, dining out, and taking spontaneous vacations. While this didn't seem like a problem early on, it slowly became one as their debt began to accumulate.

Sarah and Mark had a mortgage, car loans, and credit card debt from Mark's impulsive purchases. Sarah tried to rein in spending, but Mark's spending habits persisted. As their financial situation worsened, arguments about money became more frequent. Sarah would get frustrated when she saw Mark buying new electronics or making extravagant plans without considering their mounting debts.

Mark felt controlled and stifled by Sarah's insistence on saving and budgeting, seeing her approach as too rigid.

The tension in their marriage started to spill over into other areas.

They began avoiding discussions about finances, which only made the situation worse. Bills went unpaid, credit scores dropped, and the stress from their financial mismanagement strained their emotional connection. They found themselves fighting more often, not just about money but about their priorities, their future, and whether they could stay married under the pressure.

After a particularly heated argument, Mark suggested that they consult a financial counselor. The counselor helped them realize that their differing financial habits weren't just a result of poor communication, but a fundamental mismatch in their values and expectations regarding money. This realization led them to discuss the possibility of creating a Post-Marriage Contract to clearly define their financial roles and expectations moving forward.

This contract allowed them to create clear financial boundaries, and it helped to rebuild their trust in each other. While it wasn't a complete fix to their deeper issues, it helped alleviate some of the stress around money and gave them a concrete plan to work toward. Over time, Sarah and Mark began to understand each other's financial needs and concerns better, and the constant strain that had once seemed insurmountable became more manageable. The financial pressure, though still present, no longer dominated their relationship as it once had.

Another example is when a spouse is to receive a significant inheritance. In that case, couples may choose to sign a Post-Marriage Contract to clarify how the inherited wealth should be managed within the marriage. This can prevent potential conflicts and provide a structured approach to handling newfound financial resources.

Consider the example of Farhad and Armen who have been married for ten years and, one day, Farhad learned that she was to inherit a substantial sum of money from her late grandfather, along with a family-owned business. While Farhad and Armen have always managed their finances jointly, Farhad wanted to ensure that the inherited assets are protected and that her family's legacy is preserved, especially in the event of a divorce. To address this, they decided to enter into a Post-Marriage Contract which helped prevent potential disputes in the future while maintaining transparency and mutual understanding.

The most threatening of all events during marriage is the discovery of infidelity. It can have profound effects on a marriage. Couples opting to re-build their relationship – while attempting to remediate the broken trust – may use a Post-Marriage Contract to address financial concerns stemming from the breach of trust, ensuring both parties are protected as they work towards reconciliation.

Consider Parminder and Rahul who had been married for twenty years when Parminder discovered that Rahul had been having an affair for the past six months. The revelation shattered their trust, and for several weeks, the couple struggled to communicate. After the initial shock and anger subsided, they began to explore the possibility of rebuilding their relationship. Parminder was deeply hurt and uncertain about whether she could ever trust Rahul again, while Rahul was filled with remorse but wanted to prove his commitment to her and their family.

As part of their effort to move forward, they decided to consult a marriage counselor and also sought legal advice. Recognizing the need for a clear framework to address both emotional and practical concerns, they opted to create a Post-Marriage Contract. The contract was designed not only to protect both parties but also to ensure transparency, fairness, and mutual respect in their rebuilding process.

The Post-Marriage Contract was an important tool for Parminder and Rahul to navigate the new chapter of their marriage. While it was not a cure-all, it provided a structure that helped both of them address their individual concerns. For Parminder, it gave her a sense of control and security in an otherwise uncertain situation, while Rahul saw it as an opportunity to prove his commitment to rebuilding trust. Over time, they worked through their emotional pain and gradually rebuilt their bond, with the contract acting as a constant reminder of their mutual dedication to healing and rebuilding their marriage.

Life is dynamic, and decisions made during a marriage can have varying impacts on each partner. Whether it is one of the above example, or a career change, a significant move, or a major investment, a Post-Marriage Contract can provide a framework for handling the financial consequences of decisions that may affect the couple differently.

In conclusion, Post-Marriage Contracts offer couples a way to adapt to changing circumstances and reinforce the foundation of their relationship. By addressing financial concerns and clarifying expectations, these agreements provide a level of security and transparency that can contribute to the longevity and health of a marriage. It is essential for couples considering a Post-Marriage Contract to engage in open and honest communication and seek legal and financial advice to ensure that the terms are fair, mutually agreed upon, and legally sound.

Article: Trapped AMT in Trusts

By Alex Kerslak, LLM, CFA, TEP, Senior Manager, Tax, PricewaterhouseCoopers LLP, & **Lorenzo Armena,** CPA, TEP, MAcc, Senior Manager, Tax, PricewaterhouseCoopers LLP.

The 2023 Federal Budget announced the most significant changes to the alternative minimum tax (“AMT”) regime since its inception in 1986, with the aim to “better target the AMT to high-income individuals”. These changes were enacted under Bill C-69 and will take effect for taxation years beginning after 2023. Neither the 2023 Federal Budget nor the Parliamentary Budget Officer report analyzing the AMT proposals estimated the number of trusts that would be affected. However, as this article will discuss, we anticipate a considerable increase in the number of trusts subject to AMT under the new rules.

The increase in the number of trusts subject to AMT is expected for three main reasons: (1) almost all trusts do not benefit from the basic exemption amount; (2) the “adjusted taxable income” (“ATI”) now disallows common tax incentives that were previously permitted; and (3) many trusts are not subject to regular tax, as often trustees distribute all taxable income to its beneficiaries.

AMT and its application to trusts

The AMT aims to ensure high-income individuals and trusts pay a minimum level of tax, despite qualifying for various exemptions, deductions and credits under the Income Tax Act. The AMT involves a detailed calculation that includes adjustments to a person’s taxable income by restricting access to certain exemptions, deductions, and credits that are typically allowed. There is an additional tax due to AMT where the federal AMT exceeds an individual’s or trust’s regular federal tax liability during the year.

While individuals (which includes trusts for tax purposes) are subject to AMT, there are some exceptions. These exceptions include the year of an individual’s death, graduated rate estates (a new exception for years after 2023), and certain other trusts for the year in which a deemed disposition occurs upon an individual’s death, such as certain spousal trusts, or alter-ego trusts.

The AMT formula starts by determining an individual’s ATI, which is their regular income with specific adjustments made to disallow certain tax incentives. The ATI is then reduced by the basic exemption amount ($173,205 for the 2024 taxation year, inflation adjusted going forward), multiplied by 20.5%, and further reduced by certain tax credits. Accordingly, for the 2024 taxation year, the AMT is calculated as follows:

(ATI - $173,205) * 20.5% - basic minimum tax credit - special foreign tax credit

The basic exemption amount is intended to carve-out lower-income taxpayers from AMT exposure by ensuring a certain level of income can be earned before AMT applies. Trusts do not benefit from the basic exemption amount (unless it is a “qualified disability trust” which is outside the scope of this article) so AMT can apply to trusts regardless of its level of income. Any increase to the ATI, or reduction to the credits under either the basic minimum tax or special foreign tax credit formula, will result in AMT in a trust, provided that trust has nil regular tax owing otherwise - for instance if trustees distribute all of the trust’s taxable income to the beneficiaries.

The ATI calculation begins by determining the taxpayer's normal taxable income for the year, followed by many adjustments to disallow specific tax incentives. For example, for normal tax purposes a donation of a share listed on the TSX to a registered charity has a nil inclusion rate, whereas for ATI purposes it has a 30% inclusion rate, meaning a $1,000 capital gain due to a donation of $1,000 would result in nil taxable income, but $300 ATI. This process repeats for each adjustment required under the ATI calculation.

There is an opportunity to recover AMT paid in the following seven years if the regular tax exceeds the federal AMT in any of those years. However, this carryover may be less beneficial for trusts that do not retain regular taxable income, as the carryover would be unavailable without specific planning.

Once the federal AMT is determined, it is also necessary to consider the provincial AMT impact. All provinces, except Quebec, rely on the federal AMT calculation to determine the provincial tax payable (the Quebec AMT regime is outside the scope of this article). Provincial AMT is calculated as a percentage of the difference between federal AMT and federal normal tax payable.

Changes to the ATI formula impacting trusts

The changes for the 2024 taxation year introduce a series of new adjustments to the ATI calculation, which makes it more likely for many trusts to have ATI in excess of its taxable income. In this section we consider some common scenarios where this may occur. This is far from an exhaustive list of the new ATI adjustments which is beyond the scope of this article. We assume the trusts in question have no regular tax owing, are not exempt from AMT, and do not benefit from the basic exemption amount. Any remaining ATI in the examples below will be multiplied by 20.5% to determine the federal AMT, in addition to any applicable provincial AMT.

<u>Prescribed rate loan planning (interest expense)</u>

New for 2024, only 50% of interest and financing expenses incurred for the purpose of incurring property income are deductible when calculating ATI. Consider a situation where the trustees borrow funds to earn property income in the trust as part of a prescribed rate loan plan. The trust incurs an interest expense of $20,000 to earn $100,000 of investment income, and the trustees allocate the taxable income of $80,000 to the beneficiaries in the taxation year. For regular tax purposes, the trust is left with nil taxable income meaning no regular tax ($100,000 income, less $20,000 interest expense, less $80,000 income allocation). However, for AMT purposes, there will be $10,000 of ATI ($100,000 income, less $10,000 adjusted interest expense, less $80,000 income allocation).

<u>Investment counseling fees</u>

Draft legislation released on August 12, 2024 proposes to limit investment counseling fees to 50% when calculating ATI, to be effective for taxation years after 2023. It is common for trusts with investment portfolios to incur these types of fees. Consider a situation where a trust incurs investment counseling fees, to have an investment portfolio managed. The trust earned $50,000 of investment income during the year and was charged a management fee of $2,000 during the year, and the trustees allocated the taxable income of $48,000 to the beneficiaries in the taxation year. For regular tax purposes, the trust is left with nil taxable income meaning no regular tax ($50,000 income, less $2,000 investment counseling fees, less $48,000 income allocation). However, for AMT purposes, there would be $1,000 of ATI ($50,000 income, less $1,000 investment fees, less $48,000 income allocation).

<u>Applying loss carryovers</u>

New for 2024, the calculation of ATI also includes an adjustment where a taxpayer applies their capital loss carryover balance against capital gains earned during the year, generally capped at the inclusion rate of the taxpayer for the year, whereas capital gains for ATI purposes have a 100% inclusion rate. Consider a trust that realizes $10,000 of capital gains in late 2024 and applies a capital loss carryforward of $10,000 to offset that capital gain - it is assumed that the proposed legislation to enact the two-thirds inclusion rate for capital gains applies. For regular tax purposes that trust would have nil taxable income meaning no regular tax ($6,666 taxable capital gain less $6,666 capital loss carryforward applied). For AMT purposes, there would be $3,333 of ATI ($10,000 taxable capital gain less $6,666 loss carryforward applied).

Practical implications with AMT in trusts

A key issue for many trusts under the new AMT regime is their ability to pay the tax. A number of trusts lack bank accounts and cannot directly remit funds. If funds are remitted on behalf of the trust through a loan arrangement, care must be taken to avoid causing additional tax issues through triggering attribution rules.

Some trusts subject to AMT may have no additional cash flow that can cover the tax liability - which is more problematic where the trust itself has minimal liquid assets or earns its income through investing capital received in a loan. Trustees will need to ensure that AMT will not prevent the trust from repaying the trust's outstanding liabilities later (e.g. a prescribed rate loan).

Trustee resolutions will need to be considered when making income of the trust payable at the end of the year to beneficiaries, when that trust may be subject to AMT. For example, if a trustee resolution states "net income" is payable, is that beneficiary's entitlement to taxable income reduced by income tax payable by the trust (due to AMT)? Alternatively, is income tax paid from the capital of a trust potentially eroding the capital beneficiaries' entitlement? A solution may be available if a trust deed permits trustees to determine if income tax is to be charged against income or capital.

Planning for AMT in a trust

One option is to retain sufficient income in a trust to ensure regular tax is equal or greater than AMT so that AMT is avoided, or AMT from a previous year can be recovered. It can be difficult to determine if this is the most tax-efficient approach, and any professional fees to implement specific planning should be considered in conjunction. Generally, the calculation requires comparing the reduction in beneficiaries' tax payable to the increase in tax payable by the trust (trust taxable income is taxed at the top federal and provincial tax rates). It is possible that after the completion of these calculations it is determined that allowing the AMT to occur still results in the greatest tax savings.

Surprisingly, one conclusion may be to decide not to claim optional deductions or credits that cause AMT. For example, not using a trust's capital loss carryover balance available to avoid AMT and distributing capital gains to beneficiaries instead. This result may occur where the savings that would otherwise be available do not outweigh the practical implications with AMT in the trust. There are also some scenarios where a beneficiary is taxed at a sufficiently low tax rate, as a result it may be better for a trust to distribute more taxable income to avoid AMT!

About Connection

Please note that each advertiser is linked to their web page (as are our program sponsors below). Please click through to their web pages to learn more about each of our sponsors and advertisers. STEP Toronto publishes 'Connection' for our membership 6 times per year between September and May. We welcome your feedback and contributions. The STEP Toronto Board is looking for volunteers to assist with this newsletter and our other committees. Please send any comments or inquiries about volunteering with the STEP Toronto Board to any of our Board members.

Letters, announcements, opinions, comments from members

If you have an article or an idea that would be of interest to other members of STEP, please send them to Elise Pulver elise.pulver@td.com for consideration for inclusion in our next edition.

STEP continues to grow and we welcome membership inquiries. As a reminder, there are three routes to full membership; one based on experience (Expertise Route) and two education routes (Essay Route and Exam Route).

If you know anyone who would be a good candidate for STEP membership, please direct them to the STEP Canada website for information.

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