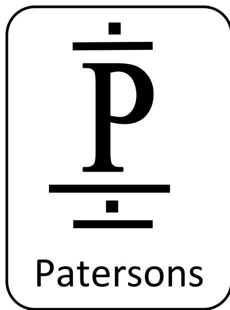

Separated Spouses and Life Insurance

By Breena Murray

A recent decision by the Manitoba Court of Appeal highlights the importance of updating your named beneficiaries as life circumstances change.

In that decision, a man had a previous common-law partner with whom he separated from in 1994. The man had designated his former common-law partner as the beneficiary of the death benefit through his group insurance plan at work at the beginning of their relationship. He never changed the beneficiary of his death benefit upon separation from his partner.

The same year he split from his former partner, the man began a new common-law relationship, which lasted until his death in 2007. The man and his new partner owned a house together as joint tenants and had joint bank accounts. Additionally, the man had named his partner has the beneficiary to all of the other group benefits he had available to him, including his pension, health and dental benefits. However, he did not name her has beneficiary of his death benefit.

When the man died, he did not have a Will prepared nor had he changed the beneficiary on his death benefit from his former common-law partner. As result, when he passed away in 2007, the former partner received the benefit from the life insurance policy.

The current partner tried to argue that when the man designated her has beneficiary of all the other benefits he was entitled to, this was evidence to show that he intended for her to be the beneficiary of his death benefits as well. However, the trial judge held, and the Court of Appeal agreed, that *The Insurance Act* requires that a change in beneficiary must be in writing and signed by the insured. As such, the former partner was entitled to keep the death benefit monies she had received.

There is an important lesson to be learned from this case. When a person is in the midst of a separation from their common-law partner or spouse, one of the last things they think about is their insurance policies, Wills and Powers of Attorneys. Yet, if they don't think about these things, there could be unintentional consequences if something were to happen to them.

For example, if you have a Power of Attorney that names your (former) spouse as attorney of your affairs if you become incapacitated, there is nothing preventing them from being the person handling your financial affairs unless the court makes an order otherwise.

Similarly, if you were to die without a Will, your estate would be divided as set out by *The Intestate Successions Act*. Your spouse or common-law partner would be entitled to the entire estate or one half of the estate (if you have children that are not also your spouse's children), unless an application has been made for an

accounting or equalization of your assets.

Finally, if you have a Will that you made previously, which names your former spouse as a beneficiary, he or she would be entitled to take the assets you left them. This is true, unless a divorce judgment has been issued or in the case of common-law partners, you have been separated for more than three years.

As we saw with the preceding case, if your spouse or common-law partner is named as beneficiary of your life or disability insurance, they would be entitled to the proceeds from the plan, no matter how long you have been separated. As such, at the time of separation, one should always update their insurance policies, Powers of Attorneys, Wills and any other document in which a beneficiary has been named.