



## Advancement by Scott D. Abel

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It is common nowadays for ageing parents to transfer their assets into joint accounts with their adult children in order to have that child assist them in managing their financial affairs. An obvious example is an elderly parent having their bank account be joint with an adult child, with the child having the right of survivorship. One needs to be cautious with this practice, due to the legal implications that may arise.

The law used to be, when a parent made a gift to an adult child, it was presumed that the gift was meant to benefit the child. Therefore, when a joint bank account was opened, with the adult child as the other account holder, when the parent died, the child received the balance of the bank account.

This avoided the necessity of probate, and often minimized the amount of work that had to be done to transfer a deceased parent's assets.

The Supreme Court of Canada has recently changed the presumption – it can no longer be presumed that the parent

intended to benefit the child.

In fact, the Supreme Court has now ruled that the adult child is holding the property in trust for the ageing parent to facilitate the free and efficient management of that parent's affairs. The property may be held for the benefit of the parent while still alive, or the parent's estate when they die.

The presumption is rebuttable – the adult child could adduce evidence to suggest that when the child became an account holder with their parent, the parent intended to give the child the right of survivorship to whatever assets are left in the account.

How does one produce that kind of evidence? One should look at the wording of the bank documents themselves, the control and use of the funds in the account, and the tax treatment of the joint account.

This rule of advancement does not apply, however, if the child is a minor. The presumption if the child is a minor, is still to benefit the child.

There is no one correct way to address issues. As with any family situation, the best way to minimize future conflicts is to discuss matters with everyone in the family.

These problems tend to arise only after the elderly parent has died, and at that point, it is too late to ask them what they intended. Therefore, communication and documentation is the best manner in which to minimize the possibility of future conflict.