

EXECUTIVE SUMMARY/RÉSUMÉ

Most retirement and pension plans allow the plan participant to decide who should be entitled to their assets when they die. In Manitoba, *The Beneficiary Designation Act (Retirement, Savings and Other Plans)* [*The Beneficiary Designation Act*]¹ provides for the creation of beneficiary designations under insurance and pension benefits legislation. This report considers reforms to improve the efficiency and clarity of *The Beneficiary Designation Act*.

The Commission decided to explore reform of the Act after learning of some possible deficiencies in the current law. In April 2018, the Commission released a consultation report entitled *The Beneficiary Designation Act (Retirement, Savings and Other Plans)* to solicit feedback on possible areas of reform. The Commission received comments from legal practitioners who provided their comments on the provisional recommendations and issues for discussion. Through the consultation process, the Commission received practical feedback from experts and legal practitioners who work in the area. The feedback received helps to inform this report.

This report addresses the need for reform in three main areas: (1) the continuation of beneficiary designations where plans are renewed, replaced, or converted; (2) making, changing or revoking beneficiary designations; and (3) the effect of marriage, divorce and common-law relationships. The report also considers other areas of reform, namely irrevocable beneficiary designations, multiple beneficiaries, trusteeship, prescribing plans, beneficiary pre-deceasing a plan participant; and plan benefits and claims from creditors.

The Commission makes eight recommendations to amend and update *The Beneficiary Designation Act* to improve the legislation and help Manitobans carry out their intentions when it comes to making beneficiary designations. Perhaps one of the most significant issues addressed in the report is whether there is a gap in the law such that a beneficiary designation will not automatically roll over in certain circumstances, such as when an insurance policy or investment plan is replaced or converted. In such circumstances, the renewed, converted or transferred plan, including the beneficiary designation, ceases to exist, and the participant must make a fresh beneficiary designation. Requiring the participant to make a fresh beneficiary in such situations can prove particularly problematic when the participant has become mentally incompetent and is unable to make a continuing designation. To mend this gap, the Commission recommends amendments to *The Mental Health Act*, *The Vulnerable Persons Living with a Mental Disability Act*, and *The Powers of Attorney Act* that would expressly allow a substitute decision maker to redesignate a beneficiary to which *The Beneficiary Designation Act* applies.

This report is part of a series of Commission reports entitled *Creating Efficiencies in the Law*. This series focuses on provincial legislation that would be more efficient with relatively straightforward and minor adjustments

¹SM 1992, c 31; CCSM c B30.

