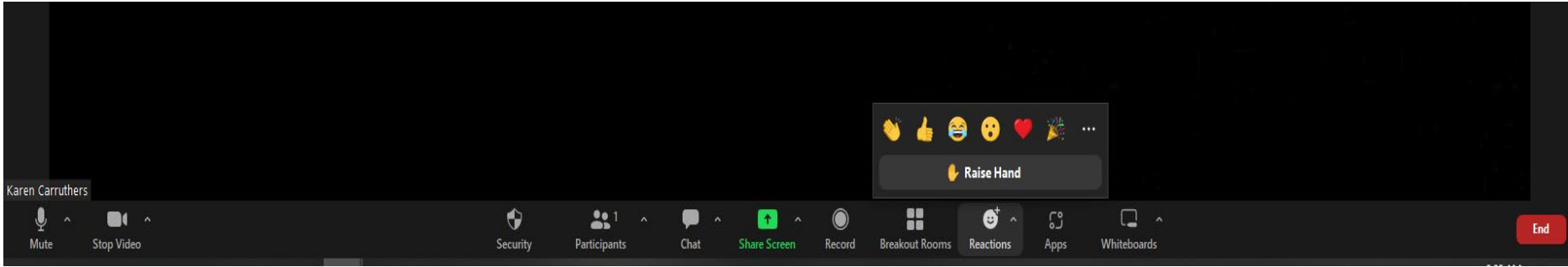


# AFSRB Lunch and Learn

## Who can control disposition

November 16, 2022



# Outline

- ▶ Review the Order of Priority
- ▶ Review additional provisions
  - ▶ Explanation of how these can be used
- ▶ Defining adult interdependent partner
- ▶ Scenarios to work through
- ▶ Questions

# Funeral Services Act General Regulation Section 36

- ▶ The order of priority is subject to an Order of the Court
- ▶ The right to control disposition of human remains or cremated remains vests in or devolves on persons in the following order of priority:
  - ▶ The personal representative designated in the will of the deceased
  - ▶ The spouse or adult interdependent partner of the deceased
    - ▶ If they were living with the deceased at time of death
  - ▶ The adult child of the deceased
  - ▶ A parent of the deceased
  - ▶ A guardian of the deceased
  - ▶ An adult grandchild of the deceased
  - ▶ An adult brother or sister of the deceased
  - ▶ An adult nephew or niece of the deceased
  - ▶ An adult next of kin
  - ▶ The Public Trustee
  - ▶ An adult person having some relationship with the deceased
  - ▶ The Minister of Community and Social Services

# Order of the Court

The purpose of this information is for general guidance/clarification if a family is looking to obtain an Order of the Court.

An Order of the Court for this purpose can be obtained from Court of King's Bench or a Provincial Court.

There are provisions for obtaining an “emergency or urgent” court order, and these are processed within 24-48 hours. From the information on the court's website, it isn't clear if controlling disposition would be captured under these provisions.

It is likely that a family wishing to obtain an Order of the Court may need the services of a lawyer to help navigate this process, although this is not a requirement.

# Section 36 Additional provisions

## ▶ “living with the deceased”

### ▶ Includes a situation where:

- ▶ The deceased resided before death in a care facility for health reasons and the spouse or adult interdependent partner continued to provide the usual support customarily associated with couples intending to continue a relationship, or
- ▶ The deceased and the spouse or adult interdependent partner were living apart at the time of death due only to circumstances other than a breakdown of their relationship

## ▶ Parent means:

- ▶ if the deceased is a minor, the parent who had legal custody of the deceased at the time of death.

# Section 36 Additional provisions con't

- ▶ Persons of equal rank
  - ▶ If the person who has the right to control the disposition of human remains or cremated remains passes to persons of equal rank, in the absence of agreement between or among them, the order of priority begins with the eldest person in that rank and descends in order of age.
- ▶ Unavailable or unwilling
  - ▶ If the person who has the right to control the disposition of human remains or cremated remains is not available or is unwilling to give instructions, that right passes to the next available qualified person.

# Adult Interdependent Partner Act

- ▶ The definition provided for under this piece of legislation states the following:
  - ▶ A person is the adult interdependent partner of another person if
    - ▶ The person has lived with the other person in a relationship of interdependence
      - ▶ For a continuous period of not less than 3 years, or
      - ▶ Of some permanence, if there is a child of the relationship by birth or adoption
    - ▶ OR
    - ▶ The person has entered into an adult interdependent partner agreement with the other person
  - ▶ Persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent partner agreement under section 7.
  - ▶ “Relationship of interdependence”
    - ▶ Means a relationship outside marriage in which any 2 persons share one another’s lives, are emotionally committed to one another and function as an economic and domestic unit.



# Scenario 1

Joey Jones passed away. Joey is living with Betty Boop and has been living with her in an adult interdependent relationship for the last 10 years. Joey also has a spouse, Maggie Jones, who Joey is separated from but they are not divorced.

Joey and Maggie have a son, Joey Jones Jr., who is a big shot lawyer and will be paying for the funeral.

Maggie Jones has come forward saying that she should be responsible for making the funeral arrangements because she is still technically his spouse.

Joey Jones did not have a will.

In this situation, who should control the disposition of Joey Jones?

1. Maggie Jones, spouse
2. Joey Jones Jr., adult son
3. Betty Boop, adult interdependent partner

# Answer to Scenario 1

1. Maggie Jones - the legislation requires that the spouse needs to be living with the deceased at time of death. This is not the case with Maggie and therefore she does not have the right to control disposition.
2. Joey Jones Jr. - An adult son of the deceased comes lower in the order than a spouse or adult interdependent partner. Even though he is paying for the funeral, he is not the one authorized to make the arrangements.
3. Betty Boop - Betty meets the requirements to be considered the adult interdependent partner, and would be the one eligible to control the disposition of Joey.

## Scenario 2

Mrs. Agnus Smith passed away at the age of 71. She was predeceased by her husband of 45 years and both of her parents. Mrs. Smith has a will and her executor is her sister Martha Stewart. The will does not have specific funeral wishes to be followed. Martha is 86 years old and is living in a care facility. She doesn't feel capable of making the arrangements and doesn't want to deal with these decisions. Martha wants her daughter Emily Stewart to look after the arrangements. Emily is willing to do this for her Aunt Agnus.

Mrs. Smith had no children, but she does have brother, Jacob Black, who lives in England. Jacob would be willing to look after this for his sister, but is unable to travel to Alberta to do this in person.

In this situation who should the funeral services business work with on the arrangements for Agnus Smith?

1. Martha Stewart - executor and sister
2. Emily Stewart - niece and designate of the executor
3. Jacob Black - brother

# Answer to Scenario 2

1. Martha Stewart - although Martha is the executor, if she is unwilling to make the arrangements, the right passes to the next available qualified person.
2. Emily Stewart - the executor Martha has indicated that she wants Emily to complete the arrangements. This would be allowed if Emily was the next in the order of priority. However, Emily is not the next in the order of priority so she should not be the one to make the arrangements.
3. Jacob Black - Jacob would be the highest in the order of priority, and even though he lives overseas, he is willing to make the arrangements. With the technology available, this can be a fairly smooth process.

## Scenario 3

Jan Juniper passed away. She does not have a will. Her husband Alberta Juniper has dementia and is living in a care facility. He no longer recognizes family or friends, and is mostly non-verbal.

Jan and Albert have two adult children, Angel (37) and Tony (41). Angel has been looking after her aging parents and is aware that her mother wants a more traditional funeral and to be buried in the family cemetery plot. Tony has had a troubled life and has substance abuse issues and has been incarcerated on numerous occasions. Tony is currently incarcerated but has access to phone and email in order to be involved in the arrangements.

The siblings cannot agree on the arrangements. Angel knows what her mother's wishes were, but Tony wants a more economical direct cremation. A family friend who is also Jan's lawyer, Randolph Shane, has suggested that he make the arrangements since the siblings cannot decide. Who controls disposition of Jan?

1. Albert Juniper - husband
2. Tony - son
3. Angel - daughter
4. Randolph Shane - lawyer

## Answer to Scenario 3

1. Albert Juniper - It is likely that Albert is unavailable to do the arrangements due to his advanced stage of dementia. The authority would pass to the next in the order
2. Tony - Although Tony has had a troubled life and may not be the best person to be making the decisions regarding the final disposition of his mother, because the children cannot agree, the eldest child would be the one to control disposition. This would be Tony.
3. Angel - Although Angel seems to be a good choice for making the decisions on the arrangements, the legislation does not allow for consideration of the suitability of a person to make the decisions regarding disposition. Angel would not be the one to make the decisions for her mother's funeral. Angel could file for an Order of the Court to request the authority to control the disposition.
4. Randolph Shane - The lawyer would have no authority to make the decisions regarding disposition Jan, until you get to the bottom of the order that states "a person with some other relationship to the deceased".

# Scenario 4

Susie Homemaker has passed away at the age of 29. She does not have a will and was not living with anyone at the time of her death. She has one daughter, Sophia, who is 8 years old.

Susie's mom, Andrea, has not been involved in her life since Susie was 4 years old, but has now decided that she wants to make the decisions regarding the funeral. Susie's grandmother, Crystal, was her caregiver for the majority of her life and they have a very close relationship, although there was no formal adoption or guardianship. Susie's father is unknown. Susie also had a sister, Brenda (32), who was also very close to Susie.

The grandmother, Crystal, believes she has the right to control disposition because she raised Susie as her own child. Who should control disposition of Susie?

1. Sophia, the daughter
2. Andrea, the mom
3. Crystal, the grandmother
4. Brenda, the sister

# Answer to Scenario 4

1. Sophia - she is a minor and is not eligible to make the decisions for her mother's funeral.
2. Andrea - although Andrea has not been involved in her daughter's life, she is the person highest in the order of priority. Again, the regulation does not allow for consideration of the suitability of a person to make the decisions regarding disposition. Andrea would be the person eligible to control the disposition.
3. Crystal - Because there was no formal adoption or guardianship, Crystal would fall under the category of "an adult next of kin" which is much further down the list. Crystal could apply for an Order of the Court to obtain the right to control disposition.
4. Brenda - She would be above the order of the grandmother, but still below the mother, so if the mother wants to make the arrangements, Brenda would not be the person to control disposition.



# Scenario 5

Frank Johnson passed away at the age of 63 from cancer. Frank did not have a will. He had no family that anyone was aware of. He had been married but was divorced 28 years ago, and they have not been in contact since then.

Frank had a neighbor, Alan, who was a good friend. Alan knew that Frank wished to be cremated and his remains scattered on the local golf course. Frank had already obtained permission from the golf course owners to have his remains scattered in a remote area of course.

The neighbor is willing to make the arrangements and pay for Frank's cremation.

Who can control disposition of Frank?

1. Frank's ex-wife
2. Alan
3. The Public Trustee

# Answer to Scenario 5

1. Frank's ex-wife - she would not be considered as they are divorced and no one knows where to find her. She would not be considered for the person who has the right to control disposition.
2. Alan - although Alan knows what Frank's wishes were, and is willing to pay for the funeral, Alan would not be the one highest on the order of priority.
3. Public Trustee - the Public Trustee would be the one to control the disposition as they are the highest in the order of priority. However, if the public trustee is not willing to make the arrangements, this right would pass to the next in the order which would then be Alan and he would be eligible to make the arrangements.

Bonus question: Would Alan be allowed to arrange for cremation or would he only be allowed to arrange for a burial?

# Questions