



Understanding the Two-Lawyer Rule: The "Related Persons" Exception



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October 1, 2014

Toronto, Ontario

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3.4-16.7 to 3.4-16.9 Lawyers Acting For Transferor and Transferee in Transfers of Title

3.4-16.7 Subject to rule 3.4-16.8, an individual lawyer shall not act for or otherwise represent both the transferor and the transferee in a transfer of title to real property.

...

3.4-16.9 So long as there is no violation of the rules in Section 3.4, an individual lawyer may act for or otherwise represent both the transferor and the transferee in a transfer of title to real property if

...

(b) the transferor and transferee are "related persons" as defined in section 251 of the *Income Tax Act* (Canada)

...

Understanding the Two-Lawyer Rule: The "Related Persons" Exception

Definition of "related persons"

251 (2) For the purpose of this Act, "related persons", or persons related to each other, are

- (a) individuals connected by blood relationship, marriage or common-law partnership or adoption;
- (b) a corporation and
 - (i) a person who controls the corporation, if it is controlled by one person,
 - (ii) a person who is a member of a related group that controls the corporation, or
 - (iii) any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and
- (c) any two corporations
 - (i) if they are controlled by the same person or group of persons,
 - (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
 - (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,
 - (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
 - (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
 - (vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.



Individuals

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- Individuals are related if they are connected by blood relationship, marriage, common-law partnership or adoption.

Blood Relationships

- Individuals are connected by a blood relationship if one is the child, descendent or sibling of the other.
- Child includes:
 - a natural child;
 - an adopted child;
 - a child of the individual's spouse or common-law partner (a "Step-Child");
 - the spouse or common-law partner of the individual's child; and
 - a person who is wholly dependent on that individual for support if the person is or was, before reaching the age of 19, in law or in fact, under the individual's custody and control (a "Dependant").
- A sibling of an individual includes the sibling of the individual's spouse or common-law partner and a spouse or common-law partner of the individual's siblings.
- On the dissolution of a marriage or common-law partnership, an individual will cease to be related to his or her former spouse or common-law partner and the parents, children and siblings of his or her former spouse or common-law partner

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Marriage & Common Law Partnerships

- An individual is connected by marriage or common-law partnership to his or her spouse or common-law partner and to individuals who are connected by a blood relationship to his or her spouse or common-law partner. For example, an individual will be related to the spouse of his or her spouse's siblings.
- An individual will be in a common-law partnership with another individual if they are currently cohabiting in a conjugal relationship, and they have either cohabited in that conjugal relationship for the 12 preceding months, or one is the parent (by birth or adoption) of the other individual's child.
- Cohabiting in a conjugal relationship is a question of fact to be resolved in each case. The following factors have been found to be relevant:
 - sharing of the same dwelling;
 - personal and sexual relations;
 - sharing services like cooking, washing, and errands;
 - social activities;
 - financial support regarding food, clothes, rent, etc.;
 - attitude of the couple towards the children; and
 - attitude of the society towards the couple.
- Once a common-law partnership has been established, it will continue to exist until the parties have been living separate and apart for 90 days because of a breakdown in the conjugal relationship.

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Adoption

- Two individuals are connected by adoption if one is the adopted child or descendent of the other.
- Adoption includes both legal adoption and adoption in fact.
- For a *de facto* adoption to exist, the adoptive parent must exercise parental care and guidance on a continuing basis.

Other Relationships

- An individual is generally not related to his or her aunts and uncles, nieces or nephews or cousins. They may be related in certain circumstances based on marriage, adoption or common-law partnership. For example, an individual's niece or nephew may be a Dependant of the individual.



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Related	Not Related
<ul style="list-style-type: none">•Spouse or common-law partner•Natural children, adopted children, step-children and daughters/sons in-law•Grandchildren, great-grandchildren, etc. (whether connected by birth, adoption, marriage or common-law partnership)•Dependants•Natural parents, adoptive parents, step-parents and mothers/fathers in-law•Grandparents, great-grandparents, etc. (whether connected by birth, adoption, marriage or common-law partnership)•Sisters, brothers, sisters/ brothers in-law	<ul style="list-style-type: none">•Divorced spouse and former common-law partner•Children, parents and siblings of a former spouse or common-law partner•Uncles and aunts•Nieces and nephews•Cousins



Corporations

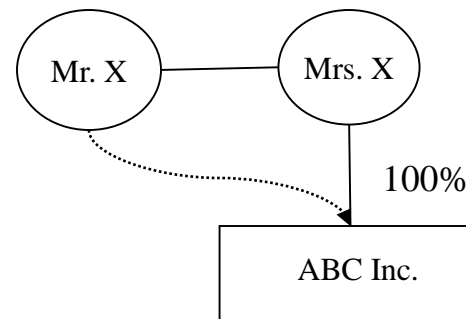
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Corporations and Shareholders

- For a corporation and its shareholder to be related, the shareholder must control the corporation individually or through a related group.
- A person will also be related to a corporation if he, she or it is related to a corporation's controlling shareholder or a member of a related group that controls the corporation.
- Control refers to the ability to elect a majority of the board of directors at the annual general meeting of the corporation having regard to the share register and the terms of the articles, by-laws and unanimous shareholder, if any, for the corporation.
- A related group is a group of persons each of whom is related to all of the other members of the group.
- When a related group is in a position to control a corporation, the related group will be deemed to control the corporation even if the related group is part of a larger group that in fact controls the corporation.

Example:

1. Mrs. X controls and is related to ABC Inc.
2. Mrs. X is related to Mr. X.
3. Mr. X is related to ABC Inc. through Mrs. X.

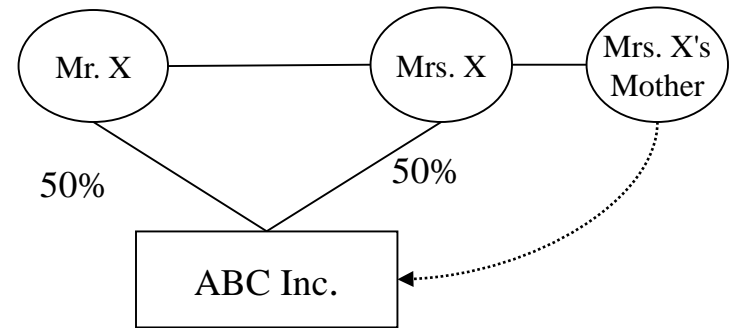




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Example:

1. Mrs. and Mr. X are a related group that controls ABC Inc.
2. ABC Inc. is related to both Mr. and Mrs. X.
3. Mrs. X's mother is related to ABC Inc. since she is related to a related group (Mr. and Mrs. X) that controls ABC Inc.





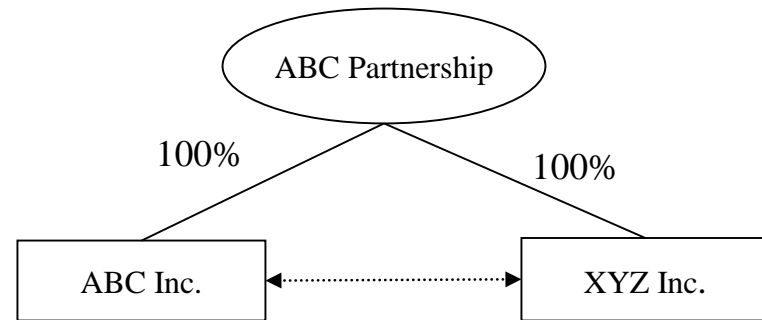
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Two Corporations

- Two Corporations will be related if:
 - each corporation is controlled by the same person or group of persons (whether or not the group is a related group);
 - each corporation is controlled by one person and the person that controls one of the corporations is related to the person that controls the other corporation;
 - one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation;
 - one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation;
 - any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation; or
 - each member of an unrelated group is related to at least one member of an unrelated group that controls the other corporation.

Example:

- ABC Inc. and XYZ Inc. are controlled by the same group of persons, ABC Partnership.
- ABC Inc. and XYZ Inc. are related.

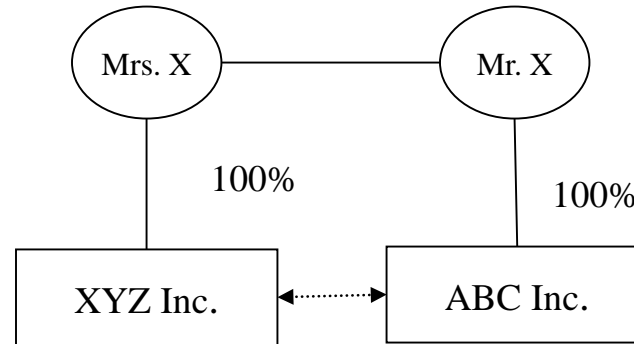




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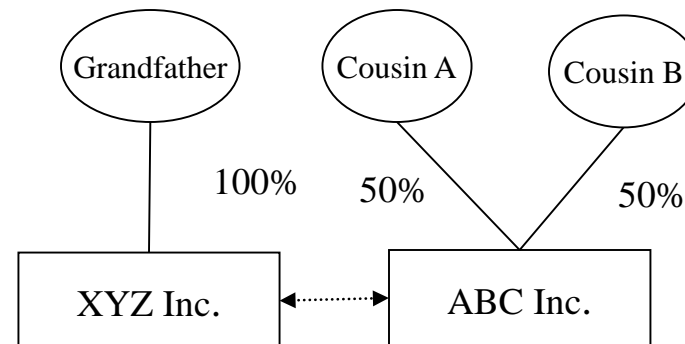
Example:

- Mr. X is related to Mrs. X.
- XYZ Inc. is controlled by Mrs. X and ABC Inc. is controlled by Mr. X.
- Each of XYZ Inc. and ABC Inc. is controlled by one person who is related to the person who controls the other corporation.
- XYZ Inc. and ABC Inc. are related.



Example:

- Grandfather is the grandfather of Cousin A and Cousin B. Grandfather is related to Cousin A and B.
- Cousin A and B are unrelated.
- XYZ Inc. is controlled by grandfather who is related to each member of an unrelated group (Cousin A and B) who control ABC Inc.
- XYZ Inc. and ABC Inc. are related.



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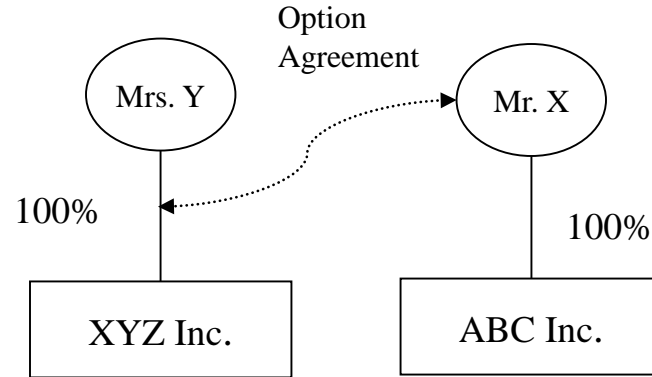
Special Rules

- Two corporations that are otherwise unrelated will be deemed to be related if each corporation is related to a third corporation.
- A person who owns shares of more than one corporation shall be deemed, as shareholder of the corporations to be related to himself, herself, or itself.
- Where at any time a person has the right under a contract, in equity or otherwise, exercisable either immediately or in the future (other than a right that is contingent upon the death, bankruptcy or disability of an individual):
 - to acquire shares (or control voting rights of shares) of a corporation, the person is deemed to be in the same position in relation to the control of the corporation as if such person owned the shares;
 - to cause a corporation to redeem, acquire, or cancel any shares of its capital stock owned by other shareholders, the person is deemed to be in the same position in relation to the control of the corporation as if the shares were redeemed, acquired, or cancelled by the corporation;
 - to (or to acquire or control) voting rights of a corporation's shares, the person is deemed to be in the same position in relation to the control of the corporation as if that person could exercise those voting rights at that time; or
 - to cause the reduction of voting rights of a corporation's shares owned by other shareholders, the person is deemed to be in the same position in relation to the control of the corporation as if the voting rights were reduced at that time.

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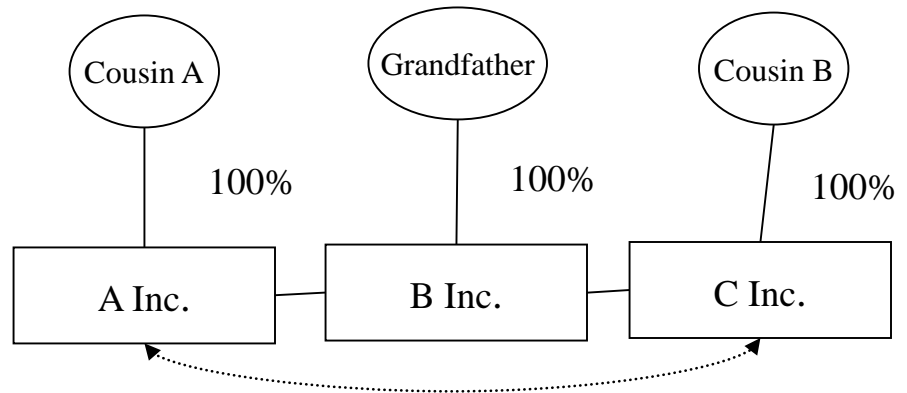
Example:

- Mrs. Y is unrelated to Mr. X.
- Mr. X has an option to purchase Mrs. Y's XYZ Inc. shares.
- Mr. X will be deemed to own the XYZ Inc. shares that are subject to the option.
- Mr. X will be deemed to control XYZ Inc. at the time the option is granted.
- Mr. X and ABC Inc. will be related to XYZ Inc.
- Mrs. Y will continue to control and be related to XYZ Inc. until the option is exercised.



Example:

- Grandfather is the grandfather of, and is related to, Cousin A and Cousin B.
- Cousin A and B are unrelated.
- B Inc. is related to A Inc. and C Inc.
- A Inc. and C Inc. are deemed to be related through B Inc.





Trusts and Partnerships

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Trusts

- There is no provision of the *Income Tax Act* (Canada) that deems a trustee or a bare trustee to be related to beneficiaries of a trust.
- A trustee may be related to a beneficiary based on another relationship. For example, if the trustee is an individual who is connected by a blood relationship to the beneficiaries.

Partnerships

- There is no provision of the *Income Tax Act* (Canada) that deems partners of a partnership to be related.
- Partners may be related based on another relationship. For example, two corporate partners may be related if they are under common control.