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CASE SUMMARY: UNDER SECTION 171(1) OF THE ONTARIO INSURANCE ACT, CHANGE OF BENEFICIARY DESIGNATION FOUND TO BE VALID

A Change of Beneficiary Designation was found to be valid within the meaning of s.171(1) of the *Insurance Act*, R.S.O. 1990, chap. I. 8.

Life insurance; Group insurance; Change of beneficiaries; Validity; Irrevocable beneficiaries; Statutory provisions

[Sun Life Assurance Co. of Canada v. Nelson Estate](#), [2017] O.J. No. 4394, 2017 ONSC 4987, Ontario Superior Court of Justice, August 23, 2017, C.J. Brown J.

In 1999, the insured purchased a life insurance policy from Canada Life and named her daughters, Rachel Seraphin and Aleesha Savoury, beneficiaries along with her mother and step daughter.

In June 2006, the insured married Justin Nelson.

In January 2007, the insured's employer terminated its group policy with the insurer and transferred the coverage to Desjardins Financial Security. The insured signed an application for enrolment for Desjardins as well as a Change of Beneficiary Designation, irrevocably designating her daughters as beneficiaries of the group policy. Prior to this time, the group life insurance policy named Justin Nelson as the beneficiary.

The insured was diagnosed with cancer in early 2007. As she was already disabled at the time of the transfer of the group policy, her policy remained with the original insurer and the original Beneficiary Designation and new Change of Beneficiary Designation remained in the insured's file with her employer and were forwarded to the insurer after her death.

In November 2009, the insured executed her Last Will and Testament, pursuant to which she left the residue of her estate to her daughters to be divided equally. The insurance designation in the Will stated:

I declare that the proceeds of the insurance policy shall be paid to my estate trustee to be held in a separate trust in the same manner and on the same terms as I have provided for the residue of my estate by my Will. This declaration shall be a declaration within the meaning of the *Insurance Act (Ontario)*.

The insured passed away on December 11, 2009. Her mother was executor and trustee but she died and the will was never probated. The court was asked to rule on the validity of the insurance declaration in the will and the validity of the Change of Beneficiary Designation.

There was no definition of “insurance policy” in the will and at the time the will was executed, the insured had two life insurance policies. There was nothing to assist the court in determining which policy was referenced in the will and the court declined to make an interpretation that would be equivocal to rewriting the will and potentially alter the wishes of the testator. Accordingly, the court concluded the will’s insurance provision was ambiguous.

In assessing the validity of the Change of Beneficiary Designation, the court noted the *Insurance Act*, R.S.O. 1990, chap. I. 8 defines “declaration” as an instrument, signed by the insured that identifies the contract in which the insured designates, alters or revokes the designation of a beneficiary as one to whom the insurance money is to be payable. It is sufficient if the declaration is in writing, identifies the policy and the person who is to benefit. Accordingly, the court concluded it was the clear intention of the insured that her two daughters be the equal beneficiaries of her group life policy and the court declared the Change of Beneficiary Designation to be valid within the meaning of s.171(1) of the *Insurance Act*.

This case was digested by [Aaron D. Atkinson](#) and edited by [Steven W. Abramson](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at aatkinson@harpergrey.com or sabramson@harpergrey.com or review their biographies at <http://www.harpergrey.com>.