

## Legal update

### Finding the sweet spot – an SCC recalibration of the irrevocable beneficiary and the remedy for unjust enrichment

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**November 2018**

**Insurance**

**Dispute resolution and litigation**

*Moore v Sweet* is a recent Supreme Court of Canada decision that arose out of a dispute over life insurance proceeds. It sheds light on the law of unjust enrichment and constructive trusts.

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#### Background

The Moores separated after 20 years of marriage. After they separated, Mr. and Ms. Moore orally agreed that Ms. Moore would continue paying the premiums under a policy of life insurance (the Policy) and she would remain the beneficiary. The Policy was not addressed in a subsequent separation agreement between the Moores.

Notwithstanding the Moores' oral agreement, Mr. Moore revoked Ms. Moore's designation and named Ms. Sweet the irrevocable beneficiary under the Policy.

Mr. Moore later passed away, resulting in an entitlement to proceeds under the Policy of \$250,000. That sum was paid into court pending a judicial determination about who was entitled to it.

At first instance, the Ontario Superior Court of Justice held, in part, that Ms. Sweet would be unjustly enriched by the Policy proceeds and such proceeds were subject to a constructive trust in favour of Ms. Moore.

The Ontario Court of Appeal overturned the lower court's decision, holding instead that Ms. Sweet was entitled to the insurance proceeds.

#### Supreme Court of Canada

The Supreme Court of Canada allowed Ms. Moore's appeal affirming her entitlement to the insurance policy proceeds.

Côté J. (for the majority) considered the Supreme Court of Canada's earlier decisions dealing with unjust enrichment, which recognized an onus on the plaintiff to establish that (1) the defendant was enriched, (2) the plaintiff suffered a corresponding deprivation, and (3) the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason. If the plaintiff's onus was satisfied, the defendant could nevertheless defeat an unjust enrichment claim by demonstrating a "residual reason" for denying recovery, focussing on the parties' reasonable expectations or public policy.

Côté J. reasoned that Ms. Sweet was enriched by the insurance proceeds and Ms. Moore suffered a corresponding deprivation. She further reasoned that there was no juristic reason for the enrichment of Ms. Sweet. The legislation

pursuant to which beneficiary designations are made was merely a mechanism for choosing a beneficiary. It did not deny the common law or equitable rights of others who may have rights to insurance proceeds, nor could it trump an unjust enrichment claim by a party deprived of a prior contractual entitlement to the insurance proceeds. An irrevocable designation was therefore not recognized by Côté J. as a juristic reason that would undermine Ms. Moore's unjust enrichment claim.

Nor was there a residual reason to deny recovery by Ms. Moore based on the parties' reasonable expectations or public policy.

Côté J. then considered the issue of remedy. She reasoned that a "personal" remedy (akin to a debt or monetary obligation) is the "default" remedy in a case of unjust enrichment. However, a "proprietary" remedy in the form of a constructive trust may be granted if a "personal" remedy would be inadequate and "the plaintiff's contribution that founds the action (i.e., the plaintiff's deprivation) is linked or causally connected to the property over which a constructive trust is claimed" (at para. 91).

The disputed insurance proceeds were recognized as being subject to a constructive trust in favour of Ms. Moore. Côté J. was satisfied that granting a constructive trust was appropriate because the insurance proceeds were "readily available to be impressed with a constructive trust" because they had been paid into court and that failing to grant a constructive trust would "create a risk that the money might be spent or accessed by other creditors in the interim" (at para. 93).

The dissenting judges reasoned that Ms. Moore (who was only ever a revocable beneficiary under the Policy) had no right to contest Mr. Moore's subsequent redesignation pursuant to which Ms. Sweet became the Policy's irrevocable beneficiary except by suing Mr. Moore for breach of contract.

Mr. Moore's breach of contract had resulted in a deprivation to Ms. Moore; however, Ms. Moore could not establish an unjust enrichment claim because her deprivation (the inability to enforce her contractual rights) did not correspond with Ms. Sweet's enrichment (entitlement to insurance proceeds).

In any event, the dissenting judges held that Mr. Moore's legislatively compliant designation of Ms. Sweet as the irrevocable beneficiary under the Policy was a juristic reason for Ms. Sweet's enrichment.

The dissenting judges therefore held that Ms. Moore had no right to the Policy proceeds but merely had a breach of contract claim to make against Mr. Moore's estate. They recognized that insurance proceeds are an entitlement of an insurance policy's beneficiary, irrespective of who pays the premium.

## Take-away

From the insurance industry's perspective, the Supreme Court of Canada's majority decision stands for the proposition that a legislatively compliant designation of a beneficiary is not determinative of the beneficiary's entitlement and, indeed, a claimant's prior oral agreement with the policy owner may be enough to undermine the beneficiary's entitlement.

An insurer with proceeds to pay out may therefore find itself hamstrung while a non-beneficiary claimant challenges the beneficiary's entitlement through the court system, potentially delaying the payment of insurance proceeds to a needy beneficiary. If faced with such a dispute, an insurer should give serious thought to paying the insurance proceeds into court (as was done in *Moore v Sweet*) to shield itself from a potential delay-based "bad faith" claim by the duly-designated beneficiary.

Furthermore, there has long been uncertainty in the law about when (if not always) an unjust enrichment claim will result in a constructive trust. The Supreme Court of Canada has now held that a constructive trust is not the "default" remedy in instances of unjust enrichment and has provided guidance about when a constructive trust should be recognized as an exception to the "default" rule.

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