



# Moore v. Sweet

The Supreme Court reviews a case on life insurance beneficiary

It is rare for the highest court in the land to hear a case involving \$250,000 of life insurance proceeds. Nonetheless, the legal issues involved in *Moore v. Sweet* were sufficiently important that the Supreme Court of Canada (“SCC”) agreed to hear the case.

Lawrence and Michelle Moore separated in 1999, after 20 years of marriage. At the time of separation, Lawrence agreed that Michelle would continue to be the beneficiary under the life insurance policy Lawrence owned on his life. As part of the agreement, Michelle paid all subsequent policy premiums, which amounted to approximately \$7,000 over the years prior to Lawrence’s death in 2013.

After Lawrence’s death it was discovered that, notwithstanding the agreement with Michelle, he had subsequently made an irrevocable designation in favour of his common-law spouse, Risa Sweet. Michelle brought a legal action, arguing she was rightfully the beneficiary of the insurance proceeds.

Pending the resolution of the litigation, the insurer paid the proceeds into court.

## LEGAL ISSUES

Michelle’s argument was that, given her agreement with Lawrence, Risa had been unjustly enriched by the proceeds and that, notwithstanding the irrevocable beneficiary designation, the proceeds were subject to a “constructive trust” in Michelle’s favour.

Risa’s position was that the irrevocable beneficiary designation, validly made pursuant to the *Insurance Act* (the “Act”), constituted a “juristic reason,” or legal justification, for her to receive the proceeds. On this analysis, Michelle was a creditor who had recourse against Lawrence’s estate, but could not access policy proceeds that were clearly protected from creditors under the Act. It is important to note that Michelle’s position as an unsecured creditor of Lawrence’s estate was of no value to her, as the estate had no significant assets.



The case was first heard in 2015 by the Ontario Superior Court of Justice, which ruled in Michelle’s favour, but the decision was overturned in 2017 on appeal by the Ontario Court of Appeal. The SCC granted Michelle’s leave to appeal and ultimately heard the case in February 2018. By a 7–2 vote, her appeal was allowed in a decision released in November 2018. The following are some key points from the minority and majority members of the SCC:

**The Minority Position:** The view of the two dissenting judges was that the scheme of the Act as it relates to beneficiary designations and creditor protection established a juristic reason for Risa’s enrichment. She was entitled to the specific protection provided under the Act from the moment she became the irrevocable beneficiary. As a creditor of Lawrence’s estate, Michelle had no entitlement to the proceeds.

**The Majority Position:** The majority found that if Risa were to receive the proceeds she would be unjustly enriched at Michelle’s expense. Michelle had upheld her end of the agreement with Lawrence and would otherwise have been deprived of the exact benefit for which she paid. While the Act does provide creditor protection where there is an irrevocable beneficiary designation, it does not state “with irresistible clearness” that the designation precludes a claim in unjust enrichment by a

party (Michelle) with a contractual or equitable interest in the proceeds. The majority’s essential view was that, on the basis of fairness and equity, Michelle deserved to receive the proceeds.

*Moore v. Sweet* is unique in having reached the SCC, which hears an extremely small percentage of cases passing through the Canadian court system. It is possible that no other case involving an insurance proceeds dispute has reached the highest court.

Having said that, many cases have been decided by lower courts in which insurance proceeds otherwise payable to a named beneficiary are ordered to be paid to others. For example, the *Succession Law Reform Act (Ontario)* specifically treats insurance proceeds as part of an individual’s estate if the deceased did not adequately provide for his or her dependants. Beneficiary designations have also been overturned in cases involving fraudulent conveyances under bankruptcy proceedings.

Insurance professionals should be aware that under certain situations there may be legislative or common-law protections that impact the viability of a beneficiary designation. After all, even irrevocable designations are not always “cast in stone.”

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