

# Necessity of Uniformity in Insurance Law

Continuation of Article, from Issue of November 20, by Mr. Charles Ruby, Secretary of the Mutual Life of Canada.

[The lack of understanding regarding life insurance policies, on the part of the public, makes necessary some explanation of the law of insurance. But since the same law does not operate throughout all the Provinces of the Dominion, some of which are in conflict with others and still some without an insurance statute at all, considerable confusion has arisen as to the rights of beneficiaries and in other directions. Mr. Ruby, in his plea for uniformity of legislation throughout the various Provinces, takes Ontario as the standard, since that Province has devoted the most time to the subject and has enacted the most comprehensive and perhaps the wisest legislation on the subject, and then proceeds to point out some of the salient differences in other Provinces, concluding with the desirability of uniformity. Last issue presented, of the Ontario statute, what the law governed, insurable interest, and limitations of actions. This article opens with the law of beneficiaries.—Editor.]

## BENEFICIARIES.

The Act recognizes three classes of beneficiaries: (a) Preferred, (b) Ordinary, and (c) Beneficiaries for Value.

### Preferred Beneficiaries.

The section of the Act dealing with Preferred Beneficiaries is rather complicated, but the evident aim has been to throw special protection around beneficiaries of that class. Originally the class consisted of the wife and children of the assured, but it was subsequently enlarged at various times and at present includes

"the husband, wife, children, grand-children and mother of the assured."

In favor of these beneficiaries a trust is created by the Act in the following terms:

"Where the contract of insurance or declaration provides that the insurance money or part thereof, or the interest thereof, shall be for the benefit of a preferred beneficiary or preferred beneficiaries, such contract or declaration shall, subject to the right of the assured to apportion or alter as hereinafter provided, create a trust in favor of such beneficiary or beneficiaries, and so long as any object of the trust remains, the money payable under the contract shall not be subject to the control of the assured, or of his creditors, or form part of his estate, but this shall not interfere with any transfer or pledge of the contract to any person prior to such declaration." Sec. 178 (2).

It will thus be seen that once an appointment of a preferred beneficiary has been made, the policy passes beyond the unrestricted control of the assured and at the same time puts the insurance money beyond the reach of his creditors. The assured, however, has the right to apportion the insurance money and vary the beneficiaries practically as he may see fit, provided he does not go outside the class of preferred beneficiaries.

Any other dealing with the policy, including its surrender (except to surrender it for a paid-up policy or to borrow on it for the purpose of paying premiums), requires the consent of the preferred beneficiary.

Frequently the beneficiaries are not mentioned by name, but are simply designated as the wife of the assured or the children. In such cases the Act provides that

"the word 'wife' shall mean the wife living at the maturity of the contract, and the word children shall include all the children of the assured living at the maturity of the contract, whether by his then or any former wife, and also the children living at the ma-

turity of the contract of any child of the assured who predeceased him, such last mentioned children taking the share their parent would have taken if living." Sec. 178 (3a).

When an ordinary beneficiary predeceases the assured, the benefit reverts to the assured or his estate automatically, but this is not the case when a preferred beneficiary predeceases the assured. In the latter event, if the benefit is to revert to the assured he must make provision for such reversion by a declaration. In the absence of any such declaration,

"the share or shares of the person or persons so dying shall be for the benefit, in equal shares, of the survivor or survivors of such designated preferred beneficiaries, except where the person so dying is a child of the assured and leaves a child or children surviving him, in which case his share of any share to which he would have become entitled, if he had survived, shall be for the benefit of his child or children, in equal shares, and if there is no such surviving beneficiary and no such child entitled to take, the insurance shall be for the benefit in equal shares, if there is more than one person entitled, of the wife and children of the assured living at his death and the child or children of any deceased child who shall be entitled to the share which the parent if then living would have taken, and if there is no surviving wife, child or grand-child, the insurance money shall form part of the estate of the assured." Sec. 178 (7).

### Ordinary Beneficiaries.

Beneficiaries not included in the preferred class and not designated as beneficiaries for value, are known as Ordinary beneficiaries. In common law such beneficiaries would have a vested interest, and the assured would not have the right to revoke or change the beneficiary unless such right was reserved in the contract. Under the Ontario law, however, the assured is given full powers of revocation, appointment and change of beneficiary in the following terms:

"The assured may designate the beneficiary by the contract of insurance or by an instrument in writing, attached to or endorsed on it, or by an instrument in writing, including a will, otherwise in any way identifying the contract, and may by the contract or any such instrument, and whether the insurance money has or has not been already appointed or apportioned, from time to time appoint or apportion the same, or alter or revoke the benefits, or add or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate, but not so as to alter or divert the benefit of any person who is a beneficiary for value, nor so as to alter or divert the benefit of a person who is of the class of preferred beneficiaries to a person not of that class or to the assured himself or to his estate." Sec. 171 (3).

It will be noted that one mode of designating the beneficiary is by a will. As a will speaks only from the death of the testator, the intention of the assured, if making a subsequent declaration changing the beneficiary, would be defeated and to overcome this difficulty, the Act provides that

"Where the instrument by which a declaration is made is a will, such declaration as against a subsequent declaration shall be deemed to have been made at the date of the will and not at the date of the testator." Sec. 171 (4).

### Beneficiary for Value.

Any beneficiary may be given a vested interest by being declared to be a beneficiary for value. The provision in the Act in this respect reads:—