

Legislation Respecting Life Insurance Beneficiaries*

English Common Law has Been Altered by Legislation in Canada—
Statutes Differ in Various Provinces, However—Comparison of Law as
Regards Beneficiaries, Division of Insurance, and Children's Insurance

By H. J. SIMS, L.L.B.

Sims, Bray & McIntosh, Head Office Solicitors of the Mutual Life Assurance Co. of Canada, Waterloo, Ont.

FOR a proper understanding of the various provincial enactments in respect to beneficiaries, it would be well for a moment to consider the status of beneficiaries at common law.

In the absence of any legislation the common law rule is that a policy and the money to become due under it belong, the moment it is issued, to the person named in it as the beneficiary, and there is no power in the person procuring the insurance, by any act of his, to transfer to any other person the interest of the beneficiary named in the policy. The interest of the beneficiary is a vested one, subject to be defeated in the event of the moneys never becoming payable within the terms of the contract. In the absence of any contrary arrangement between the company and the assured, an irrevocable trust is created.

Agreements in United States

In order to defeat the common law doctrine the invariable practice in the United States is for the insurance company, when effecting the contract, to permit the assured to change the beneficiary at any time, and most all policies issued in the United States contain provisions to that effect. It is simply a matter of agreement between the company and the assured. So far as I am aware, there is no legislation in any of the various states of the union dealing with this particular branch of the subject and to the best of my knowledge there is none in England.

In Canada, on the other hand, the vested right doctrine at common law has been greatly altered, if not altogether defeated, by virtue of legislative enactments permitting the assured to change the beneficiary, subject, however, to certain restrictions which will be dealt with later on. It has, therefore, not been the practice for Canadian companies to insert a change of beneficiary clause in their policies.

In passing it may be stated that it has been conceded that the rights and status of beneficiaries are matters within the purview of the provincial legislatures.

Advanced Legislation

It can safely be said that Canada has insurance legislation much in advance of most of the older countries and principally in respect to beneficiaries. Many years ago in Upper and Lower Canada the principle was adopted of freeing insurance moneys payable to wives and children from the claims of creditors. In fact, Canada was the first country in the British empire to enact such legislation. The principle has since been extended in favor of certain other beneficiaries and is now an integral part of the insurance acts of all the provinces. Insurance moneys are by statutory enactments in this country frequently impressed with a trust, and the contract has added to it many of the characteristics of a trust settlement. The paternal features of modern legislation in Canada, as well as in other countries, have largely been dictated by a recognition of the importance of life insurance as a factor in the economic life of a nation, of the immense investments of money entrusted to life companies, and of the further fact that the encouragement of life insurance will best tend to eradicate the baneful influences of thriftlessness.

The provinces of Ontario and Quebec have been the pioneers in insurance legislation in Canada. The Ontario

Insurance Act deals in a most comprehensive way with the whole matter of insurance. Quebec, too, has very complete laws on the subject. The Saskatchewan Insurance Act is practically a counterpart of the Ontario Act. The maritime provinces have used the Ontario Act as a basis for their insurance laws. Much of the legislation in Manitoba, British Columbia and Alberta is similar to that of Ontario and Quebec.

Although there is considerable variation in the statutory enactments of the different provinces concerning life insurance, still the salient features of the various provincial acts are similar. This is particularly true in respect to the benefits conferred on wives and children. At the same time it is to be regretted that there are not uniform insurance laws throughout the various provinces. If there were, it would avoid much confusion, considerable inconvenience and more or less litigation.

It is my purpose now to point out some of the many differences in the various provincial statutes relating to beneficiaries. Before doing so it would be advisable to mention that the law of that province in which the assured resides when the insurance is effected and presumably where the policy is delivered to him, governs the construction of the contract, and some of the courts have also held that this rule applies as well to the rights and status of the beneficiaries, no matter to what province or country they may afterwards remove and notwithstanding any term or condition in the policy to the effect that the law of the province where the head office of the company is situate shall govern. The only possible exception is British Columbia.

Preferred Beneficiaries

Allow me to point out in the first place that the preferred class of beneficiaries differs in some of the provinces. In Ontario, Saskatchewan, Alberta, Nova Scotia and Prince Edward Island the class consists of the husband, wife, children, grandchildren and mother of the assured. In Quebec, in the case of a man, it consists of his wife, his children and his wife's children. In the case of a woman it consists of her children. In Manitoba the class is the husband, wife, children and step-children. In British Columbia the husband, wife and children are only preferred beneficiaries, while in New Brunswick, the class consists of husband, wife, children, grandchildren, mother, father, brothers and sisters of the assured.

In all the provinces, except Quebec, insurance moneys payable to preferred beneficiaries are not attachable by the creditors of the assured as well after as before payment by the company. In Quebec they are only exempt while in the hands of the company. In that province they are also exempt while in the hands of the company from the claims of the beneficiary's creditors, but not after payment. In Manitoba such moneys are not liable to seizure by the creditors of the beneficiary whether paid over by the company or not. There is no similar provision in the Insurance Acts of any of the other provinces.

Division Among Beneficiaries

Where the benefits are payable to wife and children, without any apportionment, the law in Manitoba is that the wife takes one-third and the children two-thirds. In Quebec the wife takes half and the children the other half. In all

*An address before the conference of provincial insurance superintendents, Winnipeg, October 4-7, 1920.