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Public Policy and Criminal Acts

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Public Policy: Main Principles



Courts will not recognize a benefit accruing to a criminal from his crime or to anyone claiming through him.

Cleaver v. Mutual Reserve

Beresford v. Royal Insurance

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Public Policy: Main Principles



“It is consistent with this Policy that a person should not be allowed to insure against his/her own criminal act irrespective of the ultimate payee.”

Sopinka, J. (*Brissette*)

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Public Policy: Main Principles



One must balance the two previous statements with the fact that an insurer ought not to escape its responsibility under the insurance contract by the broad application of the public policy doctrine.

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Public Policy: Main Principles



s.118 *Insurance Act (Ontario)*

“Unless the contract otherwise provides, a contravention of any criminal or other law in force in Ontario or elsewhere does not, by that fact alone, render unenforceable a claim for indemnity under a contract of insurance except where the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss of damage, but in the case of a contract of life insurance this section applies only to disability insurance undertaken as part of the contract.”

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General Principles of Interpretation



- Coverage:
 - Onus on Insured
 - Coverage provisions construed broadly
- Exclusions:
 - Onus on Insurer*
 - Exclusion clauses construed narrowly

**R. v. McDougall, 2008 S.C.C. 53*

Continental Insurance Co. v. Dalton Cartage Ltd., [1982] 1 S.C.R. 164

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- Ambiguity
 - *contra preferentum*
- Reasonable Expectations
 - No windfalls for the insurer
 - No unanticipated recovery for insured

Consolidated Bathurst Export Limited v. Mutual Boiler and Machinery (S.C.C.)

Reid Crowther and Partners Limited v. Simcoe and Erie General Ins Company (S.C.C.)



Need One? Use One.



Narrow coverage with explicit exclusion clauses

“Insurers remain free to limit accidental death coverage in any way they wish, provided they do so clearly, explicitly, and in a manner that does not unfairly leave the insured uncertain or unaware of the extent of the coverage.”

Martin v. American International Assurance Life Co., 2003 SCC 16, [2003] 1 SCR 158, para 29

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Findings:

- Importance of single policy (contrast with *Chan*)
- Beneficiary designation was unambiguous
- Denial of recovery consistent with public policy b/c prevented the insured from insuring against own crime
- Insured held no property to which a trust could be fastened b/c of operation of public policy
- Constructive trust did not apply b/c no claim of unjust enrichment



- Court cannot construe a contract to require payment to a victim's estate
- Cannot rewrite the policy under the guise of interpretation
- Nothing unjust about application of public policy
- No benefit payable



Principle #1

Where beneficiary murders a life insured and there is no alternate beneficiary— proceeds not payable

Brissette Estate v. Crown, Life Insurance Co., [1992] 3 S.C.R. 87

Demeter v. Dominion Life Assurance co. (1982), 35 O.R. (2d) 560 (OCA)

Lachamn Estate v. Norwich Union Life Insurance CO. (1998), 40 O.R. (3d) 393
(Ont. S.C.).

Sangha Estate v. Sovereign Life Insurance Co., [1991] 5 W.W.R. 652 (BCSC) –
constructive trust stretches principle of equity too far

Schilling Estate v. Transamerica Life Insurance Co., [1997] O.J. No. 5060 (C.A.).
(wrongly decided after Oldfield??)



Facts:

- Husband had policy on his life with wife as beneficiary
- Husband murdered wife; husband later died *by reason of his criminal acts*
- Estate action to recover proceeds of Mr. Schilling's policy
- Policy provided that if beneficiary died before insured proceeds paid to owner of policy, or if not living, to the executor



Findings:

- Public policy rule created to prevent persons from benefiting by their crime, however estate contends that the criminal receives no direct benefit and rule should not be interpreted so broadly as to deny the benefit to the dependants
- Court found that irrelevant that dependants innocent and deserving b/c absolute rule—extends to criminal's estate (quotes Sopinka from *Brissette*)
- Note: decision might have been different following SCC decision in *Oldfield*



Principle #2



Where beneficiary murders a life insured and there is an alternate beneficiary (or statute operating)—proceeds payable

(Clever, Ferry, Chan)

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Findings:

- When murderer of insured is the sole beneficiary designated in Policy and no alternate beneficiary named—courts cannot substitute beneficiary (matter of contract law)
- Wording in wife's insurance contract indentified two categories of persons to receive insurance proceeds (designated beneficiaries and insured's estate)



Ferry Estate v. Non-marine Underwriters



- Due to ambiguity in contract of insurance, court ruled in favour of insured and the proceeds were payable to the estate
- If intention was to track Ins. Act, insurer should have quoted it

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Facts:

- Joint policy with double indemnity (but not really)
- Indicia in forms suggestive of two policies
- Husband planned to murder wife, and did, shortly after policies put in place
- Wife's estate as second class of beneficiary claimed benefit



Findings:

- Where “insured” and “life insured” are two different people, it is never the life insured who designates the beneficiary
- True intent of parties on insurance construction principles was two contracts
- Any ambiguity construed in favour of insured
- Alternate beneficiary designated could take even though first not predeceased



Principle #3



Where beneficiary murders the life insured and then commits suicide—policy of murderer operates the same without regard to public policy argument re: prior murder

(De Montigny)

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Facts:

- Insured, Brossard took out policy listing companion De Montigny as designated beneficiary
- Before insured died he signed a letter saying that he gives everything to his brother, Pascal Brossard
- Insured murdered wife, two children and then committed suicide
- At issue: 1) Did letter constitute declaration to change beneficiary designation? 2) If not, did death of beneficiary (caused by illegal act) deprive Brossard of his right to recover and confer right on De Montigny's estate?



Findings:

- Court found that there was no change of beneficiary because policy not referenced in letter
- De Montigny's beneficiaries claimed that Pascal Brossard not innocent b/c legatee of criminal and could not profit from crime (principle of public order)
- Court said indemnity payable b/c suicide gave rise to benefit not murder
- De Montigny did not have right of indemnity that was transferrable to her estate—beneficiary's right does not survive his/her death
- Brossard entitled to insurance proceeds



Principle #4



Intention to commit the criminal act not relevant on the question of whether public policy operates???

(Dhingra, but also consider Piche v. Fournier (2010) QCCA 188 (CanLII); Re Martine, Bertha and Fleming Jensen Estates (1963) 40 D.L.R. (2d) 469 (BCSC))

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Facts:

- Group accidental death plan
- Husband “insured”, wife is “spouse insured” or “co-insured”
- Husband killed wife but was found not criminally responsible due to mental disorder
- Son says dad should not take (no indication in case if son argued mom’s estate should take)



Findings:

- Husband did not take
- Even though not criminally responsible, he still physically committed the crime
- No judicial support in Canada that the court ought to require a finding of intent to commit the crime in order to apply the public policy rule



Norwood says:



“The sanity or insanity of a killer must be taken into account but since persons are presumed to be sane until the contrary is established on the balance of evidence, the claimant must bring proof that the killing took place during the period of insanity...”

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(Norwood cont'd)

...if such insanity is proven, no criminal wrongdoing has been committed so the rules of public policy barring the insured or the insured's estate or beneficiary do not apply and there is nothing to relieve liability for payment of the insurance to the persons entitled.”



“The doctrine of public policy ought not to be stretched one bit beyond what is necessary for the protection of the public...A crime must be of such a character as to shew an intent to bring about the result.”

(McKinnon v. Lundy, 1894 Can LII 35 (OnCA))



“It may have been mere neglect or the result of a fit of drunkenness without criminal intent of any kind...the conviction was one of so trivial a character and so free from moral culpability as to call for the most trifling punishment.”

(re: man killing his wife accidentally with a shotgun)

(McKinnon v. Lundy)



Principle #5

Where life insured died while committing criminal act and there is exclusionary language in the Policy—proceeds not payable

- If no exclusionary language—proceeds payable to an innocent beneficiary
- If no designated beneficiary—matter of public policy to be weighed on case by case basis

(Oldfield and Goulet - narrowing of public policy)



Facts:

- Insured ingested condoms filled with cocaine for purposes of trafficking
- Condom burst and he died
- Wife was designated beneficiary under life insurance with no exclusion clause
- It is not against public policy to allow innocent beneficiary to obtain proceeds of Policy where insured accidentally dies during course of criminal act



Findings:

- A universal rule, that a person should not be able to insure against his/her own criminal act regardless of payee of proceeds, results in serious repercussions for creditors who provide value to obtain interest in life insurance (See *Irwin Estate v. Cumis*, 1997 Can LII 12190 (OnSC))
- Public policy exception that if insured did not intend the insured loss and was a named beneficiary, public policy should not operate to deny claim
- Balance of competing policies to avoid injustices where the beneficiary is innocent



Causal Connection language used

- Some variations:
 - “caused by”
 - “results from”
 - “caused by, or contributed by”
 - “directly or indirectly”
 - “while”



Conclusion:

1. Where beneficiary murders a life insured and there is no alternate beneficiary—proceeds not payable (*Brisette, Demeter, Lachman*)
2. Where beneficiary murders a life insured and there is an alternate beneficiary—proceeds payable
3. Where life insured died while committing criminal act and there is exclusionary language in the Policy—proceeds not payable
 - If no exclusionary language—proceeds payable to an innocent beneficiary
 - If no designated beneficiary—matter of public policy to be weighed on case by case basis
4. Where beneficiary murders the life insured and then commits suicide—policy of murderer operates the same without regard to public policy argument re: prior murder



Conclusions:

- While *Schilling* arrived at an absolute interpretation of the public policy rule—*Oldfield* and *Goulet* which came after, allow the argument that payment to a deceased's estate balances the principle of public policy with facts of a particular case
- Little doubt that *Schilling* would be decided differently if heard today
- Court may still conclude on basis of public policy analysis however it is clear that the rule against payment is no longer absolute

