



## The impact of a dependant relief claim on an irrevocable beneficiary designation

The case of *Dagg v. Cameron*, 2015 ONSC 2597 (CanLII) examines pending claims to life insurance proceeds by two parties who arguably were both spouses of the deceased. The case considers who is a dependant and deals with a court ordered irrevocable life insurance beneficiary designation.

In January of 2012, Stephan Cameron and Anastasia Cameron separated. They had been married for eight years and had two children. Thereafter Stephen began a relationship with Evangeline Dagg. Both moved to British Columbia and in April of 2013, Evangeline became pregnant. In November of 2013, Stephan was diagnosed with pancreatic cancer.

Pursuant to an interim court order, Stephan owned a life insurance policy and Anastasia was named as an irrevocable life insurance beneficiary. When Stephan received his cancer diagnosis, he changed the designation without Anastasia's consent, making Evangeline entitled to 53.6% of the life insurance proceeds and Anastasia and their two children entitled to the remaining 46.3%.

Anastasia was made aware of the change by the carrier and obtained a court order on November 20, 2013 to restore the previous beneficiary designation. She had been the sole beneficiary under the policy. Three days later Stephen died. Shortly thereafter his son James was born.

A court application was brought by Evangeline for a dependent relief claim for herself and James. Anastasia argued that Evangeline was not a spouse at the time of Stephan's death because he was not married to her and they had not cohabitated for three years, nor was there a relationship of permanence as set out in the Succession Law Reform Act (SLRA). A relationship of permanence exists where the parties have not lived together for a three-year period but have a child together. Anastasia argued that at the time of death, James had not yet been born and therefore there was no obligation to support Evangeline.

The definition of "spouse" under the SLRA includes two persons who are not married and have cohabitated in a relationship of permanence if they are the natural or adoptive parents of a child. In order for a spouse to qualify as a dependant, the deceased must have been providing support to the spouse, or have an obligation to provide support, immediately before death. The court indicated that there is no reason, why a deceased person cannot have two "spouses" to whom he or she has support obligations.

In addition, Evangeline and Stephan's son met the definition of "child" under the SLRA which includes a child conceived before, and born alive after the parent's death. As of the date of death, the child's status as a dependant and his right to support was conditional upon a live birth. Evangeline's entitlement to child support was also conditional upon the live birth of their child. Having met the condition of the live birth as required under the SLRA, the court found Evangeline and James to be dependants of Stephan.

The court then turned to the outstanding issue of whether the life insurance proceeds were available to Evangeline. Under the SLRA, any amount payable under an insurance policy is available for satisfaction of dependant relief claims. While Anastasia argued that Stephan did not, on the date of death, own the life insurance policy because it was subject to the irrevocable beneficiary designation, the court did not agree.

The court said that if the Ontario Legislature had intended that life insurance policies subject to an irrevocable designation be the exception, it would be apparent in the wording of the legislation. The court also went on to say that in making her argument, Anastasia ignores or confuses the distinction between the rights and interests of an insured in a policy and the rights of a beneficiary.

Anastasia also argued that she was a creditor of Stephan, giving her the exclusive right to make a claim to the proceeds. However the court relied on provisions in the Insurance Act that say insurance money from the date of death is not subject to the claims of creditors of the insured. Anastasia's interest in the insurance money is not as creditor, but rather as a dependant, along with her children and Evangeline and her son James. The court concluded that the insurance money was available to all of Stephen's dependants.

The case is a good example of the impact a dependant relief claim can have on a beneficiary designation even where it is irrevocable. Despite the court order requiring an irrevocable beneficiary designation in favour of Anastasia, Evangeline and James were also dependants of Stephan and entitled to the insurance proceeds as well.

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