



## Suspicious circumstances and beneficiary designations

When a Will is challenged, an argument may be made that the testator was under undue influence or coerced into drafting the Will in a certain manner. A Will is a testamentary instrument; it arises on the death of the testator. A beneficiary designation is similar to a Will in that they are both testamentary instruments. So given that Wills and beneficiary designations are both viewed as such, can undue influence also apply to making a designation? This question arose in the case of *David v. TransAmerica*, 2015 ONSC 5192 (CanLII).

Hollis David had a \$100,000 life insurance policy for which he filed a change of beneficiary designation form a year before his death. He made changes to the form revising the percentages for the primary beneficiaries. The effect of that change was to re-designate \$80,000 of the policy proceeds from the children of his second marriage - whom he had designated as beneficiaries a decade earlier in order to provide for their education, and who were about to enter university - to a daughter from his first marriage, who was economically independent.

The filed beneficiary designation form was provided to the carrier in 2011. Mr. David had made several obvious errors on the form even though he had previously been employed by the same insurance carrier and knew their administrative practices. The company did not make the change because of the incomplete form it received. While he had allocated 100% of the proceeds to the primary beneficiaries, the form could not be processed by the carrier because Mr. David had designated a contingent beneficiary, his son Sean, for only 80 % of the amount of the proceeds and no one for the remaining 20%. There was no evidence before the court that a Notice of Incomplete Information was sent to Mr. David or his insurance broker.

Mr. David had also written over the initial percentages provided for the primary beneficiaries reallocating the proceeds but it was not clear whether the initials made by those changes on the form were that of Mr. David.

Mr. David had indicated to his second wife shortly before signing the form that he was having trouble with his children from his first marriage because they had learned of the existence of the policy. Mr. David's second wife and their children suspected that he had signed the beneficiary designation change form under duress, and made obvious errors in the form to ensure that the insurance company would not act on it.

When Mr. David died, the payment of proceeds was contested. His daughter from his first marriage applied for a declaration that the change of beneficiary form was valid and his children from his second marriage applied for a declaration that it was not valid.

The court considered the special rules that exist to determine the validity of a testamentary instrument. The rules are there to preserve the ability of people, who may be vulnerable at the time when they make a Will or purchase or change a life insurance policy, to direct how their assets will be disposed of upon their death, when they are no longer able to speak for themselves.

The court found that there were suspicious circumstances surrounding the making of the form including the numerous errors made by Mr. David and the fact that the alterations to the form were not signed properly. As a previous employee of the carrier he would have understood the administrative impact such errors would have on successfully processing the request. The onus was on the daughter to establish that her father understood and approved the contents of the form, and that it truly reflected his testamentary wishes. She was not successful in that regard. The court also found that the submitted form was not a valid declaration pursuant to the Ontario Insurance Act.

The case provides an interesting exercise in review of the facts and determining whether there was undue influence and coercion that impacted Mr. David's action in changing the beneficiary designation form. Here the facts were simply too

suspicious for the court to accept and as a result, the changed designation did not stand

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