

**Wills, Trusts & Estates****Dependant denied support for misconduct: Insurance, intestate succession**By **Peter Neufeld**

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(June 5, 2020, 8:52 AM EDT) -- It is arguable that, generally speaking, a beneficiary would be denied insurance proceeds if they caused the death of the deceased, based on both the "slayer rule" and *ex turpi causa non oritur actio* ("no right of action arises from a base cause") (see *Brissette Estate v. Westbury Life Insurance Co.* [1992] 3 S.C.R. 87). This *ex turpi causa* doctrine has already found common application in insurance law. The Supreme Court of Canada in *Hall v. Hebert* [1993] 2 S.C.R. 159 cited the origins of the *ex turpi causa* doctrine in the notion that one should not receive life insurance proceeds after murdering the deceased:

"Few would quarrel with the proposition that a man who murders his wealthy aunt should not be allowed to receive the proceeds of her life insurance as beneficiary, or that two robbers who disagree over the division of the spoils would not be allowed to settle their dispute in a court of law. It was to deal with flagrant abuses like these that English courts developed the principle expressed in the maxim: *ex turpi causa non oritur actio* [page171] — no right of action arises from a base cause. [Emphasis

added.]"

However, there are still important exceptions to this general exclusion from life insurance proceeds. As found by the Supreme Court of Canada in *Oldfield v. Transamerica Life Insurance Co. of Canada* 2002 SCC 22, the fact that the insured died while committing a crime did not bar the innocent beneficiary from claiming the life insurance proceeds. And as noted in *Dhingra v. Dhingra Estate* 2012 ONCA 261, a beneficiary who murdered the deceased was not deprived of the insurance proceeds because they were found to be not criminally responsible.

Where the beneficiary is found to be not morally responsible for the death, however, the powers under the *Civil Remedies Act* (CRA) may still apply to retrieve proceeds from the beneficiary. *Dhingra* held that while the slayer rule did not prevent the beneficiary from receiving the life insurance proceeds, it was still open to the attorney general to bring an application under s. 3 of the CRA to seek the forfeiture of the proceeds. In that case, the court would have to determine "whether it would clearly not be in the interests of justice to forfeit the proceeds to the Crown."

**Application to intestate succession**

It is also important to briefly consider whether the dependant's conduct could prevent them from receiving part of the estate through intestacy. (A review of the laws of intestacy can be found here).

It is possible that being contributorily negligent in causing the deceased's death is not enough to disentitle the applicant from their rights under intestacy. In *O'Meara v. Yule* 2006 ABCA 86, the parties and their children were involved in a car accident that killed their infant daughter. The daughter's estate received \$168,000 from the insurance proceeds, and the father sought to claim half of those proceeds pursuant to his rights to intestacy, which the lower court granted. On appeal, the Alberta Court of Appeal recognized the authority for the proposition that a criminally responsible beneficiary is excluded from the gift. However, in *O'Meara* the father was only contributorily negligent for the death, and his apportionment of liability appeared to be insignificant. The Alberta Court of Appeal therefore dismissed the appeal.

In *Jaworenko v. Amthor* 2013 ABQB 517, the deceased also died in a motor vehicle accident, without a will, and his common law spouse was found to be contributorily negligent in the settlement with the insurer. The sister sought to deny the spouse her share of the estate based on the ex turpi causa doctrine. The court did not find that the doctrine of ex turpi causa applied to prevent the spouse from claiming under intestacy, since the sister's claim did not allege that the spouse intentionally caused the death (only that she was negligent), and there was no case law before the court that definitively included negligence causing death as a means to deny someone their rights to the estate through intestacy.

## Conclusion

Courts have the jurisdiction, in many cases, to reduce the surviving spouse's entitlement to the deceased's estate. In dependant support applications, this jurisdiction is found in the *Succession Law Reform Act*. Arguably, the legislation also provides comparable discretion with respect to the entitlement of support of other dependants. With respect to rights to insurance proceeds and rights via intestacy, the beneficiary's conduct may disentitle him/her to the deceased's estate by virtue of the ex turpi causa doctrine, the slayer rule, or the *Civil Remedies Act*. The beneficiary's/dependant's exclusion from the estate is arguably an even stronger possibility where they have caused the deceased's death.

However, the threshold to bar the dependant/beneficiary on the basis of misconduct is quite high. In the *Webb v. Belway* 2019 ONSC 4602 and *Lapierre v. Lapierre Estate* [2002] O.J. No. 1275 decisions, while the court recognized the breach of fiduciary duty and the problematic nature of the behaviour, it did not find this behaviour was "unconscionable" so as to disentitle the applicants to compensation. In *Jaworenko* and *O'Meara*, contributory negligence in causing the deceased's death was not enough to override the beneficiary's rights under intestacy, and in *Oldfield* and *Dhingra* the courts carved out exceptions to the rule in *Hall* that a beneficiary cannot claim proceeds from a life insurance where they caused the deceased's death.

Arguably, the bad behaviour exhibited above is not enough to be disentitled to the estate. However, the decisions leave room for worse behaviour, or more convincing evidence of that bad behaviour, to disentitle the wrongdoer to a share of the deceased's wealth.

This is part three of a three-part series. Read part one: *Dependants denied support for misconduct: Death and the 'slayer rule'*. Part two: *Dependant denied support for misconduct: Support applications*.

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