

Problems with Life Insurance in the Administration of an Estate

by Shael Eisen LL.B

(i) MISSING INSURANCE POLICIES

You have just been retained by an Estate Trustee who advises you that he/she thinks the Deceased has substantial life insurance policies, but the Estate Trustee can't find any records evidencing them. Your first inclination is to look in the telephone book and begin to call insurance companies but you realize quite quickly that this will take an inordinate amount of time and will be hit and miss.

Are there any other options?

Is there some sort of central repository for policies where one can make a search? Unfortunately the short answer to that in Ontario is no. However, there are two trade organizations that may be of aid. They are as follows:

(i) Canadian Life and Health Insurance Association Inc.

1 Queen Street, Suite 1700
Toronto, ON M5C 2X9
Tel: (416) 777-2221
Fax (416) 777-1895
Web Site: www.clhia.ca

This organization represents the vast majority of Insurance companies selling life insurance in Canada. You can advise it in writing that you are searching for life insurance policies on a particular person and it will send your inquiry to each of its members on an individual basis. You will not be required to produce a Certificate of Appointment. Should a policy turn up, the company that holds the policy will contact you directly. Should no policies turn up, you will not get any response from any companies. A response, should one be forthcoming, usually takes about 6-8 weeks. THERE IS NO CHARGE FOR THIS SERVICE!

(ii) MIB, Inc.

330 University Ave. Suite 501
Toronto, ON M5G 1R7
Tel: (416) 597-0590
Fax: (416) 597-1193
Web Site: www.mib.com

This organization is a central repository for medical reports for insured and potential insured and the insurance companies that requested them. They keep records going back 7 years. They will require a Certificate of Appointment of Estate Trustee. You can request in writing a search of their records. They will provide you with an information form which must be filled out and their response will usually be within a week to ten days. THERE IS NO CHARGE FOR THIS SERVICE!

Should these searches not succeed, or should you not wish to wait for the searches to be completed, and should you have access to the Deceased's Bank records, a search of automatic withdrawals and cheques may indicate to whom premiums are being paid.

(ii) DO YOU NEED TO OBTAIN A CERTIFICATE OF APPOINTMENT TO COLLECT ON A LIFE INSURANCE POLICY PAYABLE TO THE ESTATE?

For the most part, for debtor – creditor reasons and for Estate Administration Tax reasons, most holders of life insurance policies designate a beneficiary of their life insurance policy to be an entity or individual other than their estate. It therefore did not matter if a Certificate of Appointment was obtained for the Estate of the Testator, since the funds were being paid outside of the Estate.

(continued on reverse)



Problems with Life Insurance in the Administration of an Estate

(continued from cover)

However, it was the Insurance industry's policy in Ontario to require the Estate Trustee to obtain a Certificate of Appointment if the beneficiary of the policy was, for any reason, the Estate itself, prior to paying the Estate. The net result of this policy was a delay in payment of the proceeds of the policy, although insurance companies will usually pay interest on the policy from the date of death, and the imposition of Estate Administration Tax (Probate Fees) on the amount of the policy, and all of the other assets of the estate.

However, the case of *Rozon v. Transamerica Life Insurance Co. of Canada (1999)* O.J. No. 4538 (Ont. C.A.) has invalidated that policy. In that case Mr. Justice Charbonneau of the Ontario Superior Court of Justice held that under the provisions of Sections 203 and 207 of the Insurance Act of Ontario, R.S.O. 1990, c.I.8, an insurance

company is not entitled to insist on the Executor of an Estate probating a Will before it must pay out the benefits of the policy to the Estate. The decision was appealed by the Insurance company and was upheld by the Court of Appeal. Accordingly, an insurer can now pay out, in Ontario, on demand by the Estate Trustee, the amount owing under the policy to the Estate of the Deceased without probate.

There is an Estate litigation consequence to this ruling. Since probate is no longer required to pay out the proceeds of an insurance policy to an Estate, it should consider putting the insurance company in question on notice as soon as possible if there is a will challenge in order to avoid the consequences of an early payout of the policy.

Breakfast Series

Hull & Hull is pleased to announce the next breakfast series on estate-related issues.

The Hull & Hull Estate, Trust and Capacity Law Breakfast Series provides members of the bar with presentations by one of Canada's leading Estate firms on topics of importance to estate practitioners.

The next Breakfast Series meeting, Thursday, June 5, 2003, will feature Rodney Hull presenting "Concerns for the Retiring Solicitor", Sean Graham presenting "The Executor as Corporate Director" and Shael Eisen presenting "Avoiding Probate in Land Titles".

For more details, please see the enclosed registration form.



HULL & HULL
BARRISTERS AND SOLICITORS

Trust Experience

141 Adelaide St. W., Suite 1700, Toronto, Ontario M5H 3L5

TEL: (416) 369-1140 FAX: (416) 369-1517

EMAIL: ihull@hullandhull.com WEBSITE: www.hullandhull.com

The Probater is a quarterly newsletter provided as an information service. It is a summary of current legal issues of concern to estate law practitioners. The comments and articles are not meant as legal opinions and readers are cautioned not to act on information provided without seeking specific advice with respect to the particular situation.

Please note that all back issues of The Probater are available in full text on our website: www.hullandhull.com