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Advising Estate Planning Clients on Life Insurance

When assisting clients with estate planning (particularly in the circumstances of a separated or divorced client), it is important to remember that life insurance policies may be subject to claims that prevent their proceeds from being paid out to the designated beneficiaries.

In the recent decision of *Moore v Sweet*, 2018 SCC 52, the Supreme Court of Canada confirmed that the designation of an irrevocable beneficiary in accordance with the provisions of the *Insurance Act*, RSO 1990, c I.8, does not preclude the existence of other rights that may take priority [over](#) those of an irrevocable beneficiary.

Typically, in family law proceedings, the rights of separated or divorced parties to the proceeds of an insurance policy are clearly set out as terms of a separation agreement and may be subsequently confirmed within a court order that requires one party to maintain a life insurance policy for the benefit of the other party and/or the children of the relationship. For example, in *Dagg v Cameron Estate*, 2017 ONCA 366, a [court order](#) confirmed that support obligations were to be satisfied out of life insurance proceeds upon the predeceasing spouse's death and the interest of the surviving spouse was deemed to have been secured (to the extent of his support obligations) against a claim for dependant's support by an irrevocable beneficiary designation. However, the presence or absence of a formal written agreement or a court order securing one's interests in a life insurance policy may not necessarily mean that the proceeds are insulated from claims that will take priority [over](#) the rights of an irrevocable beneficiary.

In *Moore v Sweet*, [for instance](#), a constructive trust was imposed with respect to the proceeds of a life insurance policy for which an irrevocable beneficiary designation had been made on the basis of unjust enrichment. The separation agreement entered into by the claimant and the deceased did not, however, make any reference to the life insurance policy.

Lawyers assisting clients in respect of life insurance as part of an estate plan should inquire as to the background and purpose of the policy and any related agreements between the client and other individuals (beyond what may be contained within a separation agreement) so that they can advise clients in a manner that reflects the most likely disposition of the asset after death. While any claim against the policy may ultimately need to be assessed by the [court](#), it is important to remember that the *Insurance Act* does not preclude rights outside of its provisions unless it is "irresistibly" clear that it was the intention of [the legislature](#) to do so.