

## ***Sun Life v. The Estate of Juanita Nelson, 2017 ONSC 4987 – Is the insurance declaration in the will or the change in beneficiary designation valid ?***

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### **Key Takeaways**

This case involved a conflict between a change in beneficiary designation and an insurance declaration made in a will. It is important to make sure that insurance declarations and beneficiary designations are clear and consistent with each other. It's also important to remind clients that a later designation will revoke an earlier designation, to the extent of any inconsistency. In this case, however, the Court found that the beneficiary designation was the valid one even though it preceded the insurance declaration made in the will. The reason was that the later declaration made in the will was ambiguous and therefore not valid.

### **The Facts**

Juanita Nelson was a former nurse at North York General Hospital. She passed away in 2009. At the time of her passing, she had a husband, Justin, and two daughters from a previous marriage (Rachel and Aleesha).

Juanita owned two insurance policies. One policy was a personally owned policy with Canada Life paying a death benefit of \$200,000 (this policy was uncontested). The second insurance policy was a group policy (the "policy") issued by Sun Life with a face amount of \$148,500. This was the policy in issue in this case.

Juanita originally named Justin as the beneficiary of the policy. In 2007, the policy moved from Sun Life to Desjardins. At this time, Juanita signed an "Application for Enrolment" for Desjardins (the "forms"). She also changed the beneficiary designation from her husband to her two daughters. Although Juanita signed the forms, her coverage for the policy remained with Sun Life because she was on disability. She filed the forms with the hospital where she worked. The hospital also kept the original and second beneficiary designations in its files.

On November 30, 2009 (eleven days before her death), Juanita made a will. The will included a beneficiary declaration that directed the “proceeds of the insurance policy” to be held in trust for her daughters. Juanita did not refer to a specific policy in her will.

At claims time, Juanita’s insurance advisor suggested that Rachel request Justin to sign a written acknowledgement. In this acknowledgement, Justin would relinquish any claim to the insurance proceeds and confirm that Rachel and Aleesha were to receive the proceeds. Justin did so. But despite this signed acknowledgement, Justin received a cheque for the proceeds from Sun Life. Justin returned the cheque to Sun Life, and Sun Life then paid the proceeds into court.

## The Issues

The two issues in this case were:

- 1) Was the insurance declaration in the will valid?
- 2) Was the change in beneficiary designation valid?

### Issue 1: Was the insurance declaration in the will valid?

On the first issue, the Court ruled that the insurance declaration in Juanita’s will was not valid. The Court explained that the will did not define “insurance policy” or make any reference to a specific policy in the will. Also, the Court stated that it needed more information to assist it in determining which policy Juanita was referring to in the will. It did not want to interpret Juanita’s will incorrectly and potentially alter her wishes. Thus, the Court concluded that the insurance declaration in the will was ambiguous and therefore invalid.

Even though the Court did not refer to subsection 51(2) of the *Succession Law Reform Act (Ontario)* (SLRA), its decision aligns with this section. Subsection 51(2) of the SLRA states that a designation in a will is effective only if it relates *expressly* to a plan. The declaration in Juanita’s will did not refer to the policy (a plan under the SLRA) specifically. The Court may have found the declaration to be valid if Juanita had identified the policy with a contract number, and had referred to Sun Life as the company that had issued the policy.

### Issue 2: Was the change in beneficiary designation valid?

On the second issue, the Court relied on section 171 of the *Insurance Act (Ontario)* (*Insurance Act*). This section sets out the criteria for a valid “declaration”. The Court stated that it is sufficient if the declaration is in writing, and identifies the policy and person who is to benefit. The Court concluded that the declaration met these criteria. Therefore, the Court ruled that Juanita’s change in beneficiary designation was valid.

Although the Court did not refer to section 190 of the *Insurance Act*, it is important to consider it here. Under section 190, an insured may designate a beneficiary in a contract or declaration. A declaration includes a declaration made in a will.

## Other influential factors

The Court referred to other factors which indicated that Juanita wanted to name her daughters as the beneficiaries to her policy. The first was that prior to her death, Juanita told Rachel that she had made financial arrangements for Rachel and Aleesha, without providing details. Also, as noted above, Justin signed an acknowledgment stating that Juanita’s daughters were the beneficiaries of the Sun Life policy. Furthermore, Justin at no time made a claim for the proceeds, and did not contest the motion before the Court.

## Key Takeaways

The following are some of the key takeaways from this decision:

- It is important to make insurance declarations and beneficiary designations clear and consistent with each other.
- It’s also important to remind clients that a later designation will revoke an earlier designation, to the extent of any inconsistency.
- When clients make insurance declarations in wills, it is important for the testator to clearly indicate the following:
  - The name of the policy carrier
  - The policy contract number
  - The names of the beneficiary(ies)
- It is also important to keep detailed notes as to the clients’ intentions and wishes.

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