



Amendments to Insurance Act in Schedule 23 of Ontario Bill 55, *Strong Action for Ontario Act (Budget Measures), 2012*

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Recent amendments¹ to the *Insurance Act*² received Royal Assent on July 20, 2012 but have yet to be proclaimed into force.³ As noted in its explanation, Schedule 23 to Bill 55 makes a number of amendments to Parts III, V and VII of the *Insurance Act*. Some of these changes serve to make the language of the Act more consistent with that of similar legislation in other (common-law) provinces, including technical amendments.⁴

This article highlights the major changes to Part V of the *Insurance Act* as they pertain to life insurance contracts. It is anticipated that further changes will be made in light of concerns expressed by the insurance and banking industries.⁵ In any event, the changes will require a more thorough discussion going forward, but some of the main amendments to Part V of the *Insurance Act* include the following:

Definitions

- In an individual life insurance policy, the insured is the owner of the policy. However, the insured may not necessarily be the life insured. For example, an individual may purchase life insurance on the life of his or her spouse. The individual owner is the “insured”, and the spouse is the “life insured” (outside the context of group life insurance, there is no definition of “life insured”). Subsection 190(1) has been amended to expressly allow the insured (the policy owner) to designate, in a contract of insurance or in a declaration, himself or herself as the recipient of insurance

¹ *Strong Action for Ontario Act (Budget Measures), 2012*. S.O. 2012, Chapter 8, Sched. 23 (“Bill 55”).

² R.S.O. 1990, Chapter I.8 (the “*Insurance Act*”).

³ Bill 55, Schedule 23, ss.2(1)-(3), s. 77: to be proclaimed by Order in Council.

⁴ British Columbia (*Insurance Amendment Act, 2009*, SBC 2009, c.16) and Alberta (*Insurance Amendment Act, 2008*, SA 2008, c. 19) have already proclaimed amendments to their respective insurance legislation.

⁵ See, for example, letter to Cathryn MacFarlane, Senior Manager, Industrial & Financial Policy Branch, Ministry of Finance from Frank Zinatelli, Vice President and General Counsel, Canadian Health and Life Insurance Association, April 20, 2012: www.clhia.ca.

proceeds - not just the insured's personal representative or beneficiary.⁶ Corresponding amendments have been made to the definition of "declaration" in subsection 171(1).⁷

- Under section 193, the insured may appoint, in a contract or by declaration, a trustee for a beneficiary. There was no reference to a trustee within the definition of declaration itself in subsection 171(1). In order to link the two provisions together, the definition of declaration has been amended to include the appointment of a trustee for a beneficiary.⁸

Insurable Interest - Defined

- Section 179 of the *Insurance Act* currently provides that a person has an insurable interest in the person's own life and in the life of: the person's child or grandchild; the person's spouse; any person upon whom the person is dependent, for, or from whom the person is receiving, support or education; an employee of the person; and any person in the duration of whose life the person has a pecuniary interest. The amendment provides that a person (defined as the "primary person") includes a person that is "not a natural person". A primary person that is not a natural person has an insurable interest in the lives of,
 - (i) a director, officer or employee of the primary person, and
 - (ii) a person in whose life the primary person has a pecuniary interest.⁹

If anything, this amendment confirms the current practice of corporate-owned life insurance and should not change anything substantively.

- Interestingly, section 179.1 has been added to the *Insurance Act*, by enabling a person:
 - (i) whose life is insured under a contract;
 - (ii) who is not the insured under the contract; and
 - (iii) reasonably believes that the person's life or health might be endangered by the insurance on his or her life continuing under that contract,

to apply to the court to have that policy terminated or the amount of insurance under the contract on that person's life be reduced.¹⁰

⁶ Bill 55, Schedule 23, ss 22(1)

⁷ *Ibid.*, ss. 6(4).

⁸ *Ibid.*

⁹ *Ibid.*, s. 14.

¹⁰ *Ibid.*, s. 15.

Designating Beneficiaries

- Subsection 190 (4) has been added to the *Insurance Act* which enables an insurer, subject to the regulations, to restrict or exclude in a contract the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable.¹¹
- A significant amendment to Part V applies to group life insurance. New subsection 190(5) states that a group insurance contract replacing another group insurance contract may provide that:
 - i) a designation applicable to the replaced contract of a group life insured;
 - ii) a group life insured's personal representative; or
 - iii) a group life insured's beneficiary,

as one to whom or for whose benefit insurance money is to be payable shall be deemed to apply to the replacement contract.¹² Prior to this change, a new policy would be put into place, and the group life insured would need, where applicable, to re-designate the beneficiary. More often than not, the group life insured would fail to do so. Consider how this new provision could assist the group life insured when an insurance policy has been replaced after the he or has become incapacitated and who is unable to designate a beneficiary in the replacement policy.

Settlement Funds

- Subsection 190(7) has been added to give a beneficiary entitled to insurance money that remains with an insurer under a settlement option the rights and interests of an insured with respect to that settlement money. In particular, the new subsection provides that the insurance money remaining with the insurer shall be deemed to be insurance money held under a contract on the life of the beneficiary.¹³ This provision is subject to the terms of the settlement option. Presumably, the beneficiary would, in turn, be entitled to make a beneficiary designation with respect to these proceeds. Query whether or not the creditor protection provisions would also apply to the policy and/or proceeds.¹⁴

Disclaimer by Beneficiary

- Subsection 194(3) has been added formalizing the steps a beneficiary may take to disclaim his or her share of insurance money.¹⁵ The provision provides that such

¹¹ *Ibid.*, s. 22 (2).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Insurance Act*, s. 196.

¹⁵ *Ibid.*, s. 23.

disclaimer may be made by filing a notice in writing with the insurer at its head or principal office in Canada. Once filed, such notice of disclaimer is irrevocable under subsection 194(4).¹⁶

- Subsection 194(5) has been added to confirm that Subsection 194(1) applies in the case of a disclaiming beneficiary or in the case of a beneficiary determined by a court to be disentitled to insurance money as if the disclaiming or disentitled beneficiary died before the person whose life is insured.¹⁷

Assignment of Life Insurance Contracts

- Section 197 of the *Insurance Act* provides that where a beneficiary,
 - (a) is not designated irrevocably; or
 - (b) is designated irrevocably but has attained the age of eighteen years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided therein or in Part V of the *Insurance Act*, or as may be agreed upon with the insurer. New subsection 197(2) provides that despite subsection 196(1), where a beneficiary is designated irrevocably and has not consented as described in clause (l)(b) of Section 197, the insured may exercise any rights in respect of the contract that are prescribed by regulation.¹⁸ To clarify the rights of the irrevocable beneficiary as against those of the assignee, new subsection 197(3) provides that the assignee takes the contract subject to the rights of that beneficiary (subject to a consent given by that beneficiary or a court order).¹⁹

- New subsection 197(4) provides that when a beneficiary who is designated irrevocably is unable to provide consent under clause 197(1)(b) because of legal incapacity, an insured may apply to the court for an order permitting the insured to deal with the contract without that consent.²⁰
- New subsection 200(3.1) provides that where a contract is assigned unconditionally and otherwise than as security, unless the document by which the contract is assigned specifies otherwise, the assignment made on or after the date the amendment comes into force revokes,

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*, s. 24. Presumably, this would include R.R.O. 1990, Reg. 674: Replacement of Life Insurance Contracts.

¹⁹ *Ibid.*

²⁰ *Ibid.* New subsection 197(5) provides that the court may grant an order under subsection 197(4) on any notice and terms it considers just.

- (i) a designation of a beneficiary made before or after that date and not made irrevocably; and
- (ii) a nomination referred to in section 199 (successor owners) made before or after that date.²¹

Successor Owners

- In the context of successive owners acquiring the rights and interests of the insured in a life insurance contract, subsection 199(3)(b) provides that the insured may, prior to his or her death, alter or revoke the nomination by declaration. The amended provision provides that such alteration or revocation is subject to the terms of the insurance contract.²² Accordingly, unless the insurance contract provides otherwise, the declaration could be made in an instrument, including a will. Corresponding amendments have been made to the definition of a declaration in subsection 171(1).²³

Debtor Insurance

- New subsection 201.1(1) deals with creditor group insurance. It, in effect, gives privity of contract to a debtor who is jointly liable for the debt with the debtor insured. It provides that either party may enforce in his or her own name the creditor's rights in respect of a claim arising in relation to the debtor insured, subject to any defence available to the insurer against the creditor or debtor insured.²⁴ Where an insurer pays insurance money in respect of a claim under subsection (1), the insurer shall pay the insurance money to the creditor.²⁵ Where the debtor insured provides evidence satisfactory to the insurer that the insurance money exceeds the debt then owing to the creditor, new subsection 201.1(3) provides that the insurer may pay the excess directly to that debtor insured.²⁶

Payment of Insurance Proceeds

- Section 204 deals with the payment of insurance money. New subsection 204(5) provides that where insurance money is payable under a contract to a deceased person who was not resident in Ontario at the date of the person's death or to that person's personal representative, the insurer may pay the insurance money to the deceased person's personal representative as appointed under the law of the

²¹ *Ibid.* ss. 26(1).

²² *Ibid.*, s. 25.

²³ *Ibid.*, ss. 6(4).

²⁴ *Ibid.*, s. 27.

²⁵ *Ibid.*

²⁶ *Ibid.*

jurisdiction in which the person was resident at the date of the person's death, and the payment discharges the insurer to the extent of the amount of the payment.²⁷

- Section 214 provides circumstances where the insurer may apply to have the insurance proceeds paid into court. This occurs when it appears to the insurer that,
 - (a) there are adverse claimants;
 - (b) the whereabouts of a person entitled is unknown; or
 - (c) there is no person capable of giving and authorized to give a valid discharge for such proceeds, who is willing to do so.

The following additional circumstances have been added:

- (d) there is no person entitled to the insurance money; or
- (e) the person to whom the insurance money is payable would be disentitled on public policy or other grounds.²⁸

Conclusion

Of note is that the amendments do not provide the option of electronically filing forms with the insurer, including beneficiary designations. The insurance legislation for each of Alberta²⁹ and British Columbia³⁰ do allow for electronic filings.

²⁷ *Ibid.*, ss. 28(2).

²⁸ *Ibid.*, ss 29(1).

²⁹ *Insurance Act* R.S.A. 2000, c. I-3 ss.547(2).

³⁰ *Insurance Act* SBC 2012, c37, ss. 7(1), which provides:

7 (1) If under this Act a record is required or permitted to be provided to a person personally, by mail or by any other means, unless regulations referred to in subsection (4) of this section or under section 149(2)(f) provide otherwise, the record may be provided to the person in electronic form in accordance with the *Electronic Transactions Act*.

(2) Despite subsections 2(4)(a) and (b) of the *Electronic Transactions Act*, in this section, "**record**" includes a contract or declaration that designates the insured, the insured's personal representative or a beneficiary as a person to whom or for whose benefit insurance money is to be payable.

(3) If a record is provided in electronic form under this section,

(a) the record is deemed to have been provided by registered mail, and

(b) a period of time that, under this Act, starts to run when that record, or notification of it, is delivered to the addressee's postal address starts to run when the record is deemed received in accordance with the *Electronic Transactions Act*.

(4) The *Electronic Transactions Act* and subsection (1) of this section do not apply to a record, or in relation to a provision, under this Act that is excluded from their application by regulation.

Nevertheless, the amendments represent the most substantive changes to the *Insurance Act* since the 1960s. The explanatory notes to Bill 55 provide that the purposes of the amendments are to:

- i) make the language of the *Insurance Act* consistent with that of similar legislation in other provinces; and,
- ii) provide internal consistency between the provisions governing life insurance and the provisions governing accident and sickness insurance.

Again, the provisions have not yet been proclaimed into force, likely due to concerns expressed by various stakeholders in the insurance and banking industries, so it remains to be seen whether or not these goals will be achieved by the amendments in their current or some other form.

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