SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: MacEachen v. Minnikin, 2014 NSSC 47

Date: 20140205
Docket: SFHOTH-083323
Registry: Halifax

Between:

Catherine Frances MacEachen

Petitioner

v.

Paula Marie Eileen Minnikin

Respondent

Judge:	The Honourable Justice R. James Williams
Heard:	November 13, 2013, in Halifax, Nova Scotia
Counsel:	Kenzie MacKinnon, for the Applicant William L. Ryan, for the Respondent

By the Court:

[1] C. Frances MacEachen and Paula M. E. Minnikin were both married to Frederick C. Minnikin. They were his second and third wives. He died September 20, 2010 at the age of 60.

[2] Paula Minnikin received his survivor's pension from Canada Post Corporation. Frances MacEachen feels she should have it.

THE PLEADINGS

[3] Ms. MacEachen has initiated this legal proceeding seeking that benefit. The pleadings to Ms. MacEachen's application read:

> The applicant, C. Frances MacEachen, is applying for an order for the following:
>
> ...pursuant to the law of unjust enrichment, as provided for under subsection 32A(1)(v) and (w) of the *Judicature Act*, the common law and the law of equity:
>
> The applicant is seeking enforcement of the separation agreement of April 27, 2004 and of May 4, 2004 between the Respondent, Paula M. E. Minnikin, and her former husband, Frederick Campbell Minnikin, which was incorporated into their Corollary Relief Judgment of May 21, 2007, in particular the enforcement of section 17 of the said separation agreement which provided that, if Frederick Campbell Minnikin should remarry, the respondent would execute any and all documents in order to release herself as a beneficiary of the Canada Post Corporation Registered Pension Plan of which Frederick Campbell Minnikin was a member, to allow instead the new wife of Frederick Campbell Minnikin to become the beneficiary of the Canada Post Corporation Registered Pension Plan. Frederick Campbell Minnikin did later marry the applicant.
>
> The applicant is seeking an order that the pension payments the respondent (Ms. Minnikin) has received from the Canada Post Corporation Registered Pension Plan since the death of Frederick Campbell Minnikin on September 20, 2010 and all such future pension payments to be received by the respondent be impressed with a constructive trust for the benefit of the applicant.

[4] The pleadings reference clause 17 of the Separation Agreement. Clause 17 of the Agreement provides:

17. HUSBAND'S CANADA POST CORPORATION PENSION

> It is agreed by the Husband and he will continue to have the Wife as named beneficiary under his Canada Post Corporation pension and will not change her name as beneficiary until such time as he remarries. If he does not remarry, then the Wife is to be the named beneficiary under the Pension Plan and is to continue to be so as long as the plan is in effect.
>
> The Wife agrees that, if the Husband does remarry, she will execute any and all necessary documents in order to release her as beneficiary of the aforementioned plan.

[5] Ms. MacEachen was not a party to the Agreement or the Divorce. This proceeding is brought by her personally, on her own behalf. Her claim is rooted in a claim of unjust enrichment, seeking a remedy of a constructive trust.

THE EVIDENCE

[6] Mr. Minnikin and Ms. Minnikin married June 24, 1994. They had one child, Amy, who was born November 14, 1996. They separated January 26, 2003. They signed the Separation Agreement on April 27, 2004 (Ms. Minnikin) and May 4, 2004 (Mr. Minnikin). Their Divorce Judgment and the Corollary Relief Judgment was granted April 20, 2007. The Separation Agreement was incorporated into the Corollary Relief Judgment.

[7] Ms. MacEachen indicates that she and Mr. Minnikin began their relationship in April 2005 and began cohabiting in February 2006.

[8] Mr. Minnikin retired from Canada Post on October 31, 2006. Ms. MacEachen indicates he was "forced out" of his employment with Canada Post. He had been off work for some months until shortly before his retirement. The evidence suggests he suffered from mental health concerns. The evidence indicates he had legal advice at the time of his retirement.

[9] On December 4, 2006 Mr. Minnikin signed a designation of beneficiary with respect to the Canada Post pension. The document reads, in part:

> I hereby designate the following person(s) to receive any benefits payable from the Plan in the event of my death if at that time I have no surviving spouse or dependent children. These designations are revocable at all times unless otherwise specified below. These designations replace any prior designations of beneficiary. I understand that, if more than one beneficiary is named herein, the benefits payable will be divided equally among the designated beneficiaries that survive my death, unless otherwise indicated in this form.
>
> I also understand that, if no such beneficiary survives me, or if I do not fill out this form and leave no surviving spouse or dependent children, settlement will be made to my estate.

[10] Ms. Minnikin is designated as the beneficiary, named as a separated spouse, and the percentage of benefit assigned to her is designated "100%"

[11] The end of the form, above Mr. Minnikin's signature, reads as follows:

> I understand that I am responsible for notifying the Canada Post Corporation Pension Administration Centre of any change of beneficiary designation. Changes to beneficiary designations must be in writing, by completing a new Designation of Beneficiary form.

[12] Mr. Minnikin's signature on this document was witnessed by Ms. MacEachen. I would conclude that he (and Ms. Minnikin) knew the plain meaning of this clause. They both knew a change in beneficiary designation "must be in writing".

[13] There was no change of beneficiary designation made by Mr. Minnikin before his death.

[14] Mr. Minnikin and Ms. MacEachen married February 17, 2008. He died September 20, 2010. Ms. Minnikin began receiving the survivor's pension.

[15] Through counsel, Ms. MacEachen made enquiries about the survivor's pension to Canada Post. Their reply was put before the Court with the agreement of both counsel. It advised Ms. MacEachen's counsel (at Tab D of Ms. MacEachen's Affidavit of October 19, 2012):

> We acknowledge receipt of your letters dated October 8 and 19, 2010, enquiring about pension death benefits due to Catherine Frances MacEachen. We have also

> received an unsigned copy of a Separation Agreement from your client which contains a paragraph 17 as quoted in your letter.
>
> The Canada Post Corporation Registered Pension Plan is governed pursuant to the federal *Pension Benefits Standards Act ("PBSA")*. The PBSA defines, for the purpose of post-retirement death benefits, the identity of the member's spouse, who has priority to death benefits over any other individual. The spouse at the date when the pension is first due and payable is the individual entitled to post-retirement death benefits and this individual's status as "spouse" never changes for pension purposes, even if the member divorces and remarries after retirement.
>
> Under the PBSA, the "spouse" is the individual married to the member at date of retirement, whether separated or not. The only exception is if the member had a common-law spouse (at lease one year of cohabitation) at the date of retirement. In that case, the member's common-law spouse is the "spouse" for the purpose of post-retirement death benefits.
>
> In this case, Frances MacEachen has informed us that she and Mr. Minnikin began cohabiting in February 2006, which is less than one year before the member's pension commencement.
>
> Paula Minnikin and the member were still married but separated at the date of the member's retirement, November 3, 2006. They divorced effective May 21, 2007. Mr. Minnikin then married your client on February 17, 2008. This means that the "spouse" under the Plan and the PBSA at the date of the member's retirement was Paula Minnikin and she remains the spouse under both the Plan and the PBSA regardless of events post-retirement.
>
> Paragraph 17 of the Separation Agreement cannot override the terms of the Plan and the PBSA.

[16] Ms. MacEachen has put forward a letter written by Mr. Minnikin to a lawyer. That letter, dated February 24, 2010, indicates at one point:

> Frances reminded me this morning, as I read the paper, that I'll be 60 in June. My mortality briefly crossed my mind. As my widow she will be entitled to half my reduced pension. If Canada Post had not fired me, Frances and the children would be entitled to half my full pension...

[17] Ms. MacEachen suggests this letter indicates Mr. Minnikin thought he had changed the pension designation. I do not conclude that. His death was sudden, I

conclude this phrasing contemplated that he could change the designation (perhaps wrongly). He made no attempt to change the designation.

[18] This correspondence also confirmed that Mr. Minnikin had legal counsel at the time of his retirement/firing.

[19] Ms. Minnikin and Mr. Minnikin had one child, Amy (born November 14, 1996).

[20] Ms. Minnkin's evidence included these statements from her affidavit of September 13, 2013:

> 26 After he retired in 2006, Rick told me that because he had been unable to honour his child support commitments to Amy, he would not change the beneficiary designation on his Canada Post Corporation pension after his marriage to Frances. This would allow me to collect the survivor's benefit in the event of his death, which would cover some of the arrears in child support that had accumulated over the years and would help to provide for the expense of raising Amy in the future.
>
> 35 Rick and I also committed to maintain life insurance for the benefit of Amy. At the time of our separation, Rick and I both had $1,000,000 policies with Amy named as the primary beneficiary. We agreed to either maintain Amy as the primary beneficiary, or to ensure that Amy received at least 50% of the insurance proceeds in our wills. I have always maintained this insurance policy and continue to do so. Rick did not. Contrary to the above agreement, Rick later took out a new insurance policy naming Frances as beneficiary, which I understand she has since received.

[21] I conclude that Ms. Minnikin took steps to change his insurance policy - making Ms. MacEachen the beneficiary, but did not take any steps to change the beneficiary designation on his Canada Post Survivors Pension. I conclude that he made no request to Ms. Minnikin that she execute the documents referred to in Clause 17 of their Separation Agreement.

[22] Mr. Minnikin may have intended to provide for Amy (indirectly) in this fashion. He may have intended to do so until later (when Amy was older) and to then change the designation to Ms. MacEachern. He may not have intended to

change the designation at all. He died without taking any steps to change the designation.

CASE LAW ARGUED

[23] The case law addressed includes:

A. *Tower Estate v. Tower Estate* (2010) NBQB 418 affirmed by (2012) NBCA 27.

[24] The Respondent's Brief referred to *Tower*. In *Tower*, the Court considered a dispute over Supplementary Death Benefits and Superannuation Public Service Pension Benefits of Mr. Tower (deceased). The dispute was between Mr. Tower's ex-wife, who was the designated beneficiary, and her three sons, who as administrators of Mr. Tower's estate were the Plaintiffs.

[25] The Separation Agreement in *Tower* stated:

> 8. PENSIONS, RRSP'S, BANK ACCOUNTS, GIC'S AND ESTATES
>
> **8.1 The parties agree to release any and all interest he or she may have in any pension plan held or paid into by the other;**
>
> …
>
> **8.5 The parties agree to execute any and all documentation required to give effect to clause 8.** [Emphasis Added]

[26] At trial, Savoie, J. ruled as follows:

> 20 Even though I am not prepared to characterize the "death benefits" as "life insurance", the reasoning in life insurance causes is instructive.
>
> 21 In *Richardson Estate v. Mew*, 2009 ONCA 403 (CanLII) the Ontario Court of Appeal reasoned as follows at paragraph 55:
>
> > [55] ... A former spouse is entitled to proceeds of a life insurance policy if his or her designation as beneficiary has not changed. This result follows even where there is a separation agreement in which the parties exchange

> mutual releases and renounce all rights and claims in the other's estate. General expressions of the sort contained in releases do not deprive a beneficiary of rights under an insurance policy because loss of status as a beneficiary is accomplished only by compliance with the legislation.

22 ... Savoie, J. ruled that the requirements for the imposition of a constructive trust were not present:

> Constructive Trust
>
> 22 The Plaintiffs have pleaded that the monies received by Mrs. Grant are subject to a constructive trust to the benefit of the estate. Counsel for the Plaintiffs have referred the court to two cases; *Hemmerling Estate v. Hemmerling*, [2000] A.J. No. 1328, 275 A.R. 171 (Q.B.) and *Martindale Estate v. Martindale* (1998) 162 D.L.R. (4th) 475 (B.C.C.A.).
>
> 23 In my view, both cases can be distinguished. *Martindale* was a case where the wife did not remove her ex-husband as the designated beneficiary on an insurance policy. He had left her shortly after she had been diagnosed with breast cancer. There was evidence that the wife had intended to leave everything to her sister. There was a Separation Agreement where he released any interests in her estate. The court ruled that the ex-husband's claim on the insurance policy was a breach of the Separation Agreement and that he held the money subject to a constructive trust.
>
> 24 *Martindale* has been described in later cases as an "extreme case" because of its unique facts.

[27] The evidence here does not satisfy me that Mr. Minnikin "intended to leave everything" to Ms. MacEachen. To the contrary, I would conclude he made choices about changing some things (insurance policies) and not others (the pension survivor designation).

B. *Vail v. Vail Estate* (1988) 34 CCLI 261 (Ont.H.C.J.).

[28] The Respondent's Brief argued:

> 28. Similarly, in *Vail v. Vail Estate*, a former husband and wife entered into a separation agreement, which provided that neither party had a claim against insurance policies owned by the other party. Each party was to execute such further assurances as necessary to give effect to this

> declaration. The former husband failed to revoke his former wife as his beneficiary before his death. Rosenberg, J., held that the former wife was entitled to collect on the policies, despite the settlement agreement. The decision turned on the fact that the relevant insurance act contained specific requirements to be complied with in order to revoke a beneficiary. These requirements were not met by either the minutes of settlement or the court decree. Further the former husband failed to change the designation, even though a number of years passed between the settlement agreement, and his death.

[29] I conclude that the circumstances here are similar.

C. *Gaudio Estate v. Gaudio* 2005 CarswellOnt 1743 (O.N.S.C.).

[30] The Respondent's Brief argued:

> 27. In *Gaudio Estate v. Gaudio*, the Ontario Superior Court again considered this issue in the context of an insurance policy. Clarke, J. found that the separation agreement did not waive or revoke the right of the named beneficiary to the proceeds of the insurance policy and noted that it was immaterial whether the insured had left his beneficiary designation due to pure error or inadvertence or due to the erroneous impression that it was unnecessary to take any further steps to change the beneficiary designation. Clarke, J. ruled that the evidence (and particularly the absence of evidence of intention) failed to raise the issue of good conscience and call into play the doctrine of remedial constructive trust. There was no compelling evidence of the deceased's intention or what he erroneously believed that the beneficiary designation had been taken care of. [see paragraphs 7-9 of *Gaudio*]

[31] My conclusion here is the same.

D. *Love v. Love* 2005 CarswellSask 162 (CA).

[32] The Respondent's Brief asserted:

> 29. Finally, in *Love v. Love* the Saskatchewan Court of Appeal considered a case where the deceased had designated his wife as beneficiary to his insurance policy prior to their divorce. After their divorce, the deceased attempted to change his beneficiary designation to his son, but filled out

the paperwork incorrectly. The Court of Appeal ruled as follows, with regards to unjust enrichment.

> 41 The Chambers Judge's conclusion on this point is correct. Canadian law permits recovery on the basis of the doctrine of unjust enrichment when three elements are present: (a) an enrichment of or to the defendant, (b) the corresponding deprivation of the plaintiff, and (c) the absence of a juristic reason for the enrichment. See: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 (S.C.C.) at para. 32
>
> 42 In my view, Thomas's unjust enrichment argument falters on two fronts. First, and most fundamentally, this is not a situation where Thomas gave something to ms. Love which she received and retained... It is a simple contest as to who is entitled to the life insurance benefits. Second, as the Chambers Judge indicated, there is a juristic reason for Ms. Love to be the beneficiary. She was validly named as such by Mr. Love in the forms originally filed...

[33] Again, I conclude the circumstances here are similar.

[34] The Respondent's Brief asserted:

> 32. The Applicant relies on three cases in support of her argument that the Respondent has been unjustly enriched and that a constructive trust should be ordered. ...

A. *Conway v. Conway Estate* 2006 CarswellOnt 301 (ONSC).

> 33. First, in *Conway v. Conway Estate* 2006 CarswellOnt 301 (ONSC), the Ontario Superior Court of Justice considered the affect of a separation agreement on a pension beneficiary designation. In that case, the deceased had made an equalization payment to his ex-wife that took into account the value of his pension plan at the date of separation and was done for the purpose of equalizing the distribution of assets between the parties. The Court ruled:
>
> > 29 Brian Conway made an equalization payment to Debora [*sic*]Conway that took into account the value of his pension plan. I conclude that he would not have equalized the value of his

> pension if he had intended Deborah Conway to receive the benefit of it. Were she now to receive the survivor benefit under this plan she would be enriched. Brian Conway's estate would suffer a corresponding deprivation by not receiving the amount which Brian Conway had freed from the equalization claim. Given that Brian Conway paid fair compensation to Deborah Conway to free the pension from the equalization claim thee is no juristic reason for Deborah Conway to receive the benefit in the circumstances. I am therefore of the view that it is appropriate to impose a constructive trust in respect of the benefit payable under the plan.

34. This situation is clearly different than the case at hand. Here, the Separation Agreement did not provide for the final division of Mr. Minnikin's pension. Instead, the separation agreement contemplates that the Respondent could remain beneficiary of Mr. Minnikin's pension indefinitely. The decision in *Conway, supra* contemplates a situation where the asset had been equalized and final distribution made. This is not the case here.

[35] I agree. Here, Mr. Minnikin (as between he and Ms. Minnikin) was left in control of who would be designated as beneficiary once he remarried. Changing the designation involved taking concrete steps. He did not take those steps.

B. *Roberts v. Martindale* (1998) B.C.J. No. 1509 (B.C.C.A.).

[36] The Respondent's Brief argued:

35. The second case relied upon by the Applicant is *Roberts v. Martindale*, [1998] B.C.J. No. 1509 (B.C.C.A.). In *Roberts, supra* the deceased had been left by her husband shortly after she was diagnosed with cancer. The divorce was very bitter an [*sic*] acrimonious. The deceased had told friends and colleagues, several of whom gave evidence at the trial, that she had organized her affairs so that her sister would get everything. Three days before her death she told her sister and niece that it was not necessary to complete a change of beneficiary designation because she had "taken care of it". The trial judge found that the deceased honestly believed that she had done what was required to remove her ex-husband as beneficiary. The Court of Appeal ruled that it would be against good conscience for the

ex-husband to keep the proceeds because he had surrendered his right to them pursuant to the separation agreement.

36. ... It is the Respondent's position that this case may be distinguished based on its very unique and extreme set of facts (see excerpt from *Tower Estate, supra* at paragraph 22 above). In *Roberts, supra* there was a significant amount of evidence (from the parties as well as independent witnesses) that confirmed that at no time did the deceased intend that her ex-husband should benefit from the insurance proceeds, and that she mistakenly, but honestly, felt that she had done everything required to change the beneficiary. There is no analogous evidence in the case at hand.

[37] Again, I agree.

C. *Campbell Estate v. Campbell* 2011 ONSC 5079 (O.N.S.C.).

[38] The Respondent's Brief concluded:

37. The final case that the Applicant relies upon is *Campbell Estate v. Campbell* 2011 ONSC 5079 (O.N.S.C.). In that case, the separation agreement provided that both spouses relinquished all rights to the RRSP plans of the other. The separation agreement was entered into on June 28, 2010 and the husband died on August 11, 2010. After the husband's death, three RRSPs were discovered for which the wife remained the designated beneficiary. The wife argued that the revocation of the beneficiary designations had not taken place as required by the *Succession Law Reform Act* R.S.O. 1990, c. 26 and that she should therefore collect the proceeds. The Court ruled that the clause of the separation agreement was sufficient to revoke the beneficiary designations pursuant to the legislation.

38. This case is clearly distinguishable from the case at hand. There, the Court found that the separation agreement was sufficient to satisfy the requirements of the applicable legislation for revoking designated beneficiaries. Section 51 of the *Succession Law Reform Act, supra* requires that an instrument be signed by the participant to designate or revoke a beneficiary. No specific form is required. In the case at hand it is clear that Mr. Minnikin did *not* comply with the requirements for changing his beneficiary designation pursuant to the applicable legislation. He at no time completed the required form. Therefore, the decision in *Campbell Estate, supra* is distinguishable in that the requirements of the legislation have not been satisfied here.

[39] I agree.

UNJUST ENRICHMENT

[40] The test relating to unjust enrichment was set out by the Nova Scotia Supreme Court in *MacInnis v. MacMillan*, 94 NSR 271 (at paragraphs 38-43); where the Court stated:

> From the decision in the Sorochan, I draw the following conclusions:
>
> 1. The claim for unjust enrichment is now a cause of action in itself.
>
> 2. For a plaintiff to prove an unjust enrichment, the plaintiff must meet three requirements:
>
> a. an enrichment;
>
> b. a corresponding deprivation;
>
> c. the absence of any juristic reason for the enrichment.

[41] In *Kerr v. Baranow*, 2011 S.C.C. 10, the Supreme Court of Canada described the Elements of an Unjust Enrichment Claim (at paragraphs 37 to 41, and 43):

> [37] The Court has taken a straightforward economic approach to the first two elements - enrichment and corresponding deprivation. Accordingly, other considerations, such as moral and policy questions, are appropriately dealt with at the juristic reason stage of the analysis: see *Peter*, at p. 990, referring to *Pettkus, Sorochan v. Sorochan* [1986] 2 S.C.R. and *Peel*, affirmed in *Garland v. Consumer's Gas Co.,* 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 31.
>
> [38] For the first requirement - enrichment - the plaintiff must show that he or she gave something to the defendant which the defendant received and retained. The benefit need not be retained permanently, but there must be a benefit which has enriched the defendant and which can be restored to the plaintiff *in specie* or by money. Moreover, the benefit must be tangible. It may be positive or negative, the latter in the sense that the benefit conferred on the defendant spares

him or her an expense he or she would have had to undertake (*Peel*, at pp. 788 and 790; *Garland*, at paras. 31 and 37).

[39] Turning to the second element - a *corresponding* deprivation - the plaintiff's loss is material only if the defendant has gained a benefit or been enriched (*Peel*, at ppp. 789-90). That is why the second requirement obligates the plaintiff to establish not simply that the defendant has been enriched, but also that the enrichment corresponds to a deprivation which the plaintiff has suffered (*Pettkus*, at p. 852; *Rathwell*, at p. 455).

[40] The third element of an unjust enrichment claim is that the benefit and corresponding detriment must have occurred without a juristic reason. To put it simply, this means that there is no reason in law or justice for the defendant's retention of the benefit conferred by the plaintiff, making its retention "unjust" in the circumstances of the case: see *Pettkus*, at p. 848; *Rathwell*, at p. 456; *Sorochan*, at p. 44; *Peter*, at p. 987; *Peel*, at pp. 784 and 788; *Garland*, at para. 30.

[41] Juristic reasons to deny recovery may be the intention to make a gift (referred to as a "donative intent"), a contract, or a disposition of law (*Peter*, at pp. 990-91; *Garland*, at para. 44; *Rathwell*, at p. 455). The latter category generally includes circumstances where the enrichment of the defendant at the plaintiff's expense is required by law, such as where a valid statute denies recovery (P. D. Maddaugh and J. D. McCamus, *The Law of Restitution* (1990), at p. 46; *Reference re Goods and Services Tax*, [1992] 2 S. C. R . 445; *Mack v. Canada (Attorney General)* (2002), 60 O. R. (3d) 737 (C.A.)). However, just as the Court has resisted a purely categorical approach to unjust enrichment claims, it has also refused to limit juristic reasons to a closed list. This third stage of the unjust enrichment analysis provides for due consideration of the autonomy of the parties, including factors such as "the legitimate expectation of the parties, the right of parties to order their affairs by contact" (*Peel*, at p. 803).

...

[43] In *Garland*, the Court set out a two-step analysis for the absence of juristic reason. It is important to remember that what prompted this development was to ensure that the juristic reason analysis was not "purely subjective", thereby building into the unjust enrichment analysis an unacceptable "immeasurable judicial discretion" that would permit "case by case 'palm tree' justice"; *Garland*, in para. 40. The first step of the juristic reason analysis applies the established categories of juristic reasons; in their absence, the second step permits consideration of the reasonable expectations of the parties and public policy considerations to assess whether recovery should be denied:

> First the plaintiff must show that no juristic reason from an established category exists to deny recovery... The established categories that can constitute juristic reasons include a contract (*Pettkus, supra*), a disposition of law (*Pettkus, supra*), a donative intent (*Peter, supra*), and other valid common law, equitable or statutory obligations (*Peter, supra*). If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case under the juristic reason component of the analysis.
>
> The *prima facie* case is rebuttable, however, where the defendant can show that there is another reason to deny recovery. AS a result, there is a *de facto* burden of proof placed on the defendant to show the reason why the enrichment should be retained. This stage of the analysis thus provides for a category of residual defence in which courts can look to all of the circumstances of the transaction in order to determine whether there is another reason to deny recovery.
>
> As part of the defendant's attempt to rebut, courts should have regard to two factors: the reasonable expectations of the parties, and public policy considerations [paras. 44-46]

WAS THERE AN ENRICHMENT?

[42] I conclude that there was not - for the following reasons:

(a) Ms. MacEachen has not shown that she gave something to Ms. Minnikin, which Ms. Minnikin retained.

(b) Ms. MacEachen could not have been designated a spouse at the time of Mr. Minnikin's retirement. Mr. Minnikin did not change or attempt to change the beneficiary designation. Ms. Minnikin was never asked to sign a waiver. Mr. Minnikin's actions resulted in Ms. Minnikin being designated as beneficiary. He took no steps to change that. Nothing Ms. MacEachen did enriched Ms. Minnikin.

WAS THERE A DEPRIVATION?

[43] There was no enrichment, and therefore no corresponding deprivation.

[44] Ms. MacEachen's sense of deprivation is undoubtedly real. It is not, however, a "corresponding deprivation" as contemplated by the law of unjust enrichment. It is not a "deprivation" brought by actions or inactions by Ms. Minnikin. Mr. Minnikin is the author of these circumstances.

[45] Ms. MacEachen feels she was deprived in the sense that she feels she should have the benefits that Ms. Minnikin now has. Her sense of deprivation occurred either as a result of Mr. Minnikin's failure to execute the documentation necessary to change the beneficiary designation or as a result of the operation of the PBS Act.

ARE THERE JURISTIC REASONS FOR MS. MINNIKIN TO RETAIN THE BENEFIT?

[46] I conclude there are juristic reasons for Ms. Minnikin to retain the benefit. They include:

(a) The Separation Agreement and Corollary Relief Judgment provided she would be designated the beneficiary.

(b) Mr. Minnikin designated her the beneficiary.

(c) He could not have designated anyone else at the time of his retirement (the letter from Canada Post concerning the PBSA).

(d) I conclude he knew that he was responsible to notify Canada Post Corporation Administration Centre of any change in beneficiary and that it must be done in writing (the Designation of Beneficiary document).

(e) He did not change the designation.

(f) He took no steps to change the designation.

(g) Ms. Minnikin could not change the designation on her own.

(h) Ms. Minnikin was not asked by Mr. Minnikin to cooperate in changing the designation.

CONCLUSION

[47] The Application brought by Ms. MacEachen is dismissed. No unjust enrichment has been proven or demonstrated.

[48] If the parties are unable to agree on the matter of costs, a date for oral submissions may be scheduled (one hour). If that occurs, it is requested that counsel file letters summarizing their positions (counsel for Ms. Minnikin would file two weeks before the scheduled date; counsel for Ms. MacEachen would file one week before the scheduled date).

J. S. C. (F.D.)

Halifax, NS