

Ved Parkash Dhingra (applicant/appellant) v. Paul (Vikas) Dhingra acting as Estate Administrator of the Estate of Kamlesh Kumari Dhingra (respondent/respondent in appeal)  
(C53965; 2012 ONCA 261)

**Indexed As: Dhingra v. Dhingra Estate**

Ontario Court of Appeal  
Rosenberg, Cronk and Watt, J.J.A.  
April 24, 2012.

**Summary:**

In 1998, Dhingra acquired a group life insurance policy. Although he and his wife had been separated since 1992, he named his wife the beneficiary. Under the policy, his wife was also named an insured and Dhingra the beneficiary. In 2006, Dhingra killed his wife. In 2008, he was tried on a charge of second degree murder, but found not criminally responsible on account of mental disorder (NCR). Dhingra, as beneficiary, claimed the \$50,000 insurance proceeds respecting his deceased ex-wife.

The Ontario Superior Court, in a decision reported [2011] O.T.C. Uned. 3741, dismissed Dhingra's claim to the insurance proceeds, which were being held in court. The court held that the rule of public policy prohibiting a person from benefiting from his own criminal act was applicable. Dhingra appealed, arguing that the public policy rule did not apply to a beneficiary who was found not criminally responsible on account of mental disorder.

The Ontario Court of Appeal agreed that a person who was found not to be criminally responsible on account of mental disorder was not prevented from taking under an insurance policy (i.e., the common law public policy rule did not apply). The court held further, that the common law rule was not supplanted by the forfeiture provisions of the Civil Remedies Act, which applied to an NCR accused. Rather, in such a situation, the Crown could apply to have the insurance proceeds forfeited, but such an order was not automatic. In the result, the court allowed the appeal. The court ruled that the insurance proceeds were rightfully payable to Dhingra, but stayed the order for 30 days to give the Attorney General time to apply for an order under the Civil Remedies Act.

**Common Law - Topic 2604**

General rules - Prohibition of profit from criminal act - [See **Insurance - Topic 7226**].

**Criminal Law - Topic 7062**

Civil remedies for unlawful activity (Civil Remedies Act) - Remedies - Forfeiture - [See **Insurance - Topic 7226**].

**Insurance - Topic 7226**

Life insurance - Defences and exclusions - Death of insured caused by wrongful act of beneficiary - At issue was whether the public policy rule prohibiting a person from benefiting from his own criminal act applied to a beneficiary under a life insurance policy (Dhingra) who had been found not criminally responsible on account of mental disorder

(NCR) in the death of the insured - The Ontario Court of Appeal held that an NCR accused was not prevented from taking under an insurance policy (i.e., the common law public policy rule did not apply) - The court held further, that the common law rule was not supplanted by the forfeiture provisions of the Civil Remedies Act, which applied to an NCR accused - Rather, in such a situation, the Crown could apply to have the insurance proceeds forfeited, but such an order was not automatic - In this case, the court ruled that the insurance proceeds were rightfully payable to Dhingra, but stayed the order for 30 days to allow the Attorney General to bring an application under the Civil Remedies Act.

### **Insurance - Topic 7255**

Life insurance - Payment of proceeds - Death of insured caused by wrongful act of beneficiary - [See **Insurance - Topic 7226**].

### **Cases Noticed:**

Ontario Municipal Employees Retirement Board v. Young, (1985), 49 O.R.(2d) 78 (H.C.J.), refd to. [para. 7].  
Oldfield v. Transamerica Life Insurance Co. of Canada et al., [2002] 1 S.C.R. 742; 284 N.R. 104; 156 O.A.C. 310, refd to. [para. 14].  
Brissette v. Westbury Life Insurance Co., [1992] 3 S.C.R. 87; 142 N.R. 104; 58 O.A.C. 10; 96 D.L.R.(4th) 609, refd to. [para. 15].  
Lundy v. Lundy (1895), 24 S.C.R. 650, refd to. [para. 16].  
Nordstrom v. Baumann, [1962] S.C.R. 147, appld. [para. 17].  
Dreger, Re (1976), 12 O.R.(2d) 371 (H.C.J.), appld. [para. 20].  
Winko v. Forensic Psychiatric Institute (B.C.) et al., [1999] 2 S.C.R. 625; 241 N.R. 1; 124 B.C.A.C. 1; 203 W.A.C. 1, refd to. [para. 23].  
R. v. Swain, [1991] 1 S.C.R. 933; 125 N.R. 1; 47 O.A.C. 81, refd to. [para. 23].  
R. v. National Insurance Commissioner, ex parte Connor, [1981] 1 All E.R. 769 (Div. Ct.), refd to. [para. 26].  
65302 British Columbia Ltd. v. Minister of National Revenue, [1999] 3 S.C.R. 804; 248 N.R. 216, refd to. [para. 34, footnote 3].

### **Statutes Noticed:**

Civil Remedies Act, S.O. 2001, c. 28, sect. 1 [para. 28]; sect. 2, sect. 3, sect. 17(1) [para. 29].  
Remedies for Organized Crime and Other Unlawful Activities Act - See Civil Remedies Act.

### **Authors and Works Noticed:**

Schuman, Gary, Life Insurance and the Homicidal Beneficiary: The Insurer's Responsibilities Under State Slayer Laws and Statutes (2001), 51 Fed'n. Def. & Corp. Counsel Q. 197, generally [para. 25].  
Sevier, Laurel, Kooky Collects: How the Conflict Between Law and Psychiatry Grants Inheritance Rights to California's Mentally Ill Slayers (2007), 47 Santa Clara L. Rev. 379, generally [para. 25].  
Triggs, Chris, Against Policy: Homicide and Succession to Property (2005), 68 Sask. L.

Rev. 117, p. 126 [para. 26].

**Counsel:**

Eric M. Wolfman, for the appellant;  
Vito Scalisi, for the respondent.

This appeal was heard on December 7, 2011, before Rosenberg, Cronk and Watt, J.J.A., of the Ontario Court of Appeal. The following decision was delivered for the court, by Rosenberg, J.A., on April 24, 2012.

Appeal allowed.

Editor: Elizabeth M.A. Turgeon

**Common Law - Topic 2604**

General rules - Prohibition of profit from criminal act - At issue was whether the public policy rule prohibiting a person from benefiting from his own criminal act applied to a beneficiary under a life insurance policy (Dhingra) who had been found not criminally responsible on account of mental disorder (NCR) in the death of the insured - The Ontario Court of Appeal held that an NCR accused was not prevented from taking under an insurance policy (i.e., the common law public policy rule did not apply) - The court held further, that the common law rule was not supplanted by the forfeiture provisions of the Civil Remedies Act, which applied to an NCR accused - Rather, in such a situation, the Crown could apply to have the insurance proceeds forfeited, but such an order was not automatic - In this case, the court ruled that the insurance proceeds were rightfully payable to Dhingra, but stayed the order for 30 days to allow the Attorney General to bring an application under the Civil Remedies Act.

**Criminal Law - Topic 7062**

Civil remedies for unlawful activity (Civil Remedies Act) - Remedies - Forfeiture - At issue was whether the public policy rule prohibiting a person from benefiting from his own criminal act applied to a beneficiary under a life insurance policy (Dhingra) who had been found not criminally responsible on account of mental disorder (NCR) in the death of the insured - The Ontario Court of Appeal held that an NCR accused was not prevented from taking under an insurance policy (i.e., the common law public policy rule did not apply) - The court held further, that the common law rule was not supplanted by the forfeiture provisions of the Civil Remedies Act, which applied to an NCR accused - Rather, in such a situation, the Crown could apply to have the insurance proceeds forfeited, but such an order was not automatic - In this case, the court ruled that the insurance proceeds were rightfully payable to Dhingra, but stayed the order for 30 days to allow the Attorney General to bring an application under the Civil Remedies Act.

**Insurance - Topic 7255**

Life insurance - Payment of proceeds - Death of insured caused by wrongful act of beneficiary - At issue was whether the public policy rule prohibiting a person from benefiting from his own criminal act applied to a beneficiary under a life insurance policy

(Dhingra) who had been found not criminally responsible on account of mental disorder (NCR) in the death of the insured - The Ontario Court of Appeal held that an NCR accused was not prevented from taking under an insurance policy (i.e., the common law public policy rule did not apply) - The court held further, that the common law rule was not supplanted by the forfeiture provisions of the Civil Remedies Act, which applied to an NCR accused - Rather, in such a situation, the Crown could apply to have the insurance proceeds forfeited, but such an order was not automatic - In this case, the court ruled that the insurance proceeds were rightfully payable to Dhingra, but stayed the order for 30 days to allow the Attorney General to bring an application under the Civil Remedies Act.