

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Heritage Trust Company Inc. v. Garrett*,
2025 BCCA 326

Date: 20250919
Docket: CA49726

Between:

**Heritage Trust Company Inc., as administrator under special circumstances
of the Estate of Richard Garrett, deceased**

Appellant
(Respondent)

And

Sonia Garrett

Respondent
(Petitioner)

And

**Jacqueline Garrett, by her litigation guardian,
Public Guardian and Trustee, Rachel Osman and Ivori**

Respondents
(Respondents)

Before: The Honourable Mr. Justice Groberman
The Honourable Justice Fleming
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated
February 6, 2024 (*Garrett (Re)*, Vancouver Docket S231684).

Counsel for the Appellant:

K. Vimalesan

Counsel for the Respondent,
Sonia Garrett:

J.D. West

Counsel for the Respondent,
Jacqueline Garrett, by her litigation
guardian, Public Guardian and Trustee:

J. Locke

No one appearing on behalf of the
Respondent, Rachel Osman.

Place and Date of Hearing:

Vancouver, British Columbia
May 7, 2025

Place and Date of Judgment:

Vancouver, British Columbia
September 19, 2025

Written Reasons by:

The Honourable Justice Fleming

Concurred in by:

The Honourable Mr. Justice Groberman

The Honourable Justice Edelmann

Summary:

The appellant challenged the dismissal of an unjust enrichment claim arising from a dispute over the proceeds of a life insurance policy. The deceased had designated his only child as the irrevocable beneficiary of a policy, and then he obligated himself under a separation agreement to maintain a life insurance policy for the benefit of his former spouse, the child's mother. He attempted to revoke the child's designation in favour of the former spouse, but did not obtain a court order authorizing the revocation, which the insurer required. After his death, the insurer refused to pay the proceeds to the former spouse, who then petitioned for payment to her in trust for the child. The evidence adduced by the estate included allegations the deceased did not intend to or understand the consequences of the irrevocable beneficiary designation. The chambers judge dismissed the unjust enrichment claim, based on the conclusion the separation agreement provided a juristic reason for the former's spouse's enrichment.

Held: Appeal allowed. The dismissal is set aside, and the case is remitted to the court below to determine the evidentiary, factual and legal issues related to the alleged mistake or lack of intention and whether the irrevocable designation provides a juristic reason for the child's enrichment.

Reasons for Judgment of the Honourable Justice Fleming:

Introduction

[1] This appeal concerns a claim of unjust enrichment arising from a dispute over the proceeds of a life insurance policy of the deceased, Richard Garrett.

[2] Sonia Garrett is his former spouse, and Jacqueline Garret, born in 2005, is their only child. For clarity, I will refer to each of the Garretts by their first names. Heritage Trust Company Inc. (“Heritage”) is the administrator of Richard’s estate.

[3] Richard designated Jacqueline as the irrevocable beneficiary of a \$450,000 life insurance policy with Ivori (the “Ivori Policy”). Because she was a minor, Ivori required a court order to revoke Jacqueline’s designation. In a separation agreement executed some months later, Richard agreed to maintain a life insurance policy in the same amount with Sonia as the irrevocable beneficiary, for as long as he had support obligations. If he died during that time and Sonia did not receive the proceeds from the insurer, Richard’s estate was required to pay her. Richard attempted to change the irrevocable beneficiary designation in the Ivori Policy to Sonia. Although he had not obtained a court order, Ivori told him the change had been made. After his death, however, Ivori refused to pay Sonia as Jacqueline’s irrevocable beneficiary designation had not been properly revoked.

[4] Sonia then took the position Jacqueline was entitled to the Ivori Policy proceeds and brought a petition seeking an order that they be paid to her in trust for Jacqueline. Heritage opposed the petition and applied for a number of orders directed at Sonia obtaining the proceeds, including an order they be held on a constructive trust for Sonia, based on a claim that Jacqueline would be unjustly enriched if permitted to retain them.

[5] The chambers judge granted Sonia’s petition and dismissed Heritage’s application.

[6] Heritage appeals from the dismissal of the unjust enrichment claim.

Overview

[7] In 2014, Richard entered into a contract for life insurance with Ivori and designated Jacqueline as “beneficiary” under the Ivori Policy.

[8] Richard and Sonia separated in August 2019.

[9] On June 16, 2020, Richard designated Jacqueline as the irrevocable principal (primary) beneficiary of the Ivori Policy by completing a change of beneficiary form.

Under the heading “Irrevocable/Revocable Beneficiaries”, the form read:

By naming an Irrevocable Beneficiary, you are giving up substantial control over your policy. Once an Irrevocable Beneficiary has been designated, his/her consent will be required for future dealings e.g.: surrender, loan with the policy.

[10] Below the next heading “Minor Beneficiaries” was:

If naming a minor as Irrevocable Beneficiary, you should be aware that a minor cannot give consent. Irrevocable beneficiary consent to any changes will only be permitted if Ivori is provided with a court order, satisfactory to it, authorizing the specific change being requested.

[11] The beneficiary designation part of the form immediately followed, and required Richard to indicate whether Jacqueline was the revocable or irrevocable beneficiary, as well as the primary or contingent beneficiary.

[12] Richard and Sonia made the separation agreement on September 15, 2020 (the “Separation Agreement”). Under the Separation Agreement, Richard was required to pay Sonia monthly spousal support, subject to review; Richard and Sonia were each required to pay child support to the other, based on their shared “custody” of Jacqueline; and both were to contribute a proportionate share to Jacqueline’s special and extraordinary expenses. Each of their support obligations was secured by the requirement to maintain life insurance of \$450,000 for the other as irrevocable beneficiary, and failing payment by the insurer, their respective estates were required to pay this amount (less any amount received from the insurer).

[13] Richard's life insurance obligation included:

14.1 While required to pay Spousal and Child Support in accordance with this Agreement, Richard will maintain Richard's life insurance ("Richard's Policy") in the amount of \$450,000, with Sonia designated as irrevocable beneficiary.

[14] "Richard's Policy" was identified and defined in the recitals as: "Richard's UK Term Life Insurance Policy with Canada Life, with a term ending in 2028, and a death benefit of £400,000 ("Richard's Policy")".

[15] The recitals also listed Richard and Sonia's "Ivari Life Insurance Policies". Richard had only one: "Richard's Single Life Policy in the amount of \$450,000".

[16] In October 2020, Richard submitted a second change of beneficiary form to Ivari, requesting Sonia be made the principal irrevocable beneficiary and Jacqueline the contingent irrevocable beneficiary of the Ivari Policy.

[17] Despite the absence of a court order revoking Jacqueline's designation, Ivari confirmed that it had made the requested change in a letter to Richard dated December 2, 2020.

[18] Richard made his last will in June 2021 and died on August 11, 2022. Under the will, his partner, Rachel Osman is the residual beneficiary of his estate, Jacqueline receives \$20,000, and Ms. Osman's two children receive \$10,000 each. The will also appointed Ms. Osman as the executor and trustee, which she renounced after Richard's death.

[19] In November 2022, Sonia submitted a claim for the proceeds from the Ivari Policy. Ivari advised her that Jacqueline remained the irrevocable beneficiary because "the irrevocable designation in favour of the minor daughter was not properly revoked by court order".

[20] Sonia filed the petition seeking an order appointing her as trustee of the proceeds payable to Jacqueline under the Ivari Policy. Heritage brought its application for a range of procedural and substantive orders. The petition and Heritage's substantive application were heard together.

[21] In the application, Heritage took the position that Sonia was entitled to the insurance proceeds on three grounds: Jacqueline's beneficiary designation should be rescinded based on Richard's unliteral mistake; Richard and Sonia had consented to changing Jacqueline's designation on her behalf through the Separation Agreement; and unjust enrichment.

[22] The claim for unjust enrichment required Heritage to prove three elements: an enrichment of Jacqueline; a corresponding deprivation of Richard's estate; and an absence of juristic reason for the enrichment (see: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30).

[23] Relying on *Moore v. Sweet*, 2018 SCC 52, Heritage asserted Jacqueline would be unjustly enriched and the estate would suffer a corresponding deprivation if she were permitted to retain the proceeds, because her beneficiary designation is not a juristic reason for the enrichment. Heritage also asserted that Richard intended to, and thought he had, validly revoked Jacqueline's beneficiary designation and designated Sonia instead.

[24] In support of Richard's alleged mistake and intention, Heritage relied on the affidavit evidence of Ms. Osman. She deposed to not believing Richard intended to make Jacqueline's beneficiary designation irrevocable, based on his (presumptively inadmissible) hearsay evidence:

...on the basis of my conversations with Richard, Richard was unaware that ... he had made the designation of Jacquie as beneficiary of the Ivari Life Insurance Policy irrevocable, believed he could change the beneficiary of the Ivari Life Insurance Policy, and believed he did validly change [it] to Sonia following the signing of the Separation Agreement.

[25] Ms. Osman further deposed to having many conversations with Richard from September 2020 to his death, during which he made clear that \$450,000 from the Ivori Policy would be paid to Sonia on his death, for spousal and child support purposes.

Reasons of the Chambers Judge

[26] In oral reasons for judgment, the chambers judge started her discussion of the unjust enrichment claim by finding the parties had agreed the first two elements were satisfied, “in that Jacquie will be enriched and the estate will suffer a corresponding deprivation”: at para. 23. She identified the third element, the absence of a juristic reason for the enrichment and corresponding deprivation, as the contentious issue.

[27] Based on *Moore* and *Knowles v. LeBlanc*, 2021 BCSC 482 which applied *Moore*, the chambers judge concluded the *Insurance Act*, R.S.B.C. 2012, c. 1 [*Insurance Act*], did not provide a juristic reason for “Sonia’s enrichment”, but the Separation Agreement did:

[28] ...It expressly contemplates the possibility that the insurer may not pay the proceeds of the Policy to Sonia and requires Richard’s estate to pay her the amount of the proceeds [then] to her in that event. No one challenges the validity of the separation agreement.

[28] She referred to the Separation Agreement as providing a juristic reason for “Sonia’s” enrichment again in concluding the unjust enrichment claim failed (at para. 31).

[29] The chambers judge also rejected Heritage’s contention that requiring the estate to pay Sonia, with Ivori paying the Ivori Policy proceeds to Jacqueline, would result in double recovery, commenting that any such concern would be “most appropriately addressed” by the estate claiming over against Ivori, if Sonia brought an action against Richard’s estate, both of which have since occurred.

Unjust Enrichment

[30] As a cause of action, unjust enrichment grew out of traditional categories of recovery in restitution that include: a plaintiff conferring a benefit through a mistake of fact or law; under compulsion; out of necessity; or from a failed or ineffective transaction: *Moore* at para. 36; *Kerr v. Baranow*, 2011 SCC 10 at para. 31. The premise of each traditional category, and at the heart of the unjust enrichment doctrine, is the notion of restoring a benefit which justice does not permit one to retain: *Kerr* at para. 31.

[31] Alongside the traditional categories of recovery in restitution, a principled framework or tripartite test for unjust enrichment was established that requires a plaintiff to prove the elements already referenced: one, an enrichment of the defendant; two, a corresponding deprivation of the plaintiff; and three, an absence of juristic reason for the enrichment.

[32] As the Court observed in *Garland*, Canadian courts and commentators were divided in their approach to juristic reason: at paras. 40–41.

[33] Recognizing the need for useful guidelines, as well as flexibility to meet changing perceptions of justice, *Garland* prescribed a two-stage analysis for the absence of juristic reason element: at paras. 44–47.

[34] At the first stage, the plaintiff must prove the defendant’s retention of the benefit cannot be justified based on the “established” categories of juristic reason that include contract, disposition of law, donative intent and “other valid common law, equitable or statutory obligations”: *Garland* at para. 44. If an established category does not provide a juristic reason, a *prima facie* case will be made out. At the second stage, the defendant has an opportunity to show a residual reason why the enrichment should be retained. All the circumstances of the “transaction” can be examined to determine if there is another reason, but two particular factors are to be considered: the reasonable expectations of the parties and public policy considerations or moral and policy-based arguments: see *Kerr* at para. 44.

[35] *Moore* confirmed the principled framework for unjust enrichment and *Garland's* two-step juristic reason analysis. Justice Côté, writing for the majority, discussed the juristic reason element as requiring the enrichment and the corresponding deprivation to occur without a juristic reason: at paras. 37 and 55, citing *Pettkus v. Becker*, [1980] 2 S.C.R. 834 at 848, 1980 CanLII 22; *Garland* at para. 30; and *Kerr* at paras. 30–45. The dissenting justices disagreed with what they saw as the suggestion a juristic reason must simultaneously provide a reason for the defendant's enrichment and a reason why that enrichment occurred at the expense of the plaintiff. Relying on the same authorities, they emphasized the juristic reason requirement applies only to the enrichment: at para. 117.

[36] I note that *Garland* identified the absence of juristic reason element with respect to the enrichment. *Kerr* referred to it in two ways. The first is as the minority described—the absence of a juristic reason for the enrichment (at para. 32). The second includes: “the benefit and corresponding deprivation must have occurred without juristic reason” meaning “there is no reason in law or justice for the defendant's retention of the benefit conferred to by the plaintiff” (at para. 40). Nothing in the reasons of Côté J. indicate any intention to expand the scope or focus of the juristic reason requirement. Further, she articulated the juristic reason requirement as essentially concerned with the *justification* for the defendant's *retention of the benefit* that was conferred at the plaintiff's expense and what is fundamental to unjust enrichment—reversing transfers of benefits that occur without any legal or equitable basis (at para. 55; my emphasis). Ultimately then, I would read the majority decision as not standing for any change to the element of juristic reason.

[37] *Moore* involved two innocent parties, each claiming an entitlement to the deceased's life insurance proceeds. The appellant, M, and the deceased were former spouses. After they separated, they agreed the deceased would maintain her as the sole (revocable) beneficiary of his insurance policy in exchange for M continuing to pay the premiums. Unbeknownst to M, the deceased later designated

his subsequent spouse, R, as the irrevocable beneficiary of the policy. Although M had a contractual claim against him, his estate was insolvent.

[38] There was no dispute that R was enriched by her right as the irrevocable beneficiary to receive the proceeds. Applying the Court’s long-standing “straightforward economic approach” to the elements of enrichment and corresponding deprivation, which also requires “some causal connection” between them, Côté J. found M would be deprived of her contractual right to receive the policy proceeds and this corresponded with R’s gain: at paras. 41–43, 46.

[39] Turning to the third element, the absence of juristic reason, Côté J. considered the established categories of disposition of law and statutory obligations and recognized a statute may preclude recovery under unjust enrichment if “it requires (either explicitly or by necessary implication) that the defendant be enriched to the detriment of the plaintiff”: at para. 68. Justice Côté also recognized valid beneficiary designations pursuant to provincial insurance legislation had been found to constitute a juristic reason that defeats a third party’s claim, in different circumstances, referring to *Richardson Estate v. Mew*, 2009 ONCA 403.

[40] In *Richardson*, the deceased had designated his former spouse as the beneficiary of his life insurance policy. In their separation agreement, he agreed to maintain her as the beneficiary for a period of time. Although the deceased told his second spouse he would designate her instead, he never did. The premiums were paid from their joint bank account and then solely by the second spouse. The Ontario Court of Appeal held the beneficiary designation and the provisions of the *Insurance Act*, R.S.O. 1990, c. I.8, [Ontario Act] provided a juristic reason for the former wife’s enrichment, and it was not unjust for her to take the proceeds:

[55] ... A former spouse is entitled to proceeds of a life insurance policy if his or her designation as beneficiary has not been 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. ...

[41] Without impugning *Richardson*, Côté J. concluded the Ontario *Act* did not provide a juristic reason for R's enrichment because it did not *oust* common law or equitable rights that persons other than the designated beneficiary may have in policy proceeds.

[42] Key to her conclusion, in my view, was the fact of M's *prior* contractual right to the proceeds.

[43] Justice Côté identified the issue as whether R's irrevocable beneficiary designation under the Ontario *Act* provided "any reason in law or justice" for her to retain the benefit notwithstanding M's *prior* contractual right to remain named as beneficiary and therefore to receive the proceeds: at para. 70. Her analysis included:

[73] Accepting that contractual rights to claim policy proceeds can exist outside of the *Insurance Act*, can an irrevocable designation under the *Insurance Act* nonetheless constitute a juristic reason for [M's] deprivation? In my view, it cannot. This is because the applicable statutory provisions do not require, either expressly or implicitly, that a beneficiary keep the proceeds as *against a plaintiff, in an unjust enrichment claim, who stands deprived of his or her prior contractual entitlement to claim such proceeds upon the insured's death*. By not ousting prior contractual or equitable rights that third parties may have in such proceeds, the *Insurance Act* allows an irrevocable beneficiary to take insurance money that may be subject to prior rights and therefore does not give such a beneficiary any absolute entitlement to that money (*Shannon*, at p. 461).

[Emphasis in original.]

[44] Finding no juristic reason at step one of the analysis, Côté J. considered whether there was a residual reason to deny the unjust enrichment claim. Although satisfied both parties reasonably expected to receive the proceeds—R by virtue of the beneficiary designation and M by contract—she focused again on M's "*prior contractual right to remain named as beneficiary*": at para. 85. Justice Côté also concluded that policy reasons favoured M's claim because her contribution to the premiums had kept the policy alive.

[45] Applying *Moore*, in *Knowles* the B.C. Supreme Court concluded the *Insurance Act* did not provide a juristic reason for the deceased's ex-wife, as the designated beneficiary of his life insurance policy, to receive the proceeds. The unjust

enrichment claim was brought by his second spouse, who contributed to the premiums, but had no contractual right or identified equitable interest in the proceeds. The court found the deceased intended to remove his ex-wife as the beneficiary in favour of the second spouse, but forgot or neglected to do so. Satisfied there was no juristic reason for the ex-wife's enrichment or a residual reason to deny recovery to the second spouse, the court allowed the claim.

[46] After *Knowles, Ross v. Chen*, 2024 BCSC 223 distinguished both *Moore* and *Knowles*. The dispute, again over entitlement to life insurance proceeds, was between the deceased's mother who was the designated beneficiary and his wife who asserted the deceased intended to name her beneficiary. Unlike in *Knowles*, the court identified the absence of a prior common law or equitable right to the proceeds as central to whether the beneficiary designation will provide a juristic reason. In the absence of any prior claim, the court concluded a number of established categories of juristic reason were engaged including contract (the insurance policy), disposition of law, and statutory obligation (*Insurance Act*): at paras. 69–72. Also satisfied the deceased intended to designate his mother as beneficiary, the court dismissed the unjust enrichment claim.

Positions of the Parties

[47] Heritage identifies the appeal as based on a single issue: whether the chambers judge erred in law in dismissing its unjust enrichment claim, without finding a juristic reason for Jacqueline's enrichment, but instead finding the Separation Agreement provided a juristic reason for Sonia's enrichment, which was an irrelevant consideration. Sonia and Jacqueline argue the references to "Sonia's enrichment" in the reasons were typographical errors, there is a juristic reason for Jacqueline's enrichment, and Heritage has failed to show the absence of a juristic reason for the estate's deprivation.

[48] Each of the parties provided brief and sometimes unclear or amorphous written arguments in support of their positions, which expanded and shifted during the appeal hearing but, in some instances, remained difficult to decipher.

[49] Two primary issues seem to emerge from the submissions as a whole:

1. Whether the Separation Agreement provides a juristic reason for Jacqueline's enrichment; and related to this, what the absence of juristic reason element requires; and
2. Whether Jacqueline's designation as irrevocable beneficiary provides a juristic reason for her enrichment, in light of the allegations regarding Richard's intention(s) including that he was mistaken.

Issue 1—the Separation Agreement

[50] In arguing the chambers judge erred in analyzing the absence of juristic reason element, Heritage highlighted Sonia's enrichment was not an issue, Jacqueline's enrichment and the estate's corresponding deprivation were conceded, and the Separation Agreement was not raised as a juristic reason. It follows then, Heritage submitted, that the chambers judge erred in law by failing to find a juristic reason for Jacqueline's enrichment, but holding that unjust enrichment was not established because the Separation Agreement provided a juristic reason for Sonia's enrichment.

[51] Neither Sonia nor Jacqueline squarely addressed how the Separation Agreement could provide a juristic reason for Jacqueline's enrichment, and I would agree with Heritage that it does not.

[52] The smaller issues in dispute included the interpretation of Richard's Policy in the Separation Agreement. In contrast to Heritage's view that the Ivori Policy was Richard's Policy, Sonia and Jacqueline saw the Separation Agreement as requiring Richard to maintain a life insurance policy of \$450,000, as opposed to the Ivori Policy specifically. While I would agree the meaning of Richard's Policy is ambiguous, the reasons of the chambers judge seem to identify it as the Ivori Policy and Heritage ultimately acknowledged what is important is Richard's obligation to have a life insurance policy of \$450,000, with Sonia as the irrevocable beneficiary.

[53] During the appeal, it became clear the parties also disagreed about the underlying bases for the conceded elements, and in particular—that the estate will suffer a corresponding deprivation.

[54] Heritage emphasized that Jacqueline’s enrichment will arise from retaining, not receiving the life insurance proceeds; and nothing in the Separation Agreement addressed Jacqueline’s right to retain the proceeds. Heritage characterized the estate’s deprivation as the loss of the benefit it would have received from Richard fulfilling his contractual obligation to maintain Sonia as the (irrevocable) beneficiary of the Ivari Policy, not the estate’s future payment to her of \$450,000.

[55] In contrast, Jacqueline argued the estate will not be deprived until Sonia is “enriched”, when or if the estate pays her, or she succeeds in claiming for breach of the Separation Agreement. In other words, the detriment is paying or being required to pay Sonia \$450,000. Addressing the enrichment, Jacqueline suggested it was immaterial whether she or Sonia is enriched, because their enrichments are intertwined, or part of the same whole, and both equally correspond to the detriment that may be suffered by the estate.

[56] Along with focusing on the Separation Agreement as a *juristic reason* for the estate’s deprivation and contending the concessions did not bind her because she did not participate in the chambers hearing, Sonia raised a correspondence issue and disputed the conceded enrichment.

[57] She argued that finding an enrichment of Jacqueline requires there to be a time when she was not entitled to the proceeds, which is not the case. Sonia also asserted the estate’s deprivation, and any enrichment of Jacqueline did not correspond because the Separation Agreement had no effect on Jacqueline’s entitlement to the proceeds. Not only is she the irrevocable beneficiary, but any number of intervening steps could also have caused the deprivation, including the need for a court order to revoke her designation.

[58] Jacqueline made a similar argument framed as a lack of correspondence rooted in the different legal bases for the enrichment and corresponding deprivation.

[59] In my view, Sonia and Jacqueline’s arguments directed at the first two elements and/or a lack of correspondence, do not accord with the well established straightforward economic approach, which requires some causal connection, that must be applied. As Justice Iacobucci discussed in *Garland*, it is precisely because of this approach to enrichment and corresponding deprivation, that moral or normative considerations and policy concerns properly come into play at the juristic reason stage: at para. 31; see also *Kerr* at para. 37 and *Moore* at para. 41.

[60] The notion that Jacqueline cannot be enriched, because she remained entitled to the proceeds as irrevocable beneficiary, conflates the element of enrichment with juristic reason considerations. In deciding on the first two elements, the question is whether there is some “causal” economic connection, not a legal one, between Jacqueline’s enrichment and the estate’s loss. Further, the straightforward economic approach does not require the benefit or enrichment to be directly conferred: *Moore* at para. 45.

[61] On either Richard or Jacqueline’s view of the estate’s deprivation and leaving aside whether it is open to Sonia to challenge the chambers judge’s concession finding, I would not accede to the suggestion about a lack of correspondence.

[62] Clearly, there is an economic causal connection between Jacqueline’s enrichment and the estate’s deprivation. Jacqueline stands to receive and retain the Ivari Policy proceeds of \$450,000. If so, the estate will be deprived by the loss of a benefit or the requirement to pay Sonia this same amount—arising from Richard’s unfulfilled obligation to maintain Richard’s Policy in the same amount for Sonia.

[63] Sonia also asserted Heritage is required to establish the absence of a juristic reason for both the enrichment and the corresponding deprivation, again pointing to the different legal bases or juristic reasons for Jacqueline’s enrichment (the valid

and unchanged irrevocable beneficiary designation) and the estate's deprivation (the Separation Agreement).

[64] As I have indicated, I see the juristic reason analysis established in *Garland* and affirmed in *Moore*, as remaining focused at the first stage on whether there is a juristic reason for the enrichment—the enrichment being one that has the requisite connection to the detriment or deprivation. Where as here, and in *Moore*, the enrichment and the corresponding deprivation are not part of the same transaction, there will inevitably be different reasons for each element. In *Moore*, there was no juristic reason for R's enrichment, because the disposition of law category was negated by M's prior contractual claim. In other words, the legal basis for M's pre-existing entitlement formed part of the analysis of the absence of juristic reason for the enrichment, as opposed to operating as a separate absence of juristic reason criterion.

[65] Satisfied there is no basis for finding the Separation Agreement provided a juristic reason for Jacqueline's enrichment, respectfully then, I would conclude the chambers judge erred in law by dismissing Heritage's unjust enrichment claim as she did.

Jacqueline's Beneficiary Designation

[66] While Heritage suggested that such an error would result in the estate's unjust enrichment claim succeeding, Sonia and Jacqueline took the position the established category of disposition of law provides a juristic reason for Jacqueline's enrichment, based on the unchanged designation of Jacqueline as the irrevocable beneficiary and the *Insurance Act*.

[67] Acknowledging a disposition of law offers "the only possible" juristic reason for Jacqueline's enrichment, Heritage contended the category is foreclosed by the reasoning in *Moore*, as applied in *Knowles* and accepted by the chambers judge.

[68] As I have said, I read *Moore* as turning on M's *prior* contractual right to the funds not being ousted by the subsequent irrevocable beneficiary designation and the provisions of the Ontario *Act*. In my view, *Knowles* can be faulted for not acknowledging a designation of beneficiary is *prima facie* a juristic reason for the beneficiary's enrichment.

[69] Heritage also suggested that Richard had an equitable interest, as the owner of the Ivori Policy, that was prior to Jacqueline's entitlement and continued unless and until he gifted it (the proceeds) to someone. Emphasizing Ms. Osman's evidence that Richard did not intend to make Jacqueline's beneficiary designation irrevocable, Heritage ultimately focused on the issue of mistake to ground an argument the Ivori Policy proceeds were not a perfected gift.

[70] Sonia argued that Heritage cannot now rely on the issue of mistake to support the unjust enrichment claim, because it confined mistake to its claim for rescission, which the chambers judge dismissed on the evidence. That is not how I read Heritage's application, and I am satisfied the chambers judge did not make her decision based on Ms. Osman's evidence of Richard's intention or being mistaken. Instead, she dismissed the unilateral mistake argument because of an absence of proof that Ivori knew, or ought to have known, of the mistake. The chambers judge went no further than commenting there was no dispute Richard's failure to "obtain or submit" a court order authorizing a revocation of Jacqueline's beneficiary designation in favour of Sonia was inadvertent.

[71] Heritage's allegations include Richard making a mistake in designating Jacqueline as the (principal) irrevocable beneficiary in June 2020 and or not understanding a court order was required to revoke the designation. Heritage suggested his alleged lack of intention or lack of donative intent operates to negate disposition of law as a juristic reason for Jacqueline's enrichment.

[72] Jacqueline argued it is sufficient that Richard intended to make her a beneficiary who would receive the proceeds when he designated her, absent an allegation that he was mistaken about designating her *per se*.

[73] There are a number of “disappointed beneficiary” unjust enrichment cases that involve an allegation of some kind of mistake or the deceased not intending the designated beneficiary to receive the insurance proceeds. They include *Knowles* and *Ross*, which considered, but did not analyze the role of the deceased’s intentions with respect to the juristic reason element.

[74] We did not receive legal submissions dealing with how a mistake in fact or law may negate or taint a disposition of law (or any established category of juristic reason other than donative intent). Framed more broadly the question is how mistake, which is also a traditional category of recovery in restitution, ought to operate within the juristic reason analysis under the principled unjust enrichment framework.

[75] The requirement for a court order to revoke Jacqueline’s designation, because she was a minor, may also play a role in the analysis that was not considered by the chambers judge. Sonia advised she was not able to find any cases dealing with the revocation of a minor’s irrevocable beneficiary designation.

[76] It is not for this Court to consider and decide these issues absent submissions. Nor would it be appropriate to decide the related evidentiary and factual issues, which require determining whether Richard’s hearsay evidence is admissible and if admitted, the weight it should be given, before making any findings regarding the allegations of mistake and intention.

Disposition

[77] Consequently, I would allow the appeal, set aside the dismissal of Heritage’s unjust enrichment claim, and remit the matter to the court below to determine the evidentiary and factual issues and whether there is a juristic reason for Jaqueline’s enrichment, in accordance with these reasons.

“The Honourable Justice Fleming”

I AGREE:

“The Honourable Mr. Justice Groberman”

I AGREE:

“The Honourable Justice Edelman”