

**SUPREME COURT OF CANADA**

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| **Citation:** Moore*v.*Sweet, 2018 SCC 52, [2018] 3 S.C.R. 303 | **Appeal Heard:** February 8, 2018  **Judgment Rendered:** November 23, 2018  **Docket:** 37546 |

Between:

Michelle Constance Moore

Appellant

and

Risa Lorraine Sweet

Respondent

**Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 96)  **Joint Dissenting Reasons:**  (paras. 97 to 144) | Côté J. (Wagner C.J. and Abella, Moldaver, Karakatsanis, Brown and Martin JJ. concurring)  Gascon and Rowe JJ. |

Moore *v.* Sweet, 2018 SCC 52, [2018] 3 S.C.R. 303

Michelle Constance Moore Appellant

v.

Risa Lorraine Sweet Respondent

**Indexed as:** Moore ***v.*** Sweet

2018 SCC 52

File No.: 37546.

2018: February 8; 2018: November 23.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for ontario

*Equity* — *Restitution* — *Unjust enrichment* — *Remedy* — *Constructive trust* — *Husband and wife separating and entering into contractual agreement pursuant to which wife will pay husband’s life insurance policy premiums in order to remain named sole beneficiary of policy* — *Husband subsequently naming new common law spouse as beneficiary without wife’s knowledge* — *Insurance proceeds payable to common law spouse on husband’s death despite wife having continued to pay premiums* — *Whether common law spouse unjustly enriched at wife’s expense* — *If so, whether constructive trust is appropriate remedy.*

*Insurance* — *Life insurance* — *Beneficiary designation* — *Wife designated as revocable beneficiary of husband’s life insurance policy* — *After separation, wife agreeing to continue to pay policy premiums to maintain beneficiary designation* — *Husband subsequently designating new common law spouse as irrevocable beneficiary without wife’s knowledge* — *Insurance proceeds payable to common law spouse on husband’s death* — *Whether designation of common law spouse as irrevocable beneficiary in accordance with statute precludes recovery for wife with prior claim to benefit of policy* — *Insurance Act, R.S.O. 1990, c. I.8, ss. 190, 191*.

During L and M’s marriage, L purchased a term life insurance policy and designated M as revocable beneficiary. They later separated, and entered into an oral agreement whereby M would pay all of the policy premiums and, in exchange, L would maintain M’s beneficiary designation. Unbeknownst to M, L subsequently designated his new common law spouse, R, as the irrevocable beneficiary of the policy. When L passed away, the proceeds were therefore payable to R and not to M. At the time of L’s death, his estate had no significant assets. M, who had paid about $7,000 in policy premiums since separation, commenced an application regarding her entitlement to the $250,000 policy proceeds. The application judge held that R had been unjustly enriched at M’s expense and impressed the proceeds with a constructive trust in M’s favour. The Court of Appeal allowed R’s appeal and set aside the judgment of the application judge.

Held (Gascon and Rowe JJ. dissenting): The appeal should be allowed.

*Per* Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown and Martin JJ.: R was enriched, M was correspondingly deprived, and both the enrichment and deprivation occurred in the absence of a juristic reason. Therefore, a remedial constructive trust should be imposed for M’s benefit.

A constructive trust is understood primarily as an equitable remedy that may be imposed at a court’s discretion. A proper equitable basis, such as a successful claim in unjust enrichment, must first be found to exist. A plaintiff will succeed on the cause of action in unjust enrichment if he or she can show three elements: (1) that the defendant was enriched; (2) that the plaintiff suffered a corresponding deprivation; and (3) that the defendant’s enrichment and the plaintiff’s corresponding deprivation occurred in the absence of a juristic reason.

Regarding the first element, the parties do not dispute the fact that R was enriched to the full extent of the insurance proceeds in the amount of $250,000, by virtue of her right to receive them as the designated irrevocable beneficiary of L’s policy.

The second element focuses on what the plaintiff actuallylost and on whether that loss corresponds to the defendant’s enrichment, such that the latter was enriched at the expense of the former. The measure of deprivation is not limited to the plaintiff’s out‑of‑pocket expenditures or to the benefit taken directly from him or her. Rather, the concept of loss also captures a benefit that was never in the plaintiff’s possession but that the court finds would have accrued for his or her benefit had it not been received by the defendant instead. This element does not require that the disputed benefit be conferred directly by the plaintiff on the defendant. In this case, the extent of M’s deprivation is not limited to the $7,000 she paid in premiums. She stands deprived of the right to receive the entirety of the insurance proceeds, a value of $250,000. It is also clear that R’s enrichment came at M’s expense. Not only did M’s payment of the premiums make R’s enrichment possible, but R’s designation gave her the statutory right to receive the insurance proceeds. Because R received the benefit that otherwise would have accrued to M, the requisite correspondence exists: the former was enriched at the expense of the latter.

To establish the third element, it must be demonstrated that both the enrichment and corresponding deprivation occurred without a juristic reason. The juristic reason analysis proceeds in two stages. The first stage requires the plaintiff to demonstrate that the defendant’s retention of the benefit at the plaintiff’s expense cannot be justified on the basis of any of the established categories of juristic reasons, such as disposition of law or statutory obligations. A plaintiff’s claim will necessarily fail if a legislative enactment justifies the enrichment and corresponding deprivation. In this case, a beneficiary designation made pursuant to ss. 190(1) and 191(1) of the *Insurance Act* does not provide a juristic reason for R’s enrichment at M’s expense. Nothing in the *Insurance Act* can be read as ousting the common law or equitable rights that persons other than the designated beneficiary may have in policy proceeds. The legislature is presumed not to depart from prevailing law without expressing its intention to do so with irresistible clearness. While the *Insurance Act* provides the mechanism by which beneficiaries become statutorily entitled to receive policy proceeds, no part of the Act operates with the necessary irresistible clearness to preclude the existence of contractual or equitable rights in those proceeds once they have been paid to the named beneficiary. Furthermore, the *Insurance Act* provisions applicable to irrevocable beneficiary designations 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. Accordingly, an irrevocable designation under the Act cannot constitute a juristic reason for R’s enrichment and M’s deprivation. Neither by direct reference nor by necessary implication does the *Insurance Act* either foreclose a third party who stands deprived of his or her contractual entitlement to claim insurance proceeds by successfully asserting an unjust enrichment claim against the designated beneficiary — revocable or irrevocable — or preclude the imposition of a constructive trust in circumstances such as these. Therefore, no established category of juristic reason applies.

Once the plaintiff has successfully demonstrated that no category of juristic reason applies, a *prima facie* case is established and the analysis proceeds to the second stage. At this stage, the defendant must establish some residual reason why the enrichment should be retained. Considerations such as the parties’ reasonable expectations and moral and policy‑based arguments come into play. In the present case, it is clear that both parties expected to receive the proceeds of the life insurance policy. However, the residual considerations favour M, given that her contribution towards the payment of the premiums actually kept the policy alive and made R’s entitlement to receive the proceeds upon L’s death possible.

Once each of the three elements of the cause of action in unjust enrichment is made out, the remedy is restitutionary in nature and can take one of two forms: personal or proprietary. A personal remedy is essentially a debt or a monetary obligation and can be viewed as the default remedy for unjust enrichment. In certain cases, however, a plaintiff may be awarded a remedy of a proprietary nature. The most pervasive and important proprietary remedy for unjust enrichment is the constructive trust. Courts will impress the disputed property with a constructive trust only if the plaintiff can establish that a personal remedy would be inadequate; and that there is a link between his or her contributions and the disputed property. Ordinarily, a personal award would be adequate in cases such as this one where the property at stake is money. In the present case, however, the disputed insurance money has been paid into court and is readily available to be impressed with a constructive trust. Moreover, M’s payment of the premiums was causally connected to the maintenance of the policy under which R was enriched. A constructive trust to the full extent of the proceeds should therefore be imposed in M’s favour.

*Per* Gascon and Rowe JJ. (dissenting): There is disagreement with the majority that M has established a claim in unjust enrichment on these facts and therefore, that a constructive trust should be imposed.

M had a contract with L to be maintained the named beneficiary of his life insurance policy while she paid the premiums. However, this contract does not create a proprietary or equitable interest in the policy’s proceeds and simply being named as a beneficiary does not give one a right in the proceeds before the death of the insured. The right to claim the proceeds only crystalizes upon the insured’s death. Further, as a revocable beneficiary, M had no right to contest L’s redesignation of R as an irrevocable beneficiary outside of a claim against L for breach of contract. Thus, at the time of L’s death, the only rights that M possessed in relation to the life insurance contract were her contractual rights.

While M would have a claim against L’s estate for breach of contract, the estate’s lack of assets has rendered any such recourse fruitless. Instead, M’s claim is to reverse the purported unjust enrichment of R. In an action for unjust enrichment, a plaintiff must show that their deprivation corresponds to the defendant’s enrichment. The correspondence between the deprivation and the enrichment, while seemingly formalistic, is fundamental. Correspondence is the connection between the parties — a plus and a minus as obverse manifestations of the same event — that uniquely identifies the plaintiff as the proper person to seek restitution against a particular defendant.

In this case, it is clear that but for M’s payments, the policy would have lapsed, and but for L’s breach of contract, M would have been the beneficiary at the time of his death. But these facts are not enough to establish that the deprivation and the enrichment are corresponding. R’s enrichment was not at the expense of M because R’s enrichment is not dependent on M’s deprivation. What R received (a statutory entitlement to proceeds) is different from M’s deprivation (the inability to enforce her contractual rights) — they are not two sides of the same coin.

Even if a corresponding deprivation could be established, M’s claim in unjust enrichment would fail at the first stage of the juristic reason analysis, because the *Insurance Act* establishes a juristic reason for R’s enrichment. Section 191(1) of the *Insurance Act* provides that an insured may designate an irrevocable beneficiary under a life insurance policy, and thereby provide special protections to that beneficiary. From the moment an irrevocable beneficiary is designated, they have a right in the policy itself: the insurance money is not subject to the control of the insured or to the claims of his or her creditors, and the beneficiary must consent to any subsequent changes to beneficiary designation. As it is undisputed that R was the validly designated irrevocable beneficiary of the policy, she is entitled to the proceeds free of the claims of L’s creditors.

The fact that M had an agreement with L for the proceeds of the policy pursuant to which she paid its premiums does not undermine the presence of this juristic reason. As M’s rights are contractual in nature, she is a creditor of L’s estate and thus, by the provisions of the *Insurance Act*, has no claim to the proceeds. The *Insurance Act* explicitly protects irrevocable beneficiaries from the claims of the deceased’s creditors and provides that the insurance proceeds do not form part of the insured’s estate. Thus, the *Insurance Act* precludes the existence of contractual rights in those insurance proceeds.

The *Insurance Act*’s legislative history further supports R’s retention of the insurance proceeds notwithstanding M’s claim. The provisions of the *Insurance Act* were designed to protect the interests of beneficiaries in retaining the proceeds and provide no basis whatsoever for a person paying the premiums to assume she would have any claim to the eventual proceeds. The *Insurance Act* is deliberately indifferent to the source of the premium payments and renders the actions of the payers irrelevant as far as the beneficiaries are concerned.

In immunizing beneficiaries from the claims of the insured’s creditors, the *Insurance Act* does not distinguish between types of creditors. Creditors of the insured’s estate simply do not have a claim to the insurance proceeds. There is no basis to carve out a special class of creditor who would be exempt from the clear wording of the *Insurance Act*. Neither M’s contributions to the policy, nor her contract with L are sufficient to take her outside the comprehensive scheme and grant her special and preferred status.

Even if the *Insurance Act* did not establish a juristic reason for R’s enrichment, the policy considerations at the second stage of the juristic reason analysis weigh against allowing M’s claim of unjust enrichment. It is an unfortunate reality that a person’s death is sometimes accompanied by litigation that can tie up funds that the deceased intended to support loved ones for a significant period of time, adding financial hardship to personal tragedy. In an attempt to ensure that life insurance proceeds could be free from such strife, the Ontario legislator empowered policy holders to designate an irrevocable beneficiary under s. 191(1) of the *Insurance Act*. Such a designation ensures that the proceeds can be disbursed free from claims against the estate, giving certainty to insured, insurer and beneficiary alike. This provision should be given full effect.

**Cases Cited**

By Côté J.

**Applied:** *Garland v. Consumers’ Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629; *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269; *Shannon v. Shannon* (1985), 50 O.R. (2d) 456; **distinguished:** *Reference re Goods and Services Tax*, [1992] 2 S.C.R. 445; *Gladstone v. Canada (Attorney General)*, 2005 SCC 21, [2005] 1 S.C.R. 325; **referred to:** *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217; *Peter v. Beblow*, [1993] 1 S.C.R. 980; *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762; *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436; *Murdoch v. Murdoch*,[1975] 1 S.C.R. 423; *Pettkus v. Becker*, [1980] 2 S.C.R. 834; *Pacific National Investments Ltd. v. Victoria (City)*, 2004 SCC 75, [2004] 3 S.C.R. 575; *Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71, [2012] 3 S.C.R. 660; *Kleinwort Benson Ltd. v. Birmingham City Council*, [1997] Q.B. 380; *Citadel General Assurance Co. v. Lloyds Bank Canada*, [1997] 3 S.C.R. 805; *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574; *Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67; *Lacroix v. Valois*, [1990] 2 S.C.R. 1259; *Love v. Love*, 2013 SKCA 31, 359 D.L.R. (4th) 504; *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147; *Garland v. Consumers’ Gas Co.* (2001), 57 O.R. (3d) 127; *Saskatchewan Crop Insurance Corp. v. Deck*, 2008 SKCA 21, 307 Sask. R. 206; *Richardson (Estate Trustee of) v. Mew*, 2009 ONCA 403, 96 O.R. (3d) 65; *Rawluk v. Rawluk*, [1990] 1 S.C.R. 70; *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298; *KBA Canada Inc. v. 3S Printers Inc.*, 2014 BCCA 117, 59 B.C.L.R. (5th) 273; *Bank of Montreal v. Innovation Credit Union*, 2010 SCC 47, [2010] 3 S.C.R. 3; *Chanowski v. Bauer*, 2010 MBCA 96, 258 Man. R. (2d) 244; *Central Guaranty Trust Co. v. Dixdale Mortgage Investment Corp.*(1994), 24 O.R. (3d) 506; *Zaidan Group Ltd. v. London (City)* (1990), 71 O.R. (2d) 65, aff’d [1991] 3 S.C.R. 593; *Sorochan v. Sorochan*, [1986] 2 S.C.R. 38.

By Gascon and Rowe JJ. (dissenting)

*Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161; *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574; *Love v. Love*, 2013 SKCA 31, 359 D.L.R. (4th) 504; *Holowa Estate v. Stell‑Holowa*, 2011 ABQB 23, 330 D.L.R. (4th) 693; *Richardson (Estate Trustee of) v. Mew*, 2009 ONCA 403, 96 O.R. (3d) 65; *Roberts v. Martindale* (1998), 55 B.C.L.R. (3d) 63; *Milne Estate v. Milne*, 2014 BCSC 2112, 54 R.F.L. (7th) 328; *Ladner v. Wolfson*, 2011 BCCA 370, 24 B.C.L.R. (5th) 43; *Schorlemer Estate v. Schorlemer* (2006), 29 E.T.R. (3d) 181; *Steeves v. Steeves* (1995), 168 N.B.R. (2d) 226; *Gregory v. Gregory* (1994), 92 B.C.L.R. (2d) 133; *Shannon v. Shannon* (1985), 50 O.R. (2d) 456; *Garland v. Consumers’ Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629; *Peter v. Beblow*, [1993] 1 S.C.R. 980; *Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71, [2012] 3 S.C.R. 660; *Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67; *Pacific National Investments Ltd. v. Victoria (City)*, 2004 SCC 75, [2004] 3 S.C.R. 575; *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436; *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762; *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269; *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217; *Pettkus v. Becker*, [1980] 2 S.C.R. 834; *Chanowski v. Bauer*, 2010 MBCA 96, 258 Man. R. (2d) 244; *Fraser v. Fraser* (1995), 9 E.T.R. (2d) 136; *Ontario Teachers’ Pension Plan Board v. Ontario (Superintendent of Financial Services)* (2004), 70 O.R. (3d) 61; *Snider v. Mallon*, 2011 ONSC 4522, 3 R.F.L. (7th) 228; *Bielny v.* *Dzwiekowski*, [2002] I.L.R. ¶I‑4018, aff’d [2002] O.J. No. 508 (QL); *Kang v. Kang Estate*, 2002 BCCA 696, 44 C.C.L.I. (3d) 52; *Ladner Estate, Re*, 2004 BCCA 366, 40 B.C.L.R. (4th) 298.

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*Act to Secure to Wives and Children the Benefit of Life Insurance*, S.O. 1884, c. 20, s. 5.

*Insurance Act*, R.S.O. 1960, c. 190, ss. 164(1), 165.

*Insurance Act*, R.S.O. 1990, c. I.8, Part V, ss. 171(1) “beneficiary”, 172(1), 190, 191, 195, 196(1), 200.

*Succession Law Reform Act*, R.S.O. 1990, c. S.26, ss. 58, 72(1)(f).

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APPEAL from a judgment of the Ontario Court of Appeal (Strathy C.J. and Blair and Lauwers JJ.A.), 2017 ONCA 182, 134 O.R. (3d) 721, 409 D.L.R. (4th) 312, 65 C.C.L.I. (5th) 175, 32 C.C.P.B. (2nd) 254, [2017] O.J. No. 1129 (QL), 2017 CarswellOnt 2958 (WL Can.), setting aside a decision of Wilton‑Siegel J., 2015 ONSC 3914, [2015] O.J. No. 7761 (QL), 2015 CarswellOnt 20995 (WL Can.). Appeal allowed, Gascon and Rowe JJ. dissenting.

Ian M. Hull, *Suzana Popovic‑Montag* andDavid M. Smith, for the appellant.

Jeremy Opolsky and Jonathan Silver, for the respondent.

The judgment of Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown and Martin JJ. was delivered by

Côté J. —

1. Overview
2. This appeal involves a contest between two innocent parties, both of whom claim an entitlement to the proceeds of a life insurance policy.
3. The appellant, Michelle Constance Moore (“Michelle”), and the owner of the policy, Lawrence Anthony Moore (“Lawrence”), were former spouses. They entered into a contractual agreement pursuant to which Michelle would pay all of the policy’s premiums and, in exchange, Lawrence would maintain Michelle as the sole beneficiary thereunder — and she would therefore be entitled to receive the proceeds of the policy upon Lawrence’s death. While Michelle held up her end of the bargain, Lawrence did not. Shortly after assuming his contractual obligation, and unbeknownst to Michelle, Lawrence designated his new common law spouse — the respondent, Risa Lorraine Sweet (“Risa”) — as the *irrevocable* beneficiary of the policy. When Lawrence passed away several years later, the proceeds were payable to Risa and not to Michelle.
4. Should these proceeds be impressed with a constructive trust in Michelle’s favour? A majority of the Ontario Court of Appeal found that they should not. I disagree; in my view, Risa was enriched, Michelle was correspondingly deprived, and both the enrichment and the deprivation occurred in the absence of a juristic reason. In these circumstances, a remedial constructive trust should be imposed for Michelle’s benefit. I would therefore allow the appeal.
5. Context
6. Michelle and Lawrence were married in 1979. Together, they had three children. In October 1985, Lawrence purchased a term life insurance policy from Canadian General Life Insurance Company, the predecessor of RBC Life Insurance Company (“Insurance Company”). He purchased this policy, with a coverage amount of $250,000, and initially designated Michelle as the beneficiary — but not as an *irrevocable* beneficiary. The annual premium of $507.50 was paid out of the couple’s joint bank account until 2000.
7. In December 1999, Michelle and Lawrence separated. Shortly thereafter, they entered into an oral agreement (“Oral Agreement”) whereby Michelle “would pay the premiums and be entitled to the proceeds of the Policy on [Lawrence’s] death” (Superior Court decision, 2015 ONSC 3914, at para. 13 (CanLII)). The effect of this agreement was therefore to require that Michelle remain designated as the sole beneficiary of Lawrence’s life insurance policy.
8. In the summer of 2000, Lawrence began cohabiting with Risa. They remained common law spouses and lived in Risa’s apartment until Lawrence’s death 13 years later.
9. On September 21, 2000, Lawrence executed a change of beneficiary form designating Risa as the *irrevocable* beneficiary of the policy. Risa testified that Lawrence did so because he did not want her to worry about how she would pay the rent or buy medication, and wanted to make sure that she would be able to continue living in the building where she had resided for the preceding 40 years.
10. The change in beneficiary designation was made through, and after consultation with, Lawrence’s insurance broker, who also happened to be Michelle’s brother-in-law. The new designation was recorded by the Insurance Company on September 25, 2000. Although Lawrence did not change the beneficiary designation surreptitiously, he did not advise Michelle that she was no longer named as beneficiary.[[1]](#footnote-1)
11. Michelle and Lawrence entered into a formal separation agreement in May 2002. This agreement dealt with a number of issues as between them, but was silent as to the policy and anything related to it. They finalized their divorce on October 3, 2003.
12. Pursuant to her obligation under the Oral Agreement, and without knowing that Lawrence had named Risa as the irrevocable beneficiary, Michelle continued to pay all of the premiums on the policy until Lawrence’s death. By then, a total of $30,535.64 had been paid on account of premiums; about $7,000 had been paid since 2000.
13. Lawrence died on June 20, 2013. His estate had no significant assets.
14. Michelle was advised by the Insurance Company that she was not the designated beneficiary of the policy on July 5, 2013, around two weeks after Lawrence’s death. On February 12, 2014, Michelle commenced an application seeking the opinion, advice and direction of the Ontario Superior Court of Justice as to her entitlement to the proceeds of the policy. Pursuant to a court order dated December 19, 2013, the Insurance Company paid the proceeds of the policy into court pending the resolution of the dispute.
15. Part V of the *Insurance Act*, R.S.O. 1990, c. I.8, sets out a comprehensive scheme that governs the rights and obligations of parties to a life insurance policy. It applies to all life insurance contracts “[d]espite any agreement, condition or stipulation to the contrary” (s. 172(1)), which means that the parties cannot contract out of its provisions.
16. Of particular relevance for the purposes of this appeal are the provisions of the *Insurance Act* that deal with the designation of beneficiaries. A “beneficiary” of a life insurance policy is defined as “a person, other than the insured or the insured’s personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration” (s. 171(1)). A beneficiary designation therefore identifies the intended recipient of the proceeds under the life insurance policy upon the death of the insured person, in accordance with the terms of the policy.
17. Part V of the *Insurance Act* recognizes two types of beneficiary designations: those that are *revocable* and those that are *irrevocable*. A revocable beneficiary designation is one that can be altered or revoked by the insured without the beneficiary’s knowledge or consent (s. 190(1) and (2)). An irrevocable beneficiary designation, by contrast, can be altered or revoked only if the designated beneficiary consents (s. 191(1)). When a valid irrevocable beneficiary designation is made, s. 191 of the *Insurance Act* makes clear that the insurance money ceases to be subject to the control of the insured, is not subject to the claims of the insured’s creditors and does not form part of the insured’s estate.
18. It is clear that the interest of an irrevocable beneficiary is afforded much more protection than that of a revocable beneficiary; the former has a “statutory right to remain as the named beneficiary entitled to receive the insurance moneys unless he or she consents to being removed” (Court of Appeal decision, 2017 ONCA 182, 134 O.R. (3d) 721, at para. 82). The legislation contemplates only one situation where insurance money can be clawed back from a beneficiary, regardless of whether his or her designation is irrevocable: to satisfy a support claim brought by a dependant against the estate of the now-deceased insured person (*Succession Law Reform Act*, R.S.O. 1990, c. S.26, ss. 58 and 72(1)(f)). No such claim has been brought in this case.
19. Part V of the *Insurance Act* also deals with the assignment of a life insurance policy. A life insurance contract entails a promise by the insurer “to pay the contractual benefit when the insured event occurs” (*Norwood on Life Insurance Law in Canada* (3rd ed. 2002), by D. Norwood and J. P. Weir, at p. 359). It can therefore be understood as creating a chose in action against the insurer, which is transferrable from one person to another through the mechanism of an assignment. The statute provides that where the assignee gives written notice of the assignment to the insurer, he or she assumes all of the assignor’s rights and interests in the policy. Pursuant to s. 200(1)(b) of the *Insurance Act*, however, an assignee’s interest in the policy will not have priority over that of an irrevocable beneficiary who was designated prior to the time the assignee gave notice to the insurer — unless the irrevocable beneficiary consents to the assignment and surrenders his or her interest in the policy.
20. The relevant provisions of the *Insurance Act* read as follows:

**190** (1) Subject to subsection (4),[[2]](#footnote-2) an insured may in a contract or by a declaration designate the insured, the insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable.

(2) Subject to section 191, the insured may from time to time alter or revoke the designation by a declaration.

. . .

**191** (1) An insured may in a contract, or by a declaration other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured, is not subject to the claims of the insured’s creditor and does not form part of the insured’s estate.

(2) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

**200** (1) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against,

* + - * 1. any assignee other than one who gave notice earlier in like manner; and
        2. a beneficiary other than one designated irrevocably as provided in section 191 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.
      1. Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.
      2. Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

. . .

1. Decisions Below
2. Ontario Superior Court of Justice (Wilton-Siegel J.) — 2015 ONSC 3914
3. The application judge, Wilton-Siegel J., held that Risa had been unjustly enriched at Michelle’s expense, and therefore impressed the proceeds of the policy with a constructive trust in Michelle’s favour. He began his reasons by addressing a preliminary matter: the Oral Agreement that Lawrence and Michelle had entered into during their separation. He held that Michelle and Lawrence “each had an equitable interest in the proceeds of the Policy from the time that it was taken out” and that the Oral Agreement had effectively resulted in the “equitable assignment to [Michelle] of [Lawrence’s] equitable interest in the proceeds in return for [Michelle’s] agreement to pay the premiums on the Policy” (para. 17) (CanLII). According to the application judge, this equitable interest “took the form of a right to determine the beneficiary of the Policy” (para. 18).
4. The application judge then turned to Michelle’s unjust enrichment claim. He found that the first two elements of the cause of action in unjust enrichment — an enrichment of the defendant and a corresponding deprivation suffered by the plaintiff — were easily met in this case: Risa had been enriched by virtue of her valid designation as irrevocable beneficiary, and Michelle had suffered a corresponding deprivation to the extent that she paid the premiums and to the extent that the proceeds had been payable to Risa “notwithstanding the prior equitable assignment of such proceeds to her” (para. 27). With respect to the third and final element — the absence of a juristic reason for the enrichment — the application judge held that Risa’s designation as beneficiary under the policy did not constitute a juristic reason that entitled her to retain the proceeds in the particular circumstances of this case (para. 46). This was because Risa’s entitlement to the proceeds would not have been possible if Michelle had not performed her obligations under the Oral Agreement, and because the Oral Agreement itself amounted to an equitable assignment of the proceeds to Michelle (para. 48).
5. Ontario Court of Appeal (Strathy C.J.O. and Blair J.A., Lauwers J.A. dissenting) — 2017 ONCA 182, 134 O.R. (3d) 721
6. The Ontario Court of Appeal allowed Risa’s appeal and set aside the judgment of the application judge. It ordered that the $7,000 Michelle had paid in premiums between 2000 and 2013 be paid out of court to her and that the balance of the insurance proceeds be paid to Risa.
   * 1. Majority Reasons
7. Writing for himself and for Strathy C.J.O., Blair J.A. held that it was not open to the application judge to find that the Oral Agreement amounted to an equitable assignment, since the doctrine of equitable assignment had not been placed in issue by the parties before him.
8. Turning to Michelle’s unjust enrichment claim, Blair J.A. accepted the application judge’s finding that Risa was enriched. He found it unnecessary to resolve the issue of whether the corresponding deprivation element had been made out as he found there was a juristic reason justifying the receipt by Risa of the proceeds. Specifically, Blair J.A. held that the application judge had erred in his approach to the juristic reason element of the unjust enrichment framework — first, by failing to recognize the significance of Risa’s designation as an *irrevocable* beneficiary, and second, by failing to apply the two-stage analysis mandated by this Court in *Garland v. Consumers’ Gas Co*., 2004 SCC 25, [2004] 1 S.C.R. 629. In Blair J.A.’s view, “the existence of the statutory regime relating to revocable and irrevocable beneficiaries . . . falls into an existing recognized category of juristic reason”, constituting “both a disposition of law and a statutory obligation” (para. 99).
9. Blair J.A. declined to decide whether a constructive trust can be imposed only to remedy unjust enrichment and wrongful acts or can also be based on the more elastic concept of “good conscience”. He took the position that there was nothing in the circumstances of this case that put it in some “good conscience” category beyond what was captured by unjust enrichment and wrongful act.
   * 1. Dissenting Reasons
10. In dissent, Lauwers J.A. agreed with the majority that the application judge had erred in relying on the equitable assignment doctrine. However, he disagreed with the majority as to the disposition of Michelle’s unjust enrichment claim and the propriety of imposing a constructive trust over the proceeds in these circumstances. He would therefore have dismissed the appeal.
11. Lauwers J.A. began by considering this Court’s decision in *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, and held that it leaves open four routes by which a constructive trust may be imposed: (1) as a remedy for unjust enrichment; (2) for wrongful acts; (3) in circumstances where its availability has long been recognized; and (4) otherwise where good conscience requires it. According to Lauwers J.A., in relation to the fourth route, the *Soulos* court anticipated that the law of remedial trusts would continue to develop in a way that accommodates the changing needs and mores of society.
12. On the issue of unjust enrichment, Lauwers J.A. concluded that Michelle had made out each of the requisite elements and that a constructive trust ought therefore to be imposed over the proceeds in her favour. With respect to the corresponding deprivation element, he rejected the submission that Michelle’s financial contribution was the correct measure of her deprivation, and instead found that the asset for which she had paid and of which she stood deprived was the full payout of the life insurance proceeds — not just the amount she had paid in premiums.
13. Lauwers J.A. also rejected the proposition that the applicable *Insurance Act* provisions provided a juristic reason for Risa’s retention of the proceeds. In his view, Michelle’s entitlement to the insurance proceeds as against Risa was neither precluded nor affected by the operation of the *Insurance Act*. He also held that a juristic reason could not be found based on the parties’ reasonable expectations or public policy considerations.
14. Finally, regarding to the imposition of a constructive trust, Lauwers J.A. considered a number of other cases that involved disappointed beneficiaries. Noting that these cases fit awkwardly under the unjust enrichment rubric, he observed that:

. . . the disappointed beneficiary cases are perhaps better understood as a genus of cases in which a constructive trust can be imposed via the third route in *Soulos* — circumstances where the availability of a trust has previously been recognized — and the fourth route — where good conscience otherwise demands it, quite independent of unjust enrichment. [para. 276]

1. Issues
2. The issues in this case are as follows:

A. Has Michelle made out a claim in unjust enrichment by establishing:

1. Risa’s enrichment and her own corresponding deprivation; and
2. the absence of any juristic reason for Risa’s enrichment at her expense?
3. If so, is a constructive trust the appropriate remedy?
4. Analysis
5. In the present case, Michelle requests that the insurance proceeds be impressed with a constructive trust in her favour. The primary basis on which she seeks this remedy is unjust enrichment. In the alternative, she submits that the circumstances of her case provide a separate good conscience basis upon which a court may impose a constructive trust.
6. A constructive trust is a vehicle of equity through which one person is required by operation of law — regardless of any intention — to hold certain property for the benefit of another (*Waters’ Law of Trusts in Canada* (4th ed. 2012), by D. W. M. Waters, M. R. Gillen and L. D. Smith, at p. 478). In Canada, it is understood primarily as a *remedy*, which may be imposed at a court’s discretion where good conscience so requires. As McLachlin J. (as she then was) noted in *Soulos*:

. . . under the broad umbrella of good conscience, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, as well as to remedy unjust enrichment and corresponding deprivation. . . . Within these two broad categories, there is room for the law of constructive trust to develop and for greater precision to be attained, as time and experience may dictate. [Emphasis added; para. 43.]

1. What is therefore crucial to recognize is that a proper equitable basis *must* exist before the courts will impress certain property with a remedial constructive trust. The cause of action in unjust enrichment may provide one such basis, so long as the plaintiff can also establish that a monetary award is insufficient and that there is a link between his or her contributions and the disputed property (*Peter v. Beblow*, [1993] 1 S.C.R. 980, at p. 997; *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at paras. 50-51). Absent this, a plaintiff seeking the imposition of a remedial constructive trust must point to some other basis on which this remedy can be imposed, like breach of fiduciary duty.[[3]](#footnote-3)
2. I now turn to consider Michelle’s claim in unjust enrichment.
   1. Unjust Enrichment
3. Broadly speaking, the doctrine of unjust enrichment applies when a defendant receives a benefit from a plaintiff in circumstances where it would be “against all conscience” for him or her to retain that benefit. Where this is found to be the case, the defendant will be obliged to restore that benefit to the plaintiff. As recognized by McLachlin J. in *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, at p. 788, “At the heart of the doctrine of unjust enrichment . . . lies the notion of restoration of a benefit which justice does not permit one to retain.”
4. Historically, restitution was available to plaintiffs whose cases fit into certain recognized “categories of recovery” — including where a plaintiff conferred a benefit on a defendant by mistake, under compulsion, out of necessity, as a result of a failed or ineffective transaction, or at the defendant’s request (*Peel*, at p. 789; *Kerr*, at para. 31). Although these discrete categories exist independently of one another, they are each premised on the existence of some injustice in permitting the defendant to retain the benefit that he or she received at the plaintiff’s expense.
5. In the latter half of the 20th century, courts began to recognize the common principles underlying these discrete categories and, on this basis, developed “a framework that can explain all obligations arising from unjust enrichment” (L. Smith, “Demystifying Juristic Reasons” (2007), 45 *Can. Bus. L.J.* 281, at p. 281; see also *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436, and *Murdoch v. Murdoch*,[1975] 1 S.C.R. 423, per Laskin J., dissenting). Under this principled framework, a plaintiff will succeed on the cause of action in unjust enrichment if he or she can show: (a) that the defendant was enriched; (b) that the plaintiff suffered a corresponding deprivation; and (c) that the defendant’s enrichment and the plaintiff’s corresponding deprivation occurred in the absence of a juristic reason (*Pettkus v. Becker*, [1980] 2 S.C.R. 834, at p. 848; *Garland*, at para. 30; *Kerr*, at paras. 30-45). While the principled unjust enrichment framework and the categories coexist (*Kerr*, at paras. 31-32), the parties in this case made submissions only under the principled unjust enrichment framework. These reasons proceed on this basis.
6. This principled approach to unjust enrichment is a flexible one that allows courts to identify circumstances where justice and fairness require one party to restore a benefit to another. Recovery is therefore not restricted to cases that fit within the categories under which the retention of a conferred benefit was traditionally considered unjust (*Kerr*, at para. 32). As observed by McLachlin J. in *Peel* (at p. 788):

The tri‑partite principle of general application which this Court has recognized as the basis of the cause of action for unjust enrichment is thus seen to have grown out of the traditional categories of recovery. It is informed by them. It is capable, however, of going beyond them, allowing the law to develop in a flexible way as required to meet changing perceptions of justice.

1. Justice and fairness are at the core of the dispute between Michelle and Risa, both of whom are innocent parties. Moreover, and to complicate matters, resolution of this dispute requires this Court to consider the elements of an unjust enrichment claim as they apply in a context that involves several parties. Pursuant to her Oral Agreement with Lawrence, Michelle paid around $7,000 in premiums to the Insurance Company between 2000 and 2013 in exchange for the right to remain named as beneficiary of the policy. When Lawrence passed away, however, the insurance proceeds (which totalled $250,000) were payable by the Insurance Company not to Michelle, but to Risa — the person whom Lawrence had subsequently named the irrevocable beneficiary, contrary to the contractual obligation he owed to Michelle. The result of this arrangement was that Risa’s enrichment was significantly greater than Michelle’s out-of-pocket loss. Moreover, Risa was entitled to receive the proceeds from the Insurance Company by virtue of her designation as irrevocable beneficiary, pursuant to ss. 190 and 191 of the *Insurance Act*.
2. These unusual circumstances raise two distinct questions respecting the law of unjust enrichment. First, what is the proper measure of Michelle’s deprivation, and in what sense does it “correspond” to Risa’s gain? Second, does the legislative framework at issue provide a juristic reason for Risa’s enrichment and Michelle’s corresponding deprivation — and if not, can such a juristic reason be found on some other basis? I will deal with each of these questions in turn.
   * 1. Risa’s Enrichment and Michelle’s Corresponding Deprivation
3. The first two elements of the cause of action in unjust enrichment require an enrichment of the defendant and a corresponding deprivation of the plaintiff. These two elements are closely related; a straightforward economic approach is taken to both of them, with moral and policy considerations instead coming into play at the juristic reason stage of the analysis (*Kerr*, at para. 37; *Garland*, at para. 31). To establish that the defendant was enriched and the plaintiff correspondingly deprived, it must be shown that something of value — a “tangible benefit” — passed from the latter to the former (*Kerr*, at para. 38; *Garland*, at para. 31; *Peel*, at p. 790; *Pacific National Investments Ltd. v. Victoria (City)*, 2004 SCC 75, [2004] 3 S.C.R. 575, at para. 15). This Court has described the enrichment and detriment elements as being “the same thing from different perspectives” (*Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71, [2012] 3 S.C.R. 660 (“*PIPSC*”), at para. 151) and thus as being “essentially two sides of the same coin” (*Peter*, at p. 1012).
4. The parties in the present case do not dispute the fact that Risa was enriched to the full extent of the $250,000 by virtue of her right to receive the insurance proceeds as the designated irrevocable beneficiary. The application judge found as much (at para. 27), and this finding is not contested on appeal.
5. In addition to an enrichment of the defendant, a plaintiff asserting an unjust enrichment claim must also establish that he or she suffered a corresponding deprivation. According to Professor McInnes, this element serves the purpose of identifying the plaintiff as the person with standing to seek restitution against an unjustly enriched defendant (M. McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (2014), at p. 149; see also *Peel*, at pp. 789-90, and *Kleinwort Benson Ltd. v. Birmingham City Council*, [1997] Q.B. 380 (C.A.), at pp. 393 and 400). Even if a defendant’s retention of a benefit can be said to be unjust, a plaintiff has no right to recover against that defendant if he or she suffered no loss at all, or suffered a loss wholly unrelated to the defendant’s gain. Instead, the plaintiff must demonstrate that the loss he or she incurred *corresponds* to the defendant’s gain, in the sense that there is some causal connection between the two (*Pettkus*, at p. 852). Put simply, the transaction that enriched the defendant must also have caused the plaintiff’s impoverishment, such that the defendant can be said to have been enriched *at the plaintiff’s expense* (P. D. Maddaugh and J. D. McCamus, *The Law of Restitution* (loose-leaf ed.), at p. 3-24). While the nature of the correspondence between such gain and loss may vary from case to case, this correspondence is what grounds the plaintiff’s entitlement to restitution as against an unjustly enriched defendant. Professor McInnes explains that “the Canadian conception of a ‘corresponding deprivation’ rightly emphasizes the crucial connection between the defendant’s gain and the plaintiff’s loss” (*The Canadian Law of Unjust Enrichment and Restitution*, at p. 149).
6. The authorities on this point make clear that the measure of the plaintiff’s deprivation is not limited to the plaintiff’s out-of-pocket expenditures or to the benefit taken directly from him or her. Rather, the concept of “loss” also captures a benefit that was never in the plaintiff’s possession but that the court finds *would* have accrued for his or her benefit had it not been received by the defendant instead (*Citadel General Assurance Co. v. Lloyds Bank Canada*, [1997] 3 S.C.R. 805, at para. 30). This makes sense because in either case, the result is the same: the defendant becomes richer in circumstances where the plaintiff becomes poorer. As was succinctly articulated by La Forest J. in *Lac Minerals Ltd. v. International Corona Resources Ltd*., [1989] 2 S.C.R. 574, at pp. 669-70:

When one talks of restitution, one normally talks of giving back to someone something that has been taken from them (a restitutionary proprietary award), or its equivalent value (a personal restitutionary award). As the Court of Appeal noted in this case, [the respondent] never in fact owned the [disputed] property, and so it cannot be “given back” to them. However, there are concurrent findings below that but for its interception by [the appellant], [the respondent] would have acquired the property. In *Air Canada* . . . , at pp. 1202-03, I said that the function of the law of restitution “is to ensure that where a plaintiff has been deprived of wealth that is either in his possession or would have accrued for his benefit, it is restored to him. The measure of restitutionary recovery is the gain the [defendant] made at the [plaintiff’s] expense.” (Emphasis added.) In my view the fact that [the respondent in this case] never owned the property should not preclude it from the pursuing a restitutionary claim: see Birks, *An Introduction to the Law of Restitution*, at pp. 133-39. [The appellant] has therefore been enriched at the expense of [the respondent]. [Emphasis in original.]

While *Lac Minerals* turned largely on the defendant’s breach of confidence and breach of fiduciary duty, the above comments were made in the context of La Forest J.’s analysis of the tripartite unjust enrichment framework as it was applied in that case. My view is thus that these comments are applicable to the analysis in the present case.

1. The foregoing also indicates that the corresponding deprivation element does not require that the disputed benefit be conferred *directly* by the plaintiff on the defendant (see McInnes, *The Canadian Law of Unjust Enrichment and Restitution*, at p. 155, but also see pp. 156-83; Maddaugh and McCamus, *The Law of Restitution*, at p. 35-1). This understanding of the correspondence between loss and gain has also been accepted under Quebec’s civilian approach to the law of unjust enrichment:

The theory of unjustified enrichment does not require that the enrichment pass directly from the property of the impoverished to that of the enriched party . . . . The impoverished party looks to the one who profited from its impoverishment. It is then for the enriched party to find a legal justification for its enrichment.

(*Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67, at p. 79; see also *Lacroix v. Valois*, [1990] 2 S.C.R. 1259, at pp. 1278-79.)

1. Taking a straightforward economic approach to the enrichment and corresponding deprivation elements of the unjust enrichment framework, I am of the view that Michelle stands deprived of the right to receive the entirety of the policy proceeds (for a value of $250,000) and that the necessary correspondence exists between this deprivation and Risa’s gain. With respect to the extent of Michelle’s deprivation, my view is that the quantification of her loss should not be limited to her out-of-pocket expenditures — that is, the $7,000 she paid in premiums between 2000 and 2013. Pursuant to her contractual obligation, she made those payments over the course of 13 years in exchange for the right to receive the policy proceeds from the Insurance Company upon Lawrence’s death. In breach of his contractual obligation, however, Lawrence instead transferred that right to Risa. Had Lawrence held up his end of the bargain with Michelle, rather than designating Risa irrevocably, the right to payment of the policy proceeds would have accrued to Michelle. At the end of the day, therefore, what Michelle lost is not only the amount she paid in premiums. She stands deprived of the very thing for which she paid — that is, the right to claim the $250,000 in proceeds.
2. To be clear, therefore, Michelle’s entitlement under the Oral Agreement is what makes it such that she was deprived of the *full* value of the insurance payout. In other cases where the plaintiff has some general belief that the insured ought to have named him or her as the designated beneficiary, but otherwise has no legal or equitable right to be treated as the proper recipient of the insurance money, it will likely be impossible to find either that the right to receive that insurance money was ever held by the plaintiff or that it would have accrued to him or her. In such cases, the properly designated beneficiary is not enriched at the expense of a plaintiff who had no claim to the insurance money in the first place — the result being that the plaintiff will not have suffered a corresponding deprivation to the full extent of the insurance proceeds (*Love v. Love*, 2013 SKCA 31, 359 D.L.R. (4th) 504, at para. 42).
3. My colleagues, Gascon and Rowe JJ., approach Michelle’s loss differently. They take the position that unjust enrichment cannot be invoked by a claimant to protect his or her “contractual expectations against innocent third parties” (para. 104). While they agree that the Canadian principle against unjust enrichment operates where a plaintiff has lost wealth that was either in his or her possession or that would have accrued for his or her benefit, they take the position that “awards for expected property have generally been where there was a breach of an equitable duty”, and they distinguish that situation from cases where the plaintiff held “a valid contractual expectation” of receiving certain property (para. 104).
4. My view is that it is not useful, in the context of unjust enrichment, to distinguish between expectations based on a contractual obligation and expectations where there was a breach of an equitable duty (see my colleagues’ reasons, at para. 104). Rather, a robust approach to the corresponding deprivation element focuses simply on what the plaintiff *actually* lost — that is, property that was in his or her possession or that would have accrued for his or her benefit — and on whether that loss corresponds to the defendant’s enrichment, such that we can say that the latter was enriched *at the expense* of the former. As was observed by Professors Maddaugh and McCamus in *The Law of Restitution*, one source of difficulty in these kinds of disappointed beneficiary cases is

a rigid application of the “corresponding deprivation” or “expense” element as if it requires that the benefit in the defendant’s hands must have been transferred from, or constitute an out-of-pocket expense of, the plaintiff. . . . [R]estitution of benefits received from third parties may well provide a basis for recovery. In this particular context, the benefit received can, in any event, normally be described as having been received at the plaintiff’s expense in the sense that, but for the mistaken failure to implement the arrangements in question, the benefit would have been received by the plaintiff. [Emphasis added; p. 35-21.]

I agree. In this case, given the fact that Michelle held up her end of the bargain, kept the policy alive by paying the premiums, did not predecease Lawrence, and still did not get what she actually contracted for, it seems artificial to suggest that her loss was anything less than the right to receive the entirety of the insurance proceeds.

1. From this perspective, it is equally clear that Risa’s enrichment came at Michelle’s expense. It is not only that Michelle’s payment of the premiums made Risa’s enrichment possible — something which the application judge found to be the case: “The change of designation, and [Risa’s] later receipt of the proceeds of the Policy, would not have been possible but for [Michelle’s] performance of her obligations under the agreement” (para. 48). What is more significant is that Risa’s designation gave her the statutory right to receive the insurance proceeds, the necessary implication being that Michelle would have no such right *despite* the fact that she had a contractual entitlement, by virtue of the agreement with Lawrence, to remain named as beneficiary. Because Risa received the benefit that otherwise would have accrued to Michelle, the requisite correspondence exists: the former was enriched at the expense of the latter.
2. My colleagues also dispute this proposition. They say that any deprivation suffered by Michelle is attributable to the fact that she lacks the practical ability to recover anything against Lawrence’s insolvent estate. The result, in their view, is that what Risa received — a statutory entitlement to the proceeds — is different than what Michelle lost — which they characterize as the ability to enforce her contractual rights against Lawrence’s estate (para. 111). Again, I disagree; since Risa was given the very thing that Michelle had contracted to receive *and was otherwise entitled to receive* (given that she held up her end of the bargain), it seems evident to me that Risa was enriched at Michelle’s expense. To be clear, it is not simply that Risa gained a benefit with a value equal to the amount of Michelle’s deprivation. Rather, what Risa gained is the precise benefit that Michelle lost: the right to receive the proceeds of Lawrence’s life insurance policy. I would also add that the insolvency of Lawrence’s estate simply means that Michelle would be unable to recover the value of her loss by bringing an action against Lawrence’s estate in breach of contract; it does not affect her ability to bring an unjust enrichment claim against Risa. The fact that a plaintiff has a contractual claim against one defendant does not preclude the plaintiff from advancing his or her case by asserting a separate cause of action against another defendant if it appears most advantageous (*Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147, at p. 206).
3. I would therefore conclude that the requisite enrichment and corresponding deprivation are both present in this case. The payability of the insurance proceeds by the Insurance Company for Risa’s benefit did in fact impoverish Michelle “to the full extent of the insurance payout in [Risa’s] favour” (Court of Appeal decision, at para. 208 (Lauwers J.A., dissenting)).
4. In light of this, the Court of Appeal’s order — which was made on the consent of the parties, and which requires that $7,000 of the proceeds be paid to Michelle and that the balance be paid to Risa — cannot be upheld on a principled basis. If there is a juristic reason for Risa’s retention of the insurance money, then Michelle’s claim will necessarily fail and Risa will be entitled to the full $250,000. If there is no such juristic reason, however, then Michelle’s unjust enrichment claim will succeed and she will be entitled to a restitutionary remedy totalling that amount.
   * 1. Absence of Any Juristic Reason
5. Having established an enrichment and a corresponding deprivation, Michelle must still show that there is no justification in law or equity for the fact that Risa was enriched at her expense in order to succeed in her claim. As observed by Cromwell J. in *Kerr* (at para. 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 . . . . [Emphasis added.]

1. This understanding of juristic reason is crucial for the purposes of the present appeal. The third element of the cause of action in unjust enrichment is essentially concerned with the justification for the defendant’s retention of the benefit conferred on him or her at the plaintiff’s expense — or, to put it differently, with whether there is a juristic reason for the transaction that resulted in both the defendant’s enrichment and the plaintiff’s corresponding deprivation. If there is, then the defendant will be justified in keeping or retaining the benefit received at the plaintiff’s expense, and the plaintiff’s claim will fail accordingly. At its core, the doctrine of unjust enrichment is fundamentally concerned with reversing transfers of benefits that occur without any legal or equitable basis. As McLachlin J. stated in *Peter* (at p. 990), “It is at this stage that the court must consider whether the enrichment and detriment, morally neutral in themselves, are ‘unjust’.”
2. In *Garland*, this Court shed light on exactly what must be shown under the juristic reason element of the unjust enrichment analysis — and in particular, on whether this third element requires that cases be decided by “finding a ‘juristic reason’ for a defendant’s enrichment” or instead by “asking whether the plaintiff has a positive reason for demanding restitution” (para. 41, citing *Garland v. Consumers’ Gas Co.* (2001), 57 O.R. (3d) 127 (C.A.), at para. 105). In an effort to eliminate the uncertainty between these competing approaches, Iacobucci J. formulated a juristic reason analysis that proceeds in two stages.
3. The first stage requires the plaintiff to demonstrate that the defendant’s retention of the benefit at the plaintiff’s expense cannot be justified on the basis of any of the “established” categories of juristic reasons: a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations (*Garland*, at para. 44; *Kerr*, at para. 41). If any of these categories applies, the analysis ends; the plaintiff’s claim must fail because the defendant will be justified in retaining the disputed benefit. For example, a plaintiff will be denied recovery in circumstances where he or she conferred a benefit on a defendant by way of gift, since there is nothing unjust about a defendant retaining a gift of money that was made to him or her by (and that resulted in the corresponding deprivation of) the plaintiff. In this way, these established categories limit the subjectivity and discretion inherent in the unjust enrichment analysis and help to delineate the boundaries of this cause of action (*Garland*, at para. 43).
4. If the plaintiff successfully demonstrates that none of the established categories of juristic reasons applies, then he or she has established a *prima facie* case and the analysis proceeds to the second stage. At this stage, the defendant has an opportunity to rebut the plaintiff’s *prima facie* case by showing that there is some residual reason to deny recovery (*Garland*, at para. 45). The *de facto* burden of proof falls on the defendant to show why the enrichment should be retained. In determining whether this may be the case, the court should have regard to two considerations: the parties’ reasonable expectations and public policy (*Garland*, at para. 46; *Kerr*, at para. 43).
5. This two-stage approach to juristic reason was designed to strike a balance between the need for predictability and stability on the one hand, and the importance of applying the doctrine of unjust enrichment flexibly, and in a manner that reflects our evolving perception of justice, on the other.
   * + 1. First Stage — None of the Established Categories Applies in These Circumstances
6. The first stage of the *Garland* framework asks whether a juristic reason from an established category operates to deny recovery. Michelle submits that none of these categories applies in the circumstances of this case. Risa takes the position that the *Insurance Act* required the proceeds of the policy to be paid exclusively to her as the validly designated beneficiary, such that the applicable legislation constitutes a juristic reason to deny the recovery sought by Michelle.
7. The main issue at this stage of the analysis is therefore whether a beneficiary designation made pursuant to ss. 190(1) and 191(1) of the *Insurance Act*— which, when coupled with Lawrence’s insurance policy, makes it clear that Risa is the one to whom the insurance proceeds are payable — provides a juristic reason for Risa to retain those proceeds in light of Michelle’s claim to the money. Put differently, the question can be framed as follows: is there any aspect of this statutory framework that justifies the fact that Risa was enriched *at Michelle’s expense*? If so, Michelle’s claim will necessarily fail.
8. My colleagues dispute this proposition. In their view, it is sufficient to show that there is some juristic reason for the fact that the defendant was enriched, and there is thus no need to demonstrate that the enrichment *and the corresponding deprivation* occurred without a juristic reason. With respect, this proposition is at odds with the clear guidance provided by this Court in *Kerr* (para. 40, reproduced at para. 54 of these reasons) and disregards the work already done by the recognized categories of juristic reasons identified in *Garland*. Each of these categories points to a *relationship* between the plaintiff and the defendant that justifies the fact that a benefit passed from the former to the latter. To focus exclusively on the reason why the defendant was enriched is to ignore this key aspect of the law of unjust enrichment.
9. Two categories of juristic reasons might be said to apply in the circumstances of this case: disposition of law and statutory obligations. Disposition of law is a broad category that applies in various circumstances, including “where the enrichment of the defendant at the plaintiff’s expense is required by law, such as where a valid statute denies recovery” (*Kerr*,at para. 41 (emphasis added)). The statutory obligations category operates in a substantially similar manner, precluding recovery where a legislative enactment expressly or implicitly mandates a transfer of wealth from the plaintiff to the defendant. Although there is undoubtedly a degree of overlap between these two distinct categories, what matters for the purposes of this appeal is that a plaintiff’s claim will necessarily fail if a legislative enactment provides a reason for the enrichment and corresponding deprivation, so as to preclude recovery in unjust enrichment. As Professors Maddaugh and McCamus note in *The Law of Restitution*:

. . . it is perhaps self‑evident that an unjust enrichment will not be established in any case where enrichment of the defendant at the plaintiff’s expense is required by law. The payment of validly imposed taxes may be considered unjust by some but their payment gives rise to no restitutionary right of recovery. [Emphasis added; footnotes omitted; p. 3-28.]

1. The jurisprudence provides ample support for this proposition. Among the issues in *Reference re Goods and Services Tax*, [1992] 2 S.C.R. 445 (“*GST Reference*”), was whether suppliers registered under the *Excise Tax Act*, R.S.C. 1985, c. E-15, that incurred costs in collecting the Goods and Services Tax on behalf of the federal government could recover those costs from the government on the basis of restitution. For a majority of this Court, Lamer C.J. answered this question in the negative:

Under the GST Act the expenses involved in collecting and remitting the GST are borne by registered suppliers. This certainly constitutes a burden to these suppliers and a benefit to the federal government. However, this is precisely the burden contemplated by statute. Hence, a juridical reason for the retention of the benefit by the federal government exists unless the statute itself is *ultra vires*. [Emphasis added; p. 477.]

1. A similar issue arose in *Gladstone v. Canada (Attorney General)*, 2005 SCC 21, [2005] 1 S.C.R. 325. In that case, the respondents were charged under the *Fisheries Act*, R.S.C. 1970, c. F-14, for harvesting and attempting to sell large quantities of herring spawn. The Department of Fisheries and Oceans seized and sold the herring spawn, and the appellant Crown in Right of Canada held the proceeds pending the outcome of the proceedings. The proceedings were eventually stayed and the net proceeds paid to the respondents. Because the Crown refused to pay interest or any other additional amount, however, the respondents sought restitution in the amount of $132,000, on the ground that the Crown had been unjustly enriched by its retention of the proceeds during the time of seizure. Writing for a unanimous Court, Major J. denied that claim on the following basis:

Here, Parliament has enacted a statutory regime to regulate the commercial fishery. It has provided an extensive framework dealing with the seizure and return of things seized. This regime specifically provides for the return of any fish, thing, or proceeds realized. This was followed. Interest or some other additional amount might have been gratuitously included, but it was not. The validity of the *Fisheries Act* was not, nor could have been, successfully challenged. Therefore, the Act provides a juristic reason for any incidental enrichment which may have occurred in its operation. As a result, the unjust enrichment claim fails. [para. 22]

In short, it was Major J.’s position that the statutory regime, by specifying what had to be returned, made it clear that anything falling outside of the specified categories was to be retained by the Crown. In other words, the *Fisheries Act* stipulated that, in certain circumstances, a benefit would be retained by the Crown.

1. These cases are examples of situations where a statute precluded recovery on the basis of unjust enrichment. It is to be noted that in each case, recovery was denied because the legislation in question expressly or implicitly required the transfer of wealth between the plaintiff and the defendant and therefore justified the defendant’s retention of the benefit received at the plaintiff’s expense. It is in this way that the applicable legislation can be understood as “denying” or “barring” recovery in restitution and therefore as supplying a juristic reason for the defendant’s retention of the benefit.
2. What, then, should we make of ss. 190(1) and 191(1) of the *Insurance Act*? The former permits the insured to identify the person to whom or for whose benefit the insurance money is payable when the insured passes away. Coupled with the insurance contract, it directs the insurer to pay the proceeds to the person so designated. The latter provides that such a designation may be made irrevocably.
3. Given the fact that a statute will preclude recovery for unjust enrichment where it requires (either explicitly or by necessary implication) that the defendant be enriched to the detriment of the plaintiff, the provisions of the *Insurance Act* may therefore provide a juristic reason for the beneficiary’s enrichment vis-à-vis any corresponding deprivation that may have been suffered *by the insurer* at the time the insurance money is eventually paid out. For this reason, an unjust enrichment claim brought by the insurer against the designated beneficiary (revocable or irrevocable) would necessarily fail at this stage; the rights and obligations that exist in that context — both statutory and contractual — justify the beneficiary’s enrichment at the insurer’s expense (*Saskatchewan Crop Insurance Corp. v. Deck*, 2008 SKCA 21, 307 Sask. R. 206, at paras. 47-54).
4. A valid beneficiary designation under the *Insurance Act* has also been found to constitute a juristic reason that defeats a third party’s claim for the entirety of the death benefit in circumstances where that party paid some of the premiums under the erroneous belief that he or she was the named beneficiary. In *Richardson (Estate Trustee of) v. Mew*, 2009 ONCA 403, 96 O.R. (3d) 65, the deceased had maintained his first wife as the designated beneficiary under a life insurance policy. His second wife, who did not have a contractual right to be named as beneficiary, wrongly believed that he had executed a change of beneficiary designation in her favour, and paid some of the policy premiums — initially from a joint bank account she shared with the deceased and later from her own bank account. She sought the imposition of a constructive trust in her favour over the policy proceeds, arguing that there was no juristic reason for the first wife’s enrichment. Even accepting that the second wife could be said to have suffered a corresponding deprivation, the Ontario Court of Appeal upheld the motion judge’s finding that a valid beneficiary designation under the *Insurance Act* amounted to a juristic reason that defeated the second wife’s claim for the insurance money that was payable to the first wife. I would observe that the claimant in that case sought a constructive trust over the entire death benefit, and not merely the return of any payments made on the basis of her erroneous belief; the Court of Appeal did not decide whether she would be entitled to the return of those payments, and that question is not before us today.
5. At issue in this case, however, is whether a designation made pursuant to ss. 190(1) and 191(1) of the *Insurance Act* provides any reason in law or justice for Risa to retain the disputed benefit notwithstanding Michelle’s prior contractual right to remain named as beneficiary and therefore to receive the policy proceeds. In other words, does the statute preclude recovery for a plaintiff, like Michelle, who stands deprived of the benefit of the insurance policy in circumstances such as these? In my view, it does not. Nothing in the *Insurance Act* can be read as ousting the common law or equitable rights that persons other than the designated beneficiary may have in policy proceeds. As this Court explained in *Rawluk v. Rawluk*, [1990] 1 S.C.R. 70, at p. 90, the “legislature is presumed not to depart from prevailing law ‘without expressing its intentions to do so with irresistible clearness’” (see also *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298). In *KBA Canada Inc. v. 3S Printers Inc.*, 2014 BCCA 117, 59 B.C.L.R. (5th) 273, for example, the British Columbia Court of Appeal found that the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, provided a “complete set of priority rules” that was “designed to replace convoluted common law, equitable and statutory rules that beset personal property security law with complexity and uncertainty” (paras. 27 and 21, citing *Bank of Montreal v. Innovation Credit Union*, 2010 SCC 47, [2010] 3 S.C.R. 3). In those circumstances, there was no “room for priorities to be determined on the basis of common law or equitable principles” (para. 22). By contrast, while the *Insurance Act* provides the mechanism by which beneficiaries can be designated and therefore become statutorily entitled to receive policy proceeds, no part of the *Insurance Act* operates with the necessary “irresistible clearness” to preclude the existence of contractual or equitable rights in those insurance proceeds once they have been paid to the named beneficiary.
6. The reasoning put forward by McKinlay J. (as she then was) of the Ontario High Court of Justice in *Shannon v. Shannon* (1985), 50 O.R. (2d) 456, is particularly instructive in this regard. Like Michelle, the plaintiff in *Shannon* was the former spouse of an insured person who had contractually agreed to maintain the plaintiff as the sole beneficiary of the life insurance policy in his name and “not to revoke such beneficiary designation at any time in the future” (p. 458). Shortly thereafter, and in breach of his contractual obligation, the insured person surreptitiously changed the beneficiary designation in favour of his niece and nephew. He passed away several years later, and when the plaintiff discovered the change in beneficiary designation, she commenced an action asserting her entitlement to the proceeds of her former spouse’s insurance policy. McKinlay J. found in her favour and made the following observations (at p. 461):

It would appear from s. 167(2) [i.e. the predecessor of s. 190(2) of the *Insurance Act*] that the insured may at any time before the filing of an irrevocable declaration alter or revoke an existing designation by way of a declaration.

The position of the defendant is that this is precisely what the insured did, and that any finding of the court of a trust in favour of the plaintiff would have the effect of the court’s attempting to overrule a clear statutory provision.

But the *Insurance Act* provides a statutory framework for the protection of the insured, the insurer and beneficiaries; equity imposes duties of conscience on parties based on their relationship and dealings one with another outside the purview of the statute. When he concluded the separation agreement with his wife, the deceased bound himself to maintain the policy in good standing, which he did; he also bound himself to maintain it for the benefit of his wife, which he did not. [Emphasis added.]

1. *Shannon* therefore supports the proposition that while the *Insurance Act* may provide for the beneficiary’s entitlement to payment of the proceeds, it “does not specifically preclude the existence of rights outside its provisions” (p. 461). Similarly, in *Chanowski v. Bauer*, 2010 MCBA 96, 258 Man. R. (2d) 244, the Manitoba Court of Appeal recognized that courts have readily accepted that contractual rights to policy proceeds may operate to the detriment of named beneficiaries:

Generally, the courts have imposed remedial constructive trusts in factual circumstances where the deceased has breached an agreement regarding life insurance benefits. These have arisen most commonly in cases where the husband executed a separation agreement promising to retain his former wife as the beneficiary of his life insurance policy and, in contravention of that promise, before his death, the deceased changed the designation of his beneficiary to that of his present wife or another family member. [para. 39]

1. 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 Michelle’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 rightsand therefore does not give such a beneficiary any absolute entitlement to that money (*Shannon*, at p. 461). Put simply, the statute required that the Insurance Company pay Risa, but it did not give Risa a right to keep the proceeds as against Michelle, whose contract with Lawrence specifically provided that she would pay all of the premiums exclusively for her own benefit. Neither by direct reference nor by necessary implication does the statute either (a) foreclose a third party who stands deprived of his or her contractual entitlement to claim insurance proceeds by successfully asserting an unjust enrichment claim against the designated beneficiary — whether revocable or irrevocable — or (b) preclude the imposition of a constructive trust in circumstances such as these (see *Central Guaranty Trust Co. v. Dixdale Mortgage Investment Corp.* (1994), 24 O.R. (3d) 506 (C.A.); see also *KBA Canada*).
2. On this basis, the applicable *Insurance Act* provisions are distinguishable from other legislative enactments that have been found to preclude recovery, such as valid statutory provisions requiring the payment of taxes to the government (see *GST Reference*, at pp. 476-77; *Zaidan Group Ltd. v. London (City)* (1990), 71 O.R. (2d) 65 (C.A.), at p. 69, aff’d [1991] 3 S.C.R. 593). In that context, the plaintiff’s unjust enrichment claim must fail because the legislation permits the defendant to be enriched even when the plaintiff suffers a corresponding deprivation. The same cannot be said about the statutory framework at issue in this case, however; there is nothing in the *Insurance Act* that justifies the fact that Michelle, who is contractually entitled to claim the policy proceeds, is nevertheless deprived of this entitlement for Risa’s benefit.
3. Moreover, in my view, the fact that *Shannon* was decided prior to *Soulos* and *Garland* is of no moment (Court of Appeal decision, at paras. 84 and 89). While those cases add to our understanding of the law on constructive trusts and unjust enrichment, they do not in any way undermine the holding in *Shannon* with respect to the effect of the *Insurance Act* in circumstances such as these.
4. The majority below came to the opposite conclusion on this issue. Having considered the legislative regime governing beneficiary designations in Ontario, Blair J.A. held that the *Insurance Act* framework “lean[s] heavily in favour of payment of the proceeds of life insurance policies to those named as irrevocable beneficiaries, whereas it continues to recognize the right of an insured, at any time prior to such a designation, to alter or revoke a beneficiary who does not fall into that category” (para. 83). On this basis, he concluded that the legislative regime under which Risa had been designated as the irrevocable beneficiary of Lawrence’s life insurance policy supplied a juristic reason for her receipt of the proceeds, since it constituted both a disposition of law and a statutory obligation (para. 99).
5. With respect, I disagree with two aspects of Blair J.A.’s reasons. First, he framed the issue as being whether the applicable *Insurance Act* provisions, pursuant to which Risa had been designated as irrevocable beneficiary, provided a juristic reason for her receipt of the insurance proceeds (paras. 26(iii) and 83). This, in my view, is the wrong perspective from which to approach this third stage of the unjust enrichment analysis. As stated above, the authorities indicate that the court’s inquiry should focus not only on why the defendant received the benefit, but also on whether the statute gives the defendant the right to retain the benefit against a correspondingly deprived plaintiff — in this case, whether the *Insurance Act* extinguishes an unjust enrichment claim brought by a plaintiff at whose expense the named beneficiary was enriched (*GST Reference*, at p. 477; *Kerr*, at para. 31). And given the view expressed earlier in these reasons, it seems to me that the *Insurance Act* does not.
6. Second, Blair J.A. placed a significant degree of emphasis on the distinction between revocable and irrevocable beneficiaries, and on the certainty and predictability associated with the statutory regime governing irrevocable designations. While it is clear that an irrevocably designated beneficiary has a “statutory right to remain as the named beneficiary” and is therefore “entitled to receive the insurance moneys unless he or she consents to being removed” (para. 82), I am still not persuaded that s. 191 of the *Insurance Act* can be interpreted as barring the possibility of restitution to a third party who establishes that this irrevocable beneficiary cannot, in good conscience, retain those monies in the face of that third party’s unjust enrichment claim. To borrow the words of Professors Maddaugh and McCamus, “the fact that the insurer is directed by statute, implicitly if not directly, to pay the insurance monies to the irrevocable beneficiary, does not preclude recovery by the other intended beneficiary where retention of the monies by the irrevocable beneficiary would constitute an unjust enrichment” (*The Law of Restitution*, at p. 35-16). Therefore, the fact that Risa was designated pursuant to s. 191(1) of the *Insurance Act*, as opposed to s. 190(1), does not assist her against Michelle in the circumstances of this case.
7. I would also observe that the majority below declined to “go so far as to say that the designation of a beneficiary as an irrevocable beneficiary under the *Insurance Act* invariably trumps a prior claimant” (para. 91), but nevertheless found that it did in this case. It is with this latter statement that I would disagree; as outlined above, my view is that the statutory scheme does not prevent a claimant with a prior contractual entitlement from succeeding in unjust enrichment against the designated beneficiary.
8. My colleagues take the position that the *Insurance Act* provides a juristic reason for Risa’s enrichment because it specifically provides that the proceeds, once paid to the irrevocable beneficiary, are immune from attack by the insured’s creditors. They say that because “Michelle’s rights are contractual in nature, she is a creditor of Lawrence’s estate and thus, by the provisions of the *Insurance Act*, has no claim to the proceeds” (para. 122). While there is no dispute that Michelle may have a claim against Lawrence’s estate, my view is that she is *also* a person at whose expense Risa has been enriched — and therefore a plaintiff with standing to claim against Risa in unjust enrichment. And while the *Insurance Act* specifically precludes claims by creditors suing on the basis of some obligation owed by the insured’s estate, it does not state “with irresistible clearness” that a claim *in unjust enrichment* — i.e. a claim based on a different cause of action — brought by a plaintiff who also has a contractual entitlement to claim the insurance proceeds must necessarily fail as against the named beneficiary.
9. For all of the foregoing reasons, I would echo the conclusion arrived at by Lauwers J.A., dissenting in the court below, that “[Michelle’s] entitlement to the insurance proceeds as against [Risa] is neither precluded nor affected by the operation of the *Insurance Act*”, with the result that this case “falls outside the category of disposition of law as a juristic reason to permit [Risa] to retain the life insurance proceeds” (para. 229).
10. Since there is no suggestion that any other established category of juristic reason would apply in these circumstances, my conclusion at this first stage is that Michelle has made out a *prima facie* case.
    * + 1. Second Stage — Policy Reasons Militate in Favour of Michelle
11. The second stage of the juristic reason analysis affords the defendant an opportunity to rebut the plaintiff’s *prima facie* case by establishing that there is some residual reason to deny recovery. At this stage, various other considerations come into play, like the parties’ reasonable expectations and moral and policy-based arguments — including considerations relating to the way in which the parties organized their relationship (*Garland*, at paras. 45-46; *Pacific National Investments*, at para. 25; *Kerr*, at paras. 44-45).
12. It is clear that both parties expected to receive the proceeds of the life insurance policy. Pursuant to the Oral Agreement, Michelle had a contractual right to remain designated as beneficiary so long as she continued to pay the premiums and kept the policy alive for the duration of Lawrence’s life. Although she could have better safeguarded her interests by requiring Lawrence to designate her irrevocably, her expectation with respect to the insurance money — rooted in the Oral Agreement — is clearly reasonable and legitimate.
13. Risa, by contrast, expected to receive the insurance money upon Lawrence’s death by virtue of the fact that she had been validly designated as irrevocable beneficiary. Because Risa was designated after Lawrence and Michelle entered into the Oral Agreement, however, I am of the view that her expectation cannot take precedence over Michelle’s *prior contractual right* to remain named as beneficiary, regardless of whether Risa knew that this was actually the case. To echo the findings of the application judge:

While there is no evidence that [Risa] knew that [Michelle] was paying the premiums on the Policy, she was aware that [Lawrence] was not in a position to do so. She says that she believed that [Lawrence’s] brother was paying the premiums, but there is nothing in the record regarding the brother’s motivation or intentions that would make [Risa’s] belief in such action reasonable. [para. 49]

1. Moreover, I am not persuaded that the oral nature of the agreement between Michelle and Lawrence undermines Michelle’s expectation or serves as a public policy reason that favours Risa’s retention of the proceeds. The legal force of unwritten agreements has long been recognized by common law courts. And while “kitchen table agreements” may in some cases result in situations where parties neither understand nor intend the legal significance of their agreement, this is not such a case; the parties do not dispute the finding that Michelle and Lawrence did in fact have an Oral Agreement that the former would pay the premiums on the policy and, in exchange, would be entitled to the proceeds of the policy upon the latter’s death (Superior Court decision, at para. 17; Court of Appeal decision, at para. 22). Indeed, the existence of the Oral Agreement is quite clearly corroborated by Michelle’s payment of the premiums following her separation from Lawrence.
2. As a final point, it appears to me that the residual considerations that arise at this stage of the *Garland* analysis favour Michelle, given that her contribution towards the payment of the premiums actually kept the insurance policy alive and made Risa’s entitlement to receive the proceeds upon Lawrence’s death possible. Furthermore, it would be bad policy to ignore the fact that Michelle was effectively tricked by Lawrence into paying the premiums of a policy for the benefit of some other person of his choosing.
3. For the foregoing reasons, I would conclude that Risa has not met the burden of rebutting Michelle’s *prima facie* case. It follows, therefore, that Michelle has made out each of the requisite elements of the cause of action in unjust enrichment.
   1. Appropriate Remedy: Imposition of a Constructive Trust
4. The remedy for unjust enrichment is restitutionary in nature and can take one of two forms: personal or proprietary. A personal remedy is essentially a debt or a monetary obligation — i.e. an order to pay damages — that may be enforced by the plaintiff against the defendant (*Sorochan v. Sorochan*,[1986] 2 S.C.R. 38, at p. 47). In most cases, this remedy will be sufficient to achieve restitution, and it can therefore be viewed as the “default” remedy for unjust enrichment (*Lac Minerals*, at p. 678; *Kerr*, at para. 46).
5. In certain cases, however, a plaintiff may be awarded a remedy of a proprietary nature — that is, an entitlement “to enforce rights against a particular piece of property” (McInnes, *The Canadian Law of Unjust Enrichment and Restitution*, at p. 1295). The most pervasive and important proprietary remedy for unjust enrichment is the constructive trust — a remedy which, according to Dickson J. (as he then was),

is imposed without reference to intention to create a trust, and its purpose is to remedy a result otherwise unjust. It is a broad and flexible equitable tool which permits courts to gauge all the circumstances of the case, including the respective contributions of the parties, and to determine beneficial entitlement.

(*Pettkus*, at pp. 843-44)

1. While the constructive trust is a powerful remedial tool, it is not available in *all* circumstances where a plaintiff establishes his or her claim in unjust enrichment. Rather, courts will impress the disputed property with a constructive trust only if the plaintiff can establish two things: first, that a personal remedy would be inadequate; and second, that the plaintiff’s contribution that founds the action is linked or causally connected to the property over which a constructive trust is claimed (*PIPSC*, at para. 149; *Kerr*, at paras. 50-51; *Peter*, at p. 988). And even where the court finds that a constructive trust would be an appropriate remedy, it will be imposed only to the extent of the plaintiff’s proportionate contribution (direct or indirect) to the acquisition, preservation, maintenance or improvement of the property (*Kerr*, at para. 51; *Peter*, at pp. 997-98).
2. The application judge concluded that Michelle had established an entitlement to the entirety of the proceeds of the life insurance policy on the basis of unjust enrichment, and he accordingly ordered that Risa held those proceeds on constructive trust for Michelle (para. 52). He specifically found that Michelle had demonstrated a “clear ‘link or causal connection’ between her contributions and the proceeds of the Policy that continued for the entire duration of the Policy” (para. 50).
3. While my analysis of Michelle’s right to recover for unjust enrichment differs from that of the application judge, I see no reason to disturb his conclusion regarding the propriety of a remedial constructive trust in these circumstances. Ordinarily, a monetary award would be adequate in cases where the property at stake is money. In the present case, however, the disputed insurance money has been paid into court and is readily available to be impressed with a constructive trust. Furthermore, ordering that the money be paid out of court to Risa, and then requiring Michelle to enforce the judgment against Risa personally, would unnecessarily complicate the process through which Michelle can obtain the relief to which she is entitled. It would also create a risk that the money might be spent or accessed by other creditors in the interim.
4. Moreover, the application judge found that Michelle’s payment of the premiums was causally connected to the maintenance of the policy under which Risa was enriched. Because each of Michelle’s payments kept the policy alive, and given that Risa’s right as designated beneficiary necessarily deprived Michelle of her contractual entitlement to receive the entirety of the insurance proceeds, I would impose a constructive trust to the full extent of those proceeds in Michelle’s favour.
5. This disposition of the appeal renders it unnecessary to determine whether this Court’s decision in *Soulos* should be interpreted as precluding the availability of a remedial constructive trust beyond cases involving unjust enrichment or wrongful acts like breach of fiduciary duty. Similarly, the extent to which this Court’s decision in *Soulos* may have incorporated the “traditional English institutional trusts” into the remedial constructive trust framework is beyond the scope of this appeal. While recognizing that these remain open questions, I am of the view that they are best left for another day.
6. Conclusion
7. I would therefore allow the appeal without costs and order that the proceeds of the policy, with accrued interest, be impressed with a constructive trust in favour of Michelle and accordingly be paid out of court for her benefit.

The following are the reasons delivered by

Gascon and Rowe JJ. (dissenting) —

1. Introduction
2. This appeal is, without question, a difficult one. Michelle and Risa are both innocent victims of Lawrence’s breach of contract and they equally invite substantial sympathy. Michelle paid approximately $7,000 to keep alive an insurance policy on the promise she would receive the proceeds if Lawrence died within its term. Risa cared for and supported Lawrence for 13 years and expected, as irrevocable beneficiary, that she would receive support should he die. With Lawrence’s broken promise now discovered, Michelle claims a constructive trust over the proceeds on the basis of unjust enrichment or “good conscience”, while Risa insists her irrevocable beneficiary designation is unassailable.
3. It is an unfortunate reality that a person’s death is sometimes accompanied by uncertainty and conflict over the wealth that has been left behind. The resulting litigation can tie up funds that the deceased intended to support loved ones for a significant period of time, adding financial hardship to personal tragedy. In an attempt to ensure that life insurance proceeds could be free from such strife, the Ontario legislator empowered life insurance policy holders to designate an “irrevocable beneficiary” (*Insurance Act*, R.S.O. 1990, c. I.8, s. 191(1)). Such a designation ensures that the policy proceeds could be disbursed free from claims against the estate, giving certainty to insured, insurer, and beneficiary alike. This provision should be given full effect.
4. There is no basis to impose a constructive trust in the circumstances of this case. We agree with Blair J.A. of the Ontario Court of Appeal that Michelle has not established that a “good conscience” constructive trust should be imposed (2017 ONCA 182, 134 O.R. (3d) 721). We rely on his reasons to dispose of this ground of appeal. We also agree that Michelle has failed to establish a claim in unjust enrichment. On this issue, we respectfully part ways with the majority of this Court on whether unjust enrichment can be made out on these facts. Michelle has only asserted contractual rights to the proceeds and has not established a proprietary or equitable interest in the proceeds themselves. In our view, there is no correlative deprivation between Michelle’s failed contractual expectations and Risa’s enrichment. In addition, the *Insurance Act* provides clear juristic reason for any enrichment Risa could have received through Michelle’s loss as a creditor of Lawrence’s insolvent estate. Opening up irrevocable beneficiary designations to challenges by an insured’s creditors risks a recipe for litigation — a situation the legislator clearly intended to avoid. As such, for the reasons that follow, we would dismiss the appeal.
5. Analysis
   1. Characterizing Michelle’s Claim
6. The majority of the Ontario Court of Appeal was correct in characterizing Michelle’s claim as being that she had a contract with Lawrence for the policy proceeds and that she was using this contract to be entitled to restitution of the funds on the principle of unjust enrichment. According to Michelle’s affidavit, the contract was to ensure that she would be “entitled to receive the Policy benefits” in exchange for paying the premiums (A.R., at p. 138). However, it is difficult to see how the contract she has put into evidence creates a proprietary right in the proceeds. Simply being named as a beneficiary does not give one a right in the proceeds before the death of the insured. The right to claim the proceeds only crystalizes upon the insured’s death. Further, as a revocable beneficiary, Michelle had no right to contest the redesignation outside of a claim against Lawrence for breach of contract. Thus, at the time of Lawrence’s death, the only rights that Michelle possessed in relation to the life insurance contract were her contractual rights.
7. On different pleadings and a more developed record, Michelle may have been able to establish that the contract gave her a proprietary interest in the proceeds through an equitable assignment of Lawrence’s chose in action. The Ontario Court of Appeal correctly found that this avenue was never properly put to the application judge, and Michelle has not otherwise pursued this line of argument. It follows that, with only contractual rights asserted, Michelle cannot be understood to have a proprietary right in the proceeds. Rather, her agreement with Lawrence must be understood as limited to a contractual right to be maintained the named beneficiary of the policy while she paid the premiums. If Lawrence had died while she was designated as a beneficiary, Michelle would consequently receive the proceeds, but the contract itself cannot be seen to give Michelle a right in the proceeds themselves.
8. Of course, Lawrence breached his contractual obligations by redesignating Risa as an irrevocable beneficiary, entitling her to the policy proceeds on his death. While Michelle would have a claim against Lawrence’s estate for breach of contract, the estate’s lack of assets has rendered any such recourse fruitless. Instead, Michelle’s claim before this Court is to reverse the purported unjust enrichment of Risa, an innocent beneficiary of Lawrence’s breach of contract.
9. Risa has argued that unjust enrichment should not be a vehicle for protecting expectation interests in a valid contract. Indeed, the availability of unjust enrichment for indirect claims against the innocent beneficiaries of a breach of contract is a matter of significant academic controversy. Professor Birks, while a general proponent of the availability of indirect claims, has posited that there is a general rule against “leap-frogging” out of an initially valid contract through unjust enrichment (P. Birks, *Unjust Enrichment* (2nd ed. 2005), at p. 90). One reason he suggests for this rule is that a contracting party “must not wriggle round the risk of insolvency” inherent in contractual relations (p. 90). Professor Burrows also recognizes such a rule, given the logical difficulty of establishing a causal link between the claimant’s deprivation and the defendant’s benefit (A. Burrows, *The Law of Restitution* (3rd ed. 2011), at pp. 70-71). In a similar vein, Professor Virgo has identified a “privity principle” to unjust enrichment that means indirect recipients of a benefit will generally not be liable for restitution (G. Virgo, *The Principles of the Law of Restitution* (3rd ed. 2015), at p. 105). The leading text on restitution from Lord Goff and Professor Jones, by contrast, suggests that there is no such general prohibition and that causation can be made out on a simple “but for” causation analysis (*Goff & Jones: The Law of Unjust Enrichment* (9th ed. 2016), by C. Mitchell, P. Mitchell and S. Watterson, at pp. 77 and 176). Yet, they also caution that courts should be hesitant to make such awards where they would have the effect of undermining an insolvency regime or avoid the contractual allocation of risk (p. 77).
10. There is sparse Canadian authority on this matter, and we see no support for the view that unjust enrichment protects an individual’s contractual expectations against innocent third parties. Certainly, this Court has recognized that the law of restitution ensures that where a plaintiff has been deprived of wealth that is either in their possession or would have accrued for their benefit, it is restored to them (*Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161, at pp. 1202-3). However, restitution awards for expected property have generally been where there was a breach of an equitable duty by a defendant (*Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, at pp. 668-70). In these cases, a defendant, through some wrongdoing, intercepts the property otherwise destined for the plaintiff. In the words of *Lac Minerals*: “but for [the defendant’s] interception”, the plaintiff “would have acquired the property” (p. 669). Critically, the plaintiff has no recourse against the third party. Its only claim is to the very thing in the defendant’s hands. In our view, this is distinguishable from where the plaintiff holds a valid contractual expectation vis-à-vis the third party (here, Lawrence) that they would receive property, but that expectation was frustrated by an insolvency that prevents full compensation for a breach of contract. Our takeaway from *Lac Minerals* is encapsulated concisely by Professor McInnes’ views on expected property awards:

The plaintiff is entitled to demand receipt of a benefit which, as a matter of legal certainty, would have been obtained from a third party, but for the defendant’s intervention. The situation will be much different, however, if relief is available merely because the defendant realized a gain through the non-wrongful exploitation of an earning opportunity. [Emphasis added.]

(M. McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (2014), at p. 179)

To allow plaintiffs to wield contractual expectations against innocent third parties risks “drift[ing] dangerously away from reversing unjustified transfers and toward stripping non-wrongful profits” (McInnes, at p. 183).

1. Michelle has raised a number of so-called “disappointed beneficiary” cases in support of her claim. While many of these involved such indirect claims for unjust enrichment, none support using unjust enrichment to indirectly enforce a failed contractual expectation to receive policy proceeds. In many of these cases, the insured was alleged to have intended to redesignate the beneficiary but failed to do so before they died (see, e.g., *Love v. Love*, 2013 SKCA 31, 359 D.L.R. (4th) 504, at para. 10; *Holowa Estate v. Stell-Holowa*, 2011 ABQB 23, 330 D.L.R. (4th) 693, at para. 14; *Richardson (Estate Trustee of) v. Mew*, 2009 ONCA 403, 96 O.R. (3d) 65, at para. 18; *Roberts v. Martindale* (1998), 55 B.C.L.R. (3d) 63 (C.A.), at para. 17). Where courts have made awards for unjust enrichment, it has been where the defendant renounced their right to any benefit (*Holowa*,at paras. 23 and 25; *Roberts*, at para. 26). In our view, the defendant’s renunciation of rights to the proceeds render these cases distinguishable and of little assistance.
2. More germane to this appeal are cases where the insured redesignated the beneficiary in breach of an equitable or legal obligation (see, e.g., *Milne Estate v. Milne*, 2014 BCSC 2112, 54 R.F.L. (7th) 328, at para. 3; *Ladner v. Wolfson*, 2011 BCCA 370, 24 B.C.L.R. (5th) 43, at para. 3; *Schorlemer Estate v. Schorlemer* (2006), 29 E.T.R. (3d) 181 (Ont. S.C.J.), at para. 5; *Steeves v. Steeves* (1995), 168 N.B.R. (2d) 226 (Q.B.), at para. 29; *Gregory v. Gregory* (1994), 92 B.C.L.R. (2d) 133 (C.A.); *Shannon v. Shannon* (1985), 50 O.R. (2d) 456 (H.C.)). In these cases, courts have generally awarded the proceeds where the insured was found to have been bound by an equitable obligation or where the insured’s rights were otherwise held in trust for the plaintiff’s benefit. For instance, in *Schorlemer* the insured had designated the defendant as the beneficiary in breach of a written separation agreement, and the Ontario Superior Court of Justice found that the insured’s rights were held in trust for the plaintiff. Similarly, in *Gregory*, *Milne* and *Steeves*, where the insured redesignated the beneficiary in breach of a court order, the court order was found to have imposed a trusteeship on the insured for the benefit of the plaintiff. *Shannon* did involve a broken contractual agreement; however, as we detail below, we understand McKinlay J.’s reasons as most consistent with having found that the written separation agreement itself created a trust. Regardless, the serious issues with enforcing contractual rights through unjust enrichment were not given consideration in *Shannon*.
3. As such, the present appeal presents this Court with difficult questions about both the nature of how a transfer of wealth is measured in unjust enrichment and how such claims should be treated in the juristic reason analysis. To be clear, we do not wish to make any general statements regarding so-called “leap-frogging” cases. But in applying the facts of this case, as pled and proven, to the current law of unjust enrichment, we remain unconvinced that Michelle is entitled to a constructive trust for the whole of the proceeds.
   1. Corresponding Deprivation
4. In an action for unjust enrichment, a plaintiff must show that they suffered a corresponding deprivation. To establish a corresponding deprivation, there must be a transfer of wealth on a straightforward economic basis (*Garland v. Consumers’ Gas Co*., 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 35; *Peter v. Beblow*, [1993] 1 S.C.R. 980, at p. 990). While the clearest examples of such transfers are where there is payment and receipt of money (e.g. *Garland*, *Air Canada*), it can also be made out to the extent of the plaintiff’s expenditure for the defendant’s benefit (e.g. *Peter*) or where the defendant has received property destined for the plaintiff but for their wrongdoing (e.g. *Lac Minerals*). In these types of cases, the issue of correspondence may pass without comment, but the importance of this structure must be kept firmly in mind when examining other cases where the nexus between the plaintiff and defendant is less obvious. Whatever factual matrix gives rise to an apparent transfer of wealth from the plaintiff to the defendant, it is crucial that a defendant’s enrichment in fact corresponds to the plaintiff’s deprivation. As explained by this Court in *Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71, [2012] 3 S.C.R. 660, “the enrichment and detriment elements are the same thing from different perspectives” (para. 151). Enrichment and deprivation are “essentially two sides of the same coin” (*Peter*, at p. 1012).
5. The importance of the bilateral nature of unjust enrichment is highlighted by the fact that, unlike for many other causes of action, unjust enrichment will permit a plaintiff to recover from a defendant without any wrongdoing on the latter’s part. For example, a defendant will be liable to return to the plaintiff any payments made to them by mistake. Where liability attaches to the defendant without any wrongdoing, the normative basis for such liability is strictly limited. As Professor Smith explains:

Strict liability in unjust enrichment depends on both a material gain to the defendant and a material loss to the plaintiff. Moreover, the loss and the gain must be two sides of the same coin; there must always be a transfer of wealth from plaintiff to defendant. Only in this way can we justify liability through a one-sided normative flaw in the transaction. . . . Mere causal connection between plaintiff and defendant is not enough — any more than it is in negligence — because it does not carry enough normative force.

(“Restitution: The Heart of Corrective Justice” (2001), 79 *Tex. L. Rev.* 2115, at p. 2156)

The correspondence between the deprivation and the enrichment, while seemingly formalistic, is fundamental. Proper correspondence, Professor McInnes notes, “is th[e] connection between the parties — a plus and a minus as obverse manifestations of the same event — that uniquely identifies the plaintiff as the proper person to seek restitution” (p. 149).

1. The logic that permits recovery in the circumstances of unjust enrichment also conditions the measurement of any restitution. The defendant cannot be required to “return” to the plaintiff more than what they have received, even if the plaintiff suffered a loss greater than the defendant’s gain. As an innocent party, there is no basis to require the defendant to return anything more. Inversely, the plaintiff cannot collect more from the defendant than they have lost. It does not matter that the defendant benefited more than the plaintiff lost. The plaintiff only has standing in respect of losses they have suffered. Liability for unjust enrichment is limited to “the lesser of the two amounts, the enrichment or the impoverishment” (*Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67, at p. 77, cited in McIness, at p. 183).
2. It is sufficiently clear that but for Michelle’s payments, the policy would have lapsed, and but for Lawrence’s breach of contract, she would have been the beneficiary at the time of his death. But, in our view, these facts are not enough to establish that the deprivation and the enrichment are corresponding. Risa’s enrichment was not *at the expense of* Michelle. This is best illustrated by a hypothetical: suppose that Lawrence’s estate was solvent. In that case, Risa would have retained her enrichment — the insurance proceeds — and Michelle would have suffered no deprivation, as she would hold a cause of action for breach of contract that is worth the equivalent of the proceeds. How can there then be correspondence if the enrichment and the deprivation could, in theory, co-exist? Risa’s enrichment is not *at the expense of* Michelle because Risa’s enrichment is not dependent on Michelle’s deprivation. What Risa received (a statutory entitlement to proceeds) is different from Michelle’s deprivation (the inability to enforce her contractual rights) — they are not “two sides of the same coin”. It is not enough for Michelle’s impoverishment to be equal to Risa’s gain — they must be “necessarilyequal” such that it is a “zero-sum game” (L. D. Smith, “Three-Party Restitution: A Critique of Birks’s Theory of Interceptive Subtraction” (1991), 11 *Oxford J. Leg. Stud.* 481, at pp. 482-83 (emphasis added)).
3. In this regard, we note that the majority seeks to establish a correspondence between Risa’s enrichment and Michelle’s deprivation on the basis that Michelle’s contributions to the premium payments kept the policy alive. But the fact that Michelle preserved the policy does not inform whether her deprivation corresponds to Risa’s enrichment. And even if Michelle’s premium payments could generate sufficient correspondence, Michelle’s deprivation should be limited to the extent of her contributions, not to her contractual expectations. Her deprivation is not measured by the value of the agreement that motivated her to pay the premiums. This principle is illustrated in this Court’s decision in *Pacific National Investments Ltd. v. Victoria (City)*, 2004 SCC 75, [2004] 3 S.C.R. 575. In that case, the appellant sought to uphold an unjust enrichment claim against the City of Victoria for improvements it had made to public works pursuant to an agreement with the latter. The respondent city rezoned the appellant’s development mid-project, which, the appellant argued, undermined the reason for having made the improvements. The fact that the appellant performed the work as a result of an agreement did not change the measure of the appellant’s deprivation. The appellant’s measure of restitution was not its expected profits under the agreement but rather only the cost of performing the work, which was effectively given gratuitously to the respondent. As such, even on the majority’s understanding of correspondence, Michelle’s claim should be limited to the return of the premium payments.
4. On our view of the matter, Michelle has not established a corresponding deprivation between Risa’s entitlement to the policy proceeds and her failed contractual expectation to be named beneficiary. As Risa has admitted liability for the approximately $7,000 in policy premiums, there is no need for us to consider whether Michelle would have been able to properly establish a corresponding deprivation for that amount.
   1. Juristic Reason
5. Even if a corresponding deprivation is assumed, we do not come to the conclusion that Risa was unjustly enriched at Michelle’s expense. This is because there is a juristic reason for Risa’s enrichment: the provisions of the *Insurance Act*.
6. In *Garland*, this Court made a choice as to the threshold for when a transfer of wealth should be reversed. Prior to *Garland*, Canadian courts had either followed this Court’s direction in *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436*,* which prescribed a juristic reasons approach, or they applied the English approach, searching for an unjust factor to reverse an impugned transfer of wealth (*Garland*, at paras. 40-41). Faced with this division, Iacobucci J. affirmed the “distinctive Canadian approach” to juristic unjust enrichment (para. 42). Along with his clear preference for the juristic reason approach, Iacobucci J. was responsive to the criticisms of it. Recognizing the difficulty of proving a negative — the absence of any juristic reason for a defendant’s enrichment — Iacobucci J. formulated a two-stage approach to juristic reasons. At the first stage of the analysis, the plaintiff must show the absence of a juristic reason from a closed list of established categories. These include a disposition of law and a statutory obligation, among others. If the plaintiff establishes that there is no juristic reason from one of the established categories, there is a *prima facie* case for restitution. At the second stage of the analysis, the defendant may rebut the *prima facie* case by demonstrating that there is some other reason to deny recovery. While courts should look to “all of the circumstances of the transaction” in order to determine whether recovery should be denied, they are to have regard to two factors: “. . . the reasonable expectations of the parties and public policy considerations” (paras. 45-46).
7. While the test is intended to be flexible and have the capacity to accommodate “changing perceptions of justice” (*Garland*, at para. 43; *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, at p. 788), it must be borne in mind that what prompted this articulation of the test was the need “to ensure that the juristic reason analysis was not ‘purely subjective’, thereby building into the unjust enrichment analysis an unacceptable ‘immeasureable judicial discretion’ that would permit ‘case by case “palm tree” justice’” (*Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269,at para. 43, citing *Garland*,at para. 40). As such, the reasonable expectations of the parties and public policy considerations must only be taken into account at the second stage of the analysis, provided that no established juristic reason is found (*Kerr*, at paras. 44-45). Simply put, if an established category of juristic reason applies, the analysis ends and the claim for unjust enrichment fails. Reasonable expectations and public policy cannot oust an established category of juristic reason where it is found to apply.
8. The unique circumstances of Michelle’s restitutionary claim — being an indirect claim involving third parties — demands a sharper examination of the object of the juristic reason. That is, a juristic reason *for what*? The majority suggests at various points that a juristic reason must simultaneously provide a reason for the defendant’s enrichment, and a reason why that enrichment must occur *at the expense of* the plaintiff. It is this approach that appears to lead the majority to place great weight on the distinction between the receipt and retention of a benefit. We remain unconvinced this is a helpful tack to take. Rather, we would simply say that a juristic reason need only provide reason for the defendant’s enrichment, as has been consistently stated in past jurisprudence (*Kerr*, at para. 32; *Garland*, at para. 30; *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, at para. 66; *Pettkus v. Becker*, [1980] 2 S.C.R. 834, at p. 848).
9. One can readily see how this important aspect of juristic reason can be easily overlooked and has been largely unaddressed. In the paradigmatic cases of unjust enrichment where only two parties are involved, and a transfer is made directly between them, the questions of enrichment and impoverishment may be one and the same. For example, if a transfer occurs by way of a gift from the plaintiff to the defendant, the plaintiff’s donative intent is both a juristic reason for the defendant’s retention of the wealth, and a reason for the defendant’s enrichment *at the expense of* the plaintiff. After all, it was the plaintiff who intended the gift from their assets. In our view, the fact that in many cases the juristic reason for the defendant’s enrichment simultaneously explains why that enrichment occurs at the expense of the plaintiff does not render this a requirement of the test for unjust enrichment.
10. The situation is of course very different where multiple parties are involved and wealth is not transferred directly from one to another. In these cases, despite there being a reason that explains why each person is entitled to a particular thing and why another no longer is, it will be near impossible to find an explanation that can simultaneously capture both. The following example, while not a case of unjust enrichment, is instructive. A person who is given a car could sell it to another, who bears no relation to the original donor. The donor and purchaser are in effect legal strangers. In these situations, demanding a reason that simultaneously explains why the purchaser is entitled to the car and why the donor is no longer entitled to it imposes an impossible burden. Simply put, the reason the purchaser has the car is not the same reason the donor doesn’t. The legal relationships of these individuals are mediated through other legal frameworks and actors and are not amenable to a single explanation. If the unjust enrichment analysis requires that juristic reasons have this kind of explanatory power, plaintiffs will almost always be successful in proving their absence in cases involving multiple parties and indirect transfers of wealth.
    * 1. The *Insurance Act* Establishes a Juristic Reason for Risa’s Enrichment
11. In this case, the issue at the first stage of the analysis is whether a beneficiary designation made pursuant to ss. 190(1) and 191(1) of the *Insurance Act* provides a juristic reason for Risa’s receipt and retention of the insurance proceeds. Arriving at an answer to this question requires an examination of the provisions of the *Insurance Act* and the legal relationships surrounding the (alleged) transfer. In our view, not only does the *Insurance Act* — in conjunction with the deceased’s policy — specifically direct the payment of the proceeds to Risa, but it expressly contemplates doing so even in light of the very kind of claim advanced by Michelle.
12. Section 191(1) of the *Insurance Act* provides that an insured may designate an irrevocable beneficiary under a life insurance policy, and thereby provide special protections to that beneficiary. From the moment an irrevocable beneficiary is designated, they have a right in the policy itself: the insurance money is not subject to the control of the insured or to the claims of his or her creditors and the beneficiary must consent to any subsequent changes to beneficiary designation. As it is undisputed that Risa was the validly designated irrevocable beneficiary of the policy, Risa is entitled to the proceeds free of all of the claims of Lawrence’s creditors. Simply put, the direction of this comprehensive statutory scheme, in conjunction with the deceased’s policy, constitutes a juristic reason for Risa’s enrichment (*Chanowski v. Bauer*, 2010 MBCA 96, 258 Man. R. (2d) 244; *Richardson*; *Love*).
13. The fact that Michelle had an agreement with Lawrence for the proceeds of the policy does not undermine the presence of this juristic reason. As Michelle’s rights are contractual in nature, she is a creditor of Lawrence’s estate and thus, by the provisions of the *Insurance Act*, has no claim to the proceeds. Indeed, the *Insurance Act* explicitly protects irrevocable beneficiaries from the claims of the deceased’s creditors. Section 191(1) provides that where an insured designates an irrevocable beneficiary, the insurance money “is not subject to the control of the insured, is not subject to the claims of the insured’s creditor and does not form part of the insured’s estate”. Thus, contrary to the suggestion of the majority, the *Insurance Act* does, with irresistible clarity, “preclude the existence of contractual . . . rights in those insurance proceeds” (Majority Reasons, at para. 70 (emphasis added)). The French version of s. 191(1) of the Act is equally clear stating that the proceeds “*ne peuvent être réclamées par les créanciers de l’assuré et ne font pas partie de sa succession*”.
14. The *Insurance Act*’s legislative history further supports Risa’s retention of the insurance proceeds notwithstanding Michelle’s claim. This history illustrates that the provisions of the *Insurance Act* were designed to protect the interests of beneficiaries in retaining the proceeds, and provide no basis whatsoever for a person paying the premiums to assume she would have any claim to the eventual proceeds. From the earliest days, the purpose of insurance statutes was in large part to securely provide for an insured’s beneficiaries. In 1865, the then Province of Canada (which included what is now Ontario) passed legislation enabling any person to enter into a contract to insure his life for the benefit of his wife and children, with the proceeds free from the claims of any of their creditors (*An Act to secure to Wives and Children the benefit of Assurances on the lives of their Husbands and Parents*, S. Prov. C. 1865, 29 Vict., c. 17, ss. 3 and 5). Subsequently in 1884, as outlined in Risa’s factum, “the legislation permitted a class of beneficiaries who were close family members of the insured (later known as ʽpreferred beneficiariesʼ) to enforce the contract and to sue in their own right. This was effected by means of a statutory trust in favour of the preferred beneficiaries” (R.F., at para. 73; see also *An Act to Secure to Wives and Children the Benefit of Life Insurance*, S.O. 1884, c. 20, s. 5; E. H. McVitty, *A Commentary on the Life Insurance Laws of Canada* (1962), at p. 36). Subsequent versions of the insurance statutes in the province also provided protection to “beneficiaries for value”, people who gave valuable consideration to the insured in exchange for designation as the beneficiary (*The Insurance Act*, R.S.O. 1960, c. 190). However, even under this regime, beneficiaries for value were only protected if a written description of the designation had been made (ss. 164(1) and 165).
15. In 1962, significant principled changes were made to the *Insurance Act*, including the abolition of statutory trusts and beneficiaries for value (McVitty, at pp. 36-39 and 137-38). Rather than protect beneficiaries’ interests by means of a statutory trust, the modern *Insurance Act* provided revocable beneficiaries with a statutory cause of action to enforce insurance contracts for their own benefit against the insurer (*Insurance Act*, s. 195). The modern *Insurance Act* also “shifted the regime away from granting beneficiaries any control or proprietary interests in the proceeds. The sole exceptions were those beneficiaries validly designated by the insured as irrevocable beneficiaries — a status newly introduced in 1962 — and valid assignees” (R.F., at para. 75). These changes to the insurance scheme in Ontario represent the legislature’s continued intention to protect beneficiaries from the claims of the insured’s creditors, and to underline that a beneficiary’s entitlement to the proceeds is not undermined by her status as a “mere volunteer”. A beneficiary is not more or less entitled on the basis of her contribution to the policy’s premiums. The *Insurance Act* is deliberately indifferent to the source of the premium payments, and renders the actions of the payers irrelevant as far as the beneficiaries are concerned.
16. Of course, beneficiaries who pay the premiums are not left completely vulnerable by the Act. These beneficiaries — like any beneficiary — can secure their priority over the insurance proceeds by requesting either designation as the irrevocable beneficiary of a policy, or requesting an assignment of the policy. This allows a promisee to protect themselves from the risk of contractual breach. Absent these steps, there are no guarantees for beneficiaries who pay premiums: the *Insurance Act* is explicitly and deliberately indifferent to the source of the premium payments.
17. Consistent with the scheme, courts have declined to order restitution of insurance proceeds where plaintiffs pay the policy premiums under the mistaken belief that they are the named beneficiary.In *Richardson*, a plaintiff disputed the payment of her husband’s insurance policy proceeds to his former wife, the defendant, who had remained the named beneficiary on the policy. The plaintiff argued that she had paid the premiums of the policy under the mistaken belief that she was in fact the named beneficiary, and therefore, that the defendant was unjustly enriched by the retention of the proceeds. The Ontario Court of Appeal upheld the motion judge’s decision denying the plaintiff’s claim in unjust enrichment. The plaintiff’s contribution to the premium payments did not render the defendant’s enrichment unjust. There was a juristic reason for her enrichment: the designation of the defendant as the beneficiary of the policy.
18. If we were to impose on juristic reasons a requirement that they explain simultaneously a defendant’s enrichment *and* a plaintiff’s loss, it is unclear to us how the *Insurance Act* could then ever constitute a juristic reason in a third-party dispute relating to insurance proceeds. If plaintiffs can establish some correspondence in relation to a portion of the proceeds — e.g. through mistaken premium payments — the *Insurance Act* will likely never bar their claim to unjust enrichment. In our view, this is an especially troubling result in respect of the legislative history of the *Insurance Act*; it would undermine a deliberate legislative choice to divorce entitlement to the proceeds from the payment of the premiums.
19. On the basis of this view of juristic reason, the majority disagrees that the *Insurance Act* constitutes a juristic reason in this case. On their view, this is because the *Insurance Act* does not explicitly oust the prior contractual claims of third parties to the policy proceeds. They rely on the Ontario High Court of Justice’s decision in *Shannon*, finding that it supports the proposition “that while the *Insurance Act* may provide for the beneficiary’s entitlement to payment of the proceeds, it ‘does not specifically preclude the existence of rights outside its provisions’”, including contractual entitlements such as Michelle’s (Majority Reasons, at para. 72).
20. We agree with Blair J.A., that it is unclear what proposition *Shannon* actually supports. In that case, the plaintiff argued that the provisions of the separation agreement became impressed with a trust, and that the designation of other beneficiaries in breach of that agreement constituted a disposition of trust property. We would note that the only way the designation of another beneficiary could constitute a disposition of trust property is if the trust arose at the time the agreement was concluded. Justice McKinlay explained that it would be unjust for the “plaintiff’s clear rights under an agreement with her husband for good consideration [to] be taken away in favour of a niece and nephew who have given no consideration for those rights” (p. 461). She found that the proceeds of the insurance policy were impressed with a trust in favour of the plaintiff. She did not specify whether the trust was intentional (constituted at the time of formation) or constructive (remedial). To the extent the reasons suggest that the designation of beneficiaries according to the *Insurance Act* does not constitute a juristic reason because the beneficiaries are mere volunteers, we reject this argument. The very purpose of the *Insurance Act* is to distribute the policy proceeds to beneficiaries because of their designation as such, irrespective of their contribution directly to premiums or to the insured.
21. Instead, *Shannon* and the jurisprudence that has followed can be understood to support the proposition that on the facts of a given case aseparation agreement can be found to create either a trust over, or an equitable obligation in, the insurance proceeds. Indeed, this is the proposition for which *Shannon* is consistently cited. In *Fraser v. Fraser* (1995), 9 E.T.R. (2d) 136, the British Columbia Supreme Court, citing *Shannon*,found that “the covenant to maintain the beneficiary in the separation agreement is tantamount to an irrevocable designation of the beneficiary under the provisions of the *Insurance Act*” (para. 18). In *Ontario Teachers’ Pension Plan Board v. Ontario (Superintendent of Financial Services)* (2004), 70 O.R. (3d) 61, the Ontario Court of Appeal found that pre-retirement death benefits in a vested Ontario Teachers’ Pension Plan were validly assigned to a former spouse of the plan member under a separation agreement and that “a subsequent spouse who marries after a valid assignment of a pre-retirement death benefit to a former spouse should not reasonably expect to receive the already-assigned interest” (para. 62 (emphasis added)). In *Snider v. Mallon*, 2011 ONSC 4522, 3 R.F.L. (7th) 228, the Ontario Superior Court, citing *Shannon*, declared that “[i]t is therefore a well settled principle that an undertaking in a separation agreement creates a trust interest which will operate to protect the beneficiary should the undertaking party fail to honour his or her commitment” (para. 13). So too in *Bielny v. Dzwiekowski*, [2002] I.L.R. ¶I-4018 (Ont. S.C.J.), where the court found that the “law relating to the irrevocable designations of beneficiaries in separation agreements has been settled for some time” (para. 8), aff’d [2002] O.J. No. 508 (QL) (C.A.).Unlike these cases, Michelle’s interest in the policy does not arise from the contract itself, but from its breach.
22. Therefore, we do not take *Shannon* to be authority for the proposition that a prior agreement to be designated the beneficiary of an insurance policy, without more, is sufficient to undermine the operation of an established juristic reason. A contractual entitlement is insufficient to create this kind of interest in the policy or its proceeds. This principle is illustrated in *Milne*: prior to passing away, a deceased, in breach of an order from a family law proceeding, changed the beneficiary designation from the plaintiff, his former spouse, to his current spouse. The former spouse argued that as a result of the breach of the order, which she likened to a contract in the family law context, she was entitled to the proceeds. The court found that while she was not entitled to the proceeds, she was entitled to damages for the contractual breach in the amount of the proceeds. While this case differs from the present appeal in that the estate’s solvency was not in issue, it is nonetheless instructive. Similarly, in *Kang v. Kang Estate*, 2002 BCCA 696, 44 C.C.L.I. (3d) 52, the appellant claimed that her husband promised to name her as the designated beneficiary on his life insurance policy if she came with him to Canada. She accompanied her husband to Canada, but he retained his sister as the designated beneficiary under his policy of life insurance. The Court of Appeal rejected the appellant’s claims, distinguishing the case from others in which “trial judges have imposed a constructive trust to remedy a husband’s breach of fiduciary duty owed to his wife after separation” flowing from the covenant in a separation agreement (para. 9). On its own, the agreement was not sufficient to give the plaintiff any entitlement to the proceeds, and ground a claim in unjust enrichment.
23. The majority attaches significance to the fact that Michelle specifically contracted for the proceeds of the policy. She continued to pay the policy’s premiums on this basis. Put another way, in the view of the majority, Michelle is not an ordinary creditor of Lawrence’s estate; rather, she is in a special position vis-à-vis the policy proceeds. Respectfully, we cannot agree that this changes the nature of Michelle’s claim to the policy proceeds. In immunizing beneficiaries from the claims of the insured’s creditors, the *Insurance Act* does not distinguish between types of creditors. Creditors of the insured’s estate simply do not have a claim to the insurance proceeds. There is no basis to carve out a special class of creditor who would be exempt from the clear wording of the *Insurance Act*. Bearing in mind the history of the relevant provisions of the *Insurance Act* and their clarity, neither Michelle’s contributions to the policy, nor her contract with Lawrence are sufficient to take her outside the comprehensive scheme and grant her special and preferred status.
24. That being said, we do not dispute Blair J.A.’s statement that the “designation of a beneficiary as an irrevocable beneficiary under the *Insurance Act* [does not] invariably trum[p] a prior claimant” (para. 91). Whether the *Insurance Act* fails to trump a prior claimant depends on the character of that prior claim. Where by some agreement, or otherwise, the insured has “placed the policy or its proceeds beyond his or her ability to deal with them, and, therefore, beyond his or her ability to make the purported irrevocable designation”, the *Insurance Act* will not constitute a juristic reason for a beneficiary’s enrichment (para. 91). For example, if a claimant successfully established the existence of a trust over the policy or its proceeds prior to the designation of an irrevocable beneficiary, her beneficial or proprietary interest in the policy would have prevented the insured from designating an irrevocable beneficiary. Any such designation would be invalid. In those circumstances the *Insurance Act* could not constitute a juristic reason for a defendant’s enrichment.
25. But in the normal course, a contract between two parties does not at the time of the contract formation, be it for legal or equitable reason, prevent a promisor from dealing with the property that is the subject matter of the contract. In *Ladner Estate, Re*, 2004 BCCA 366, 40 B.C.L.R. (4th) 298, the British Columbia Court of Appeal considered the appropriate remedy for the deceased’s breach of his covenants in a separation agreement to pay permanent spousal support to the appellant, and to maintain insurance to secure payment of that support. Instead of acting in accordance with the agreement, the deceased made the insurance proceeds of his policies payable to his estate, and thus available for estate administration costs, and vulnerable to the claims of unsecured creditors. The appellant argued that contract law does not permit a party (or their estate) to gain an advantage from wrongful conduct. The Court of Appeal was unpersuaded, finding that a promisor’s wrongdoing “does not confer a property right or priority on the other party to the contract” (para. 23).
26. This is indeed reflected in the reasons of the majority, which acknowledge that in the regular course, Michelle could pursue a remedy for breach of contract against Lawrence’s estate. It is only because Lawrence’s estate has no significant assets to satisfy an order for payment that any claim is being made to the insurance proceeds. As such, even on their view, Michelle’s interest specifically in the policy proceeds does not crystallize until Lawrence’s death, that is, long after Lawrence designated Risa as the irrevocable beneficiary. Thus, contrary to Lauwers J.A.’s dissenting reasons at the court below, the agreement did not place the policy or its proceeds beyond Lawrence’s ability to deal with them.
27. We note that the thrust of the cases on which Michelle seeks to rely for her position recognize either explicitly or implicitly that unjust enrichment is available only where there is some proprietary or equitable entitlement to the insurance proceeds. In *Steeves*, the New Brunswick Queen’s Bench found that the insured “held the inchoate proceeds of the insurance policy in the event of his death in trust for the plaintiff” (para. 36). In *Schorlemer*, the Ontario Superior Court of Justice summarized the relevant legal principles as follows: “. . . where an insured is obligated under a separation agreement to designate the other party or their children as a beneficiary, that agreement will prevent the designation of another person as beneficiary . . .” (para. 48). These cases confirm, in our view, that a claim in unjust enrichment for the proceeds of a life insurance policy cannot be rooted in a mere contractual entitlement.
28. Still, the majority does not accept that the *Insurance Act*’s clear bar of creditor claims against beneficiaries is sufficient to oust Michelle’s claim against Risa. While acknowledging that Michelle’s breach of contract claim renders her a creditor of Lawrence’s estate, they nonetheless insist that this has no bearing on a potential claim in unjust enrichment. Respectfully, we cannot agree. Framed in either contract or unjust enrichment, Michelle has not shown a proprietary or equitable entitlement to the proceeds. Michelle relies on her rights as a contractual creditor to anchor a claim in unjust enrichment. In our view, the *Insurance Act* explicitly ousts claims of this character.
29. In sum, we consider that the *Insurance Act* reflects a deliberate policy choice to channel the insurance proceeds directly to the designated beneficiary free from any and all creditor claims. The Act is a juristic reason for the transfer to Risa. The relevant jurisprudence, including *Shannon*, does not dislodge or undercut the clear statutory language. Instead, the cases confirm that, absent some proprietary or equitable entitlement to the insurance proceeds, creditors cannot use unjust enrichment claims to undermine the *Insurance Act* and an insured’s valid designation.
    * 1. Policy Considerations Weigh Against Allowing Michelle’s Claim for Unjust Enrichment
30. Even if the *Insurance Act*, on its own, did not establish a juristic reason for Risa’s enrichment, we add that the policy considerations at the second stage of the juristic reason analysis would nevertheless favour the denial of restitution to Michelle.
31. The legislature’s choice for intended beneficiaries to receive the proceeds is rooted in the sound policy considerations underpinning that choice. Estate distributions are subject to frequent disputes, leading to lengthy and expensive litigation. Tying up insurance proceeds in litigation can create immense hardship for beneficiaries, many of whom stare at financial instability without support from their now-deceased spouse. Where there is a significant delay between an insured’s death and the receipt of the insurance proceeds, designated beneficiaries may struggle to take care of household expenses or meet basic needs. Such is the case with Risa.
32. The *Insurance Act* is structured in large part to minimize these hardships. Irrevocable beneficiary designations are meant to provide the insured and beneficiary alike with the certainty that the insurance proceeds will be received in a timely manner free of creditor claims. As per s. 196(1) of the *Insurance Act*, “Where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.” The *Insurance Act* provides even greater protection of the policy and proceeds where an irrevocable beneficiary is designated. In that case, from the moment such a designation is made, the policy and its proceeds are not subject to the claims of any of the insured’s creditors and are immune from any attempted redesignations. The inability of creditors and the insured to access or control the policy proceeds provides certainty to the insured and beneficiary that the latter will be provided the support that they were intended to have.
33. At the expense of the above considerations, the majority seems to stress the *Insurance Act*’s interest in certainty for insurers, but not the insured or their chosen beneficiaries. The *Insurance Act* purportedly outlines who should *receive* the proceeds, but not who should *retain* them. Michelle makes the same argument. While it is true that the insurance scheme benefits when insurers can identify with certainty the person who is entitled to receive a policy’s proceeds, the provisions of the *Insurance Act* go beyond this. If the interests protected by the beneficiary provisions were principally those of the insurers, there would be no need for the proceeds to be free from creditor claims, or to bypass the insured’s estate. A statute could achieve certainty for the insurer by merely directing that the proceeds be paid to the insured’s estate, to be distributed according to the insured’s testamentary dispositions. The function of these provisions is not merely to ensure that a beneficiary *receive* the proceeds, and they should not be treated as such.
34. In fact, if Risa only has a right to receive but not retain the proceeds, it would seem to follow that all insurance proceeds would be subject to the claims of creditors, contrary to the express wording of the provisions. As such, if one were to accept — which we do not — that there is a principled basis to distinguish between creditors like Michelle and other creditors of an insured’s estate, insurance proceeds would still end up being the subject of disputes and litigation. Various creditors would argue that they, too, have preferred status that should exempt them from the operation of the *Insurance Act*. Regardless of whether these creditors would ultimately be successful in their claims for unjust enrichment, the result reached by the majority invites them to nonetheless attempt to collect on the insured’s policy proceeds and tie up the proceeds in potentially protracted and expensive litigation, contrary to the intention of the *Insurance Act*. Even worse, this could leave designated beneficiaries vulnerable not just to creditors, but also to those who have sustained the policy for any period. Beneficiaries and insureds will thus be denied the certainty that the *Insurance Act* would otherwise provide.
35. Conclusion
36. Death is sometimes accompanied by much uncertainty and strife. To the extent that it is possible, the *Insurance Act* moderates such uncertainty by creating a comprehensive regime for all those involved in a life insurance contract. Notwithstanding our view that there is no corresponding deprivation of Michelle, there is also a juristic reason for the transfer to Risa; we would not attenuate the sensible regime put forward by the legislature. As Michelle’s claim of unjust enrichment is not made out, we would dismiss the appeal.

*Appeal allowed,* Gascon *and* Rowe JJ. *dissenting.*

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1. There is no dispute between the parties that the Oral Agreement was entered into sometime prior to the date on which Lawrence designated Risa as irrevocable beneficiary (transcript, at pp. 6-7). [↑](#footnote-ref-1)
2. The exception in subs. (4) does not apply in the circumstances of this case. [↑](#footnote-ref-2)
3. Whether the availability of a remedial constructive trust is limited to cases involving unjust enrichment or wrongful acts need not be decided in the present case (see para. 95). [↑](#footnote-ref-3)