CITATION: Scott Trebell v. Canada Life Assurance Company, et al., 2025 ONSC 2884
COURT FILE NO.: CV-20-00651646-0000
DATE: 20250514

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
SCOTT ROBERT WESLEY TREBELL Plaintiff/Applicant	Philip H. Horgan and Raphael T. R. Fernandes, for the Plaintiff
– and –	Rebecca Grima and Jayrashree Sivakumar, for the Defendant The Canada Life Assurance Company
THE CANADA LIFE ASSURANCE COMPANY, DARRELL M. KEMP, and JOHN DOE INSURANCE AGENCY a.k.a. NIAGARA FINANCIAL Defendant/Respondent	Barry Papazian, K.C., for the Defendant Darrell M. Kemp
	HEARD: March 11, 2025

AKAZAKI J.

REASONS FOR JUDGMENT

OVERVIEW

[1] This life insurance coverage dispute turns on the interpretation of policy activation provisions of the *Insurance Act*, R.S.O. 1990, c. I.8 (the "*Act*"). In 2014, the life insured, Elizabeth Trebell, switched insurance companies. Unbeknownst to her and her doctors, she may have been developing colon cancer. In 2018, she succumbed to that cancer. According to Canada Life's interpretation of s. 180(1)(c) of the *Act* italicized below, an insurer is entitled to deny a claim by mining the life insured's medical history during the delay between completion of an insurance application and the policy's delivery:

> 180 (1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless,
>
> (a) the policy is delivered to an insured, the insured's assign or agent, or to a beneficiary;

> (b) payment of the initial premium is made to the insurer or its authorized agent; and
>
> *(c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.* [Emphasis added.]

[2] Canada Life interprets paragraph (c) as meaning that the contract never takes effect if a change to insurability occurs between completion of the application and policy delivery. The policy remains subject to this contingency, possibly for years or decades.

[3] Later in the *Act*, s. 183 governs the insurance applicant's duty to disclose truthfully her medical condition, usually in a medical examination and in answers to a lengthy questionnaire. Absent fraud, breaches of s. 183 cannot be used to contest insurability two years after delivery of the policy, because of s. 184(2):

> 184(2) Subject to subsection (3), where a contract, or an addition, increase or change referred to in subsection 183 (3) has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose or a misrepresentation of a fact required to be disclosed by section 183 does not, in the absence of fraud, render the contract voidable.

[4] Because ss. 183 and 184 deal with insurance applicants' misrepresentations and non-disclosure of known facts, Canada Life relies on case law interpreting s. 180(1)(c) as applying to changes in insurability of which neither party is aware: *Ryan v. Canada Life Assurance Co.* (1999), 179 Nfld. & P.E.I.R. 306 (C.A.), at para. 137; David Norwood & John P. Weir, *Norwood on Life Insurance Law in Canada,* 3rd ed., (Toronto: Carswell, 2002), at p. 97.

[5] All counsel appearing on the motion agreed there was no Ontario case, for or against, directly dealing with the application of s. 180(1)(c) in the precise manner advanced by Canada Life. In *Pusateri's Ltd. v. Prudential of America Life Insurance Co (Canada)* (2001), 143 O.A.C. 115, at para. 8, the Court of Appeal declined to rule on this point, because it agreed with the trial judge's finding that there were material misrepresentations rendering the policy voidable under s. 183.

[6] For the reasons below, I conclude that s. 180(1)(c) does not permit Canada Life to reach back into the medical records and deny coverage, beyond the two-year period in s. 184(2). The rationale for this decision is not directly based on the two-year limitation, but the limitation does provide a rational outer limit to the insurer's ability to reach back into the issue of the life insured's insurability. The insurer's extension of the positive disclosure obligations for the insurance application in the policy delivery receipt also supports the conclusion that this two-year period is a practical way to resolve the textual and grammatical ambiguity of the statute. To interpret s. 180(1)(c) as providing an indeterminate escape from liability is contrary to the intention of s. 180 to establish certainty for the benefit of the parties that life insurance came into effect.

BACKGROUND

[7] Scott and Elizabeth Trebell were divorced. Their separation agreement required Ms. Trebell to insure her life for $500,000, with Scott Trebell as beneficiary on behalf of their daughters.

[8] On May 8, 2014, Ms. Trebell attended for an annual physical with her family physician, Dr. Cynthia Blair. Dr. Blair recorded that she was healthy and advised Ms. Trebell to return in a year.

[9] Hoping to save on premiums, Ms. Trebell cancelled her existing policy with Transamerica Life and applied for a London Life term life insurance policy on July 8, 2014 (the "Application"). Canada Life is the successor to London Life.

[10] Canada Life relied on the following questions and answers in Ms. Trebell's application to London Life:

> 38(a) Since the date you last consulted your personal physician, have you consulted or been referred to any other physician?
>
> Answer: **no.**
>
> (b) Do you now have any disability, disease or health problem or are you under treatment by diet, medicine or other means?
>
> Answer: **no.**
>
> (c) Within the past 3 months have you undergone a medical or diagnostic test for which you have not received the results or are you scheduled for or have you been advised to have any testing or procedure done?
>
> Answer: **no.**

[11] On August 6, 2014, London Life issued the life insurance policy to Ms. Trebell with a face amount of $500,000.

[12] On August 28, 2014, Ms. Trebell attended at her family physician's office and saw Dr. Petra Tziougras for symptoms including rectal bleeding and pain. The history taken by Dr. Tziougras noted the patient had painful bowel movements since May, and she attended in August because of "progression of her pain". Dr. Tziougras recommended conservative treatments including an ointment, oral medication and change of diet. She also referred the patient for a sigmoidoscopy, a type of examination of the lower colon.

[13] On September 18, 2014, Ms. Trebell saw Dr. Farzad Hariri, further to the referral. Dr. Hariri noted a five-month history of rectal bleeding and painful bowel movements, and a

recent exacerbation of symptoms. He could not complete the sigmoidoscopy because of pain. He opined in his consultation note that the patient suffered from fissures, a kind of damage to the rectal lining. He prescribed a calcium channel blocker ointment. He recommended a colonoscopy to screen for colorectal cancer.

[14] London Life delivered the insurance policy to Ms. Trebell, care of Darrell Kemp, her insurance agent, on September 24, 2014. At that time, the colonoscopy was still pending. Ms. Trebell signed a delivery receipt dated the same date, containing a declaration that there had been no change to her insurability, including her health status, since she completed the application. She also acknowledged that if this declaration was not true and correct, the life insurance may not be in effect.

[15] Therefore, at the time of the delivery of the policy, London Life was unaware of her symptoms and medical attendances.

[16] Dr. Hariri's December 2, 2014, colonoscopy revealed a large lesion in the posterior anal canal. Biopsies taken from the lesion confirmed the diagnosis of colon cancer. On March 24, 2018, Ms. Trebell died of colon cancer.

[17] In April 2018, Scott Trebell filed a claim for the life insurance proceeds. Dr. Empringham, the insurer's Medical Director, reviewed the claim file, including the health records released pursuant to the claim. Dr. Empringham concluded that if the insurer had known about the history of rectal bleeding and the medical attendances, London Life would have postponed the Application pending the results of the colonoscopy. Because of this opinion, London Life issued a coverage denial letter dated May 23, 2018, citing "a change in insurability from the date of application to the time the policy was delivered." It then issued the estate a cheque for $1,780 to refund the premiums.

[18] The chronology and medical history were not in dispute. Mr. Trebell objected to the opinion affidavit of Dr. Empringham as lacking in impartiality.

SUMMARY JUDGMENT PRINCIPLES AND ISSUES TO BE DECIDED

[19] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66, the Supreme Court settled the standards to be applied to a summary judgment motion under rule 20.04 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. If the court is satisfied that there is no genuine issue *requiring* a trial, the court must grant summary judgment. Even if there appears to be such an issue, a trial is not required if the motion judge can achieve a fair and just adjudication on the merits using enhanced authority to weigh evidence, evaluate credibility, and draw reasonable inferences.

[20] Mr. Trebell's counsel argued that summary judgment should be granted, because the two-year incontestability provision in s. 184(2) precluded Canada Life from denying coverage and because the insurer has not met the burden of proving there was a change in Elizabeth

Trebell's insurability between July 8 and September 24, 2014. His counsel also raised provisions in the policy documents exempting it from the effect of s. 180(1) of the *Act*.

[21] Canada Life's position was that the motion should fail, unless s. 184(2) precludes reliance on s. 180(1)(c) to argue a change of insurability. If it is not precluded from arguing a change in insurability, the evidence of its medical director is that, had it known of the medical attendances and symptoms, Canada Life would have postponed the policy's coming into effect. That postponement would have allowed the cancer diagnosis to be revealed before the policy came into effect. This evidence, at the very least, could create a triable issue requiring trial.

[22] Weaving these positions together, I frame the issues as follows:

1. Interaction of ss. 180(1)(c) and 184(2)

2. Any provision contrary to s. 180(1)

3. Whether Canada Life's medical director's evidence raises a triable issue

1. INTERACTION OF SS. 180(1)(c) AND 184(2)

[23] Section 180 deals with an important aspect of life insurance: its coming into effect. As a protection to the life insurer from death claims for which it has not fully completed its underwriting, its operative wording is couched in the negative: the policy does *not* take effect, unless two events occur, and a non-event remains non-occurring. It is the last condition that defines the controversy here. The enduring contingency of s. 180(1)(c) appears to derogate from the certainty afforded to the policyholder and beneficiary by the delivery of the policy.

[24] There is no language in s. 180(1)(c) explaining how either party is to know whether a change to insurability has *not* taken place – a negative which poses logical problems. As observed by the appellate courts in *Ryan* and *Pusateri*, s. 183 (or its equivalent in prior versions, or in other provincial legislation) deals with active disclosure issues during the application process, typically consisting of a health questionnaire and health examination. In contrast, s. 180(1)(c) is passive and enigmatic. In *Pusateri*, at para. 8, the Court of Appeal referred to its earlier holding in *Wagner Bros. Holdings Inc. v. Laurier Life Insurance Co*. (1992), 8 O.R. (3d) 609 at 615 (C.A.), that s. 180(1)(c) can prevent the contract from coming into effect, even if the insured was unaware of any change in insurability during the relevant interval.

[25] Mr. Trebell relies on the incontestability provision in s. 184(2). It states that if a contract has been in effect for two years, the failure to disclose a misrepresentation of a fact required to be disclosed under s. 183 does not render the contract voidable. Canada Life points out that s. 184 does not apply if the contract never came into effect. The logic is compelling. This does not end the inquiry, because the legislature's intent to compartmentalize

disclosure, voidability, and incontestability in ss. 183 and 184 implies that Queen's Park did not intend s. 180(1)(c) to provide a separate path for the insurer to contest coverage on the basis that the insurance never took effect.

[26] Any statutory exegesis must start with the general arrangement of the section as a unit, before focusing on the words and phrases. Statutes follow well-established drafting conventions: Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis, 2022), at p. 203. When a bill is drafted as a stand-alone work, such as a chapter in the revised statutes of Canada or a province, the first convention is to group related concepts and provisions and sequence words, phrases, clauses and larger units following a rational plan: pp. 208-209. The unifying modern principle espoused by Driedger to read words in an Act "in their entire context" embraces meaning according to their place in the sequence and group: p. 7. Thus, the trite idea that words must be read as part of the whole Act does not mean there must be interaction between life insurance and fire insurance, beyond the most basic principles set out in Part III, which governs all insurance contracts in Ontario.

[27] Observance of statutory groups and sequences thus prevents extraction of an implied meaning that does not belong with the other elements of the provision. Professor Sullivan, at pp. 208-209 of her text, gave an elegant example from La Forest J.'s dissent in *R. v. Finta*, [1994] 1 S.C.R. 701, at p. 744, in which he questioned why Parliament would have created a criminal offence in the General Part of the *Criminal Code*, and not in the catalogues of Offences. This drafting convention addresses an important legislative purpose. Statute law speaks to an audience wider than the legally trained. If s. 183 contains the disclosure duty and the jeopardy for failing to disclose, it relieves the lay reader of the statute from hunting around for other provisions rendering the life insurance void or voidable.

[28] The implication in s. 180(1)(c) that an insurer can count on a policy not taking effect if there has been a change in insurability during the brief interval between application and policy delivery suffers from the absence of a mechanism for discovering that non-occurrence during the life insured's lifetime. Glancing three and four sections later, the legislature codifies such a mechanism in ss. 183 and 184, by allowing the insurer to void the policy for disclosure breaches and limiting the insurer's opportunity to contest the disclosure to two years after the insurance comes into effect. The reader of ss. 180 through 189 can see the organized progression of subjects from the inception of a life insurance policy in s. 180 to its potential lapse and reinstatement in s. 189. The focus here is on ss. 180 to 184:

> 180: Contract taking effect
>
> 181: Default in paying premium
>
> 182: Payment of premium and grace period
>
> 183: Applicant's duty to disclose
>
> 184: Incontestability two years after contract taking effect

[29] Borrowing from La Forest J.'s reasoning, one must strongly question why the legislature would reserve an escape route for the insurer without time limit for innocent non-disclosure or misrepresentation in s. 180(1)(c) and impose a two-year limit for more culpable disclosure breaches by the applicant, short of fraud, in s. 184. A closer analysis of s. 180 reveals a more plausible meaning in the progression to s. 184.

[30] Within s. 180, there are three conditions for a contract taking effect, awkwardly expressed in the negative and treating the activation conditions as exceptional events ("a contract does *not* take effect *unless*"). This grammatical structure runs counter to the general expectation that life policies bear inherent value once in the hands of the applicant or beneficiary.

[31] First, in s. 180(1)(a), the delivery of the policy entails a definitive act by the insurer to signify its obligation. This prevents applicants from assuming they are insured simply by applying for the insurance and receiving no rejection.

[32] Second, in s. 180(1)(b), the initial premium is important to activate the policy, because s. 182(2) provides a grace period for payment "other than the initial premium." In conjunction with this, s. 181(2) allows the applicant to activate the insurance by sending a cheque for the premium by registered letter and deeming payment at the time of registration.

[33] Third, s. 180(1)(c) entails a non-occurrence in that no change to insurability has occurred. For ease of analysis, stripping the text to its logical elements helps to illustrate the point:

> a contract does not take effect … unless no change has taken place in the insurability of the life to be insured … between the time the application was completed and the time the policy was delivered.

[34] Reading the phrase, "no change has taken place," in a manner allowing retrospective treatment of the policy as never having come into effect defeats the purpose of the other two conditions of s. 180(1), which is to create certainty that the insurer is not liable to insure the life before the exchange of the policy and the premium. Because s. 180(1)(c) requires a negative condition to activate the contract from a null state, in many cases neither party can ever be certain the contract exists.

[35] The purpose of s. 180 is clarity to the parties about the existence of insurance. In contrast, a literal reading of s. 180(1)(c) throws a blanket of uncertainty over the insurance and forces the purchaser and the beneficiary to make other financial arrangements in the event the policy was null and void all along. Such an outcome defeats the purpose of buying the insurance. In the case of Ms. Trebell, the only way for her to be certain of honouring the terms of the separation agreement would have been to amass an equivalent $500,000 self-insured reserve fund for her daughters. Taken to its logical conclusion, Canada Life's position upends the market for accepting premiums against the actuarial risk of death.

[36] It would thus be possible for an insured to pay premiums dutifully for decades and pass away without ever knowing that the insurance policy has no value apart from the refunding of premiums to the estate. The life insured might never know for certain whether the policy

came into effect, because the medical data confirming that "no change has taken place" could be unknown until a post-mortem review. It is hard to imagine it was the legislators' intent to create an insurance regime involving such widespread uncertainty.

[37] Ordinarily, in insurance law, the insuring agreement of a policy provides a general obligation to insure, and words such as "unless," "except," or "excluding" carve out instances where the insurance does not apply: *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33, [2010] 2 S.C.R. 245, at paras. 26-27 ("*Progressive Homes*"). Although *Progressive Homes* described a general liability policy, the ordinary understanding of any insurance is that the policy provides coverage in the alternating structure of coverage, exclusions, and exceptions from exclusions. Conditions allowing the insurer to void the policy, such as material misrepresentations or non-disclosures, are rooted in the insured's knowledge and the idea that insurance policies are *uberrimae fidae* – contracts of utmost good faith with implied obligations of mutual disclosure.

[38] The reasonable expectation of life insureds is that, provided they do not lie or withhold information in a questionnaire or medical examination, and after surviving any pre-existing health conditions for two years, their life is insured to look after their loved ones, dependants, business partners, etc. This is the purpose of sequencing s. 184 after s. 183. Mr. Trebell's case typifies many family law settlements in which child support obligations are secured by life insurance. If the legislature intended to interfere with the reasonable expectations of parties to settle their affairs with the use of life insurance and other financial instruments, public policy would require clearer wording and a viable means for insureds and beneficiaries to know whether coverage exists.

[39] A further consequence of the literal reading of s. 180(1)(c), in the legal context, is that it would impose on the beneficiary a burden of proving a negative – that the life insured suffered no change in insurability during the pre-delivery stage. The word "unless" means the absence of change must be shown to activate the contract after the life insured's death. How does the beneficiary prove there was no change in the applicant's condition, years later? The argument that all life insurance policies are presumptively ineffectual until it is proven that no change to insurability occurred during the initial interval potentially imperils every policy of life insurance in Ontario. Given the harmony in provincial legislation, the same could be said of most life insurance policies in Canada.

[40] The medical record evidence lacks a cancer diagnosis or anything beyond a precautionary screening before the delivery of the policy. Against this backdrop, a construction of s. 180(1)(c) as a non-time-limited escape route for life insurance could turn many life insurance cases into an exercise in forensic examination of archival medical data by insurance company medical experts. The exercise would necessarily occur after death removes the life insured's ability to contribute to the inquiry.

[41] The literal and isolated meaning or implication of a statutory provision can be rebutted if it produces absurd or extremely unreasonable results: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 27. Given that s. 180(1)(c) and similar provisions in the *Insurance Act* operate as statutory terms and conditions of insurance, this restriction on the construction

of statutes is consistent with the principle of insurance law that courts should be loath to enable the insurer to pocket the premium without risk: *Consolidated-Bathurst v. Mutual Boiler*, [1980] 1 S.C.R. 888, at pp. 901-02.

[42] Canada Life's interpretation of the provision therefore defies the conventions of legislative drafting and imports potentially absolute uncertainty into the initial phase of the insurer-insured relationship, contrary to the purpose of s. 180 is to impose certainty about the insurance. The literal meaning therefore appears invalid.

[43] If that interpretation is invalid, what purpose does s. 180(1)(c) serve?

[44] Section 180(1)(c) appears as the final element of a series of three conditions for the policy to take effect. The other two elements concern inception: delivery of the policy and payment of the initial premium. It makes sense that all three conditions should be rooted in the earliest stage of the contract. Any life insurer's suspicions are raised if the life insured dies right after the policy is taken out. Because of the profound unfairness to an insurer in such conditions, the statute leaves it open for an insurer to scrutinize the deceased's cause of death in relation to any medical condition that started during the interval between the application and the delivery of the policy.

[45] Without pre-defining how such a dispute might play out, Canada Life's strategy to mitigate ambiguity or contingency resulting from s. 180(1)(c) was to include in the delivery receipt a requirement for Ms. Trebell, now described as the "owner" and not the "applicant," that no change has occurred in her insurability or health during the interval between the application and policy delivery. Because this wording of the acknowledgement of receipt tracked that of s. 180(1)(c), the insurer imposed its own contractual augmentation by treating it as a continuation of the disclosure obligations under s. 183. The need for such augmentation, for certainty on the insurer's end, was evidence that a construction of s. 180(1)(c) as an indeterminate escape clause for the insurer cannot withstand scrutiny.

[46] Interpreting s. 180(1)(c) as a limited escape provision for an insurer without the disclosure requirements of ss. 183 and 184 is consistent with the legislative architecture of these life insurance provisions in that it is the third element defining the start of the policy. An inception provision cannot be construed as lingering perpetually, when the statute limits the insurer's ability to contest actual disclosure failures during the application to two years.

[47] Reading s. 180(1)(c) as allowing an insurer to comb through medical records well beyond the two-year limit in s. 184(2) would imbue uncertainty into the insurance bargain to an extent wholly inconsistent with the nature of the insurance product. A life insured dying without knowing there was no contract of insurance defies the basic principles of contract law to such an extent that it cannot be the true intent of a statute regulating insurance contracts and imposing universal terms of the bargain. In the absence of a practical legal mechanism for ascertaining the lack of a change in insurability, s. 180(1)(c) should be limited to providing the insurer with grounds to contest the policy's coming into effect during the initial period of coverage, and for no longer than the two-year limit imposed by s. 184(2).

[48] Consequently, I decline to interpret s. 180(1)(c) as permitting an insurer to refuse to acknowledge that a life insurance contract took effect beyond the immediate aftermath of policy delivery. The fact that no time limit is defined could be a defect in the legislation, but the court's role is to read it and not to rewrite it. In practice, I fail to see how the insurer could contest the coming into effect under s. 180 beyond the two-year contestability period for material misrepresentations and non-disclosures under ss. 183 and 184.

2. PROVISIONS CONTRARY TO S. 180(1)

[49] Mr. Trebell's counsel submitted that provisions in the policy deferring the commencement of the two-year incontestability to the latest of three events, including the date the policy takes effect, ousted the effect of s. 180(1)(c). His counsel submitted there should be a conclusion analogous to that in *Wagner Brothers Holdings Inc. v. Laurier Life Insurance Co.* (1992), 8 O.R. (3d) 609, at p. 619 (referring to s. 157, an earlier iteration of s. 180):

> It seems to me that s. 157 of the Insurance Act has no role to play in the resolution of the issues whether and when this contract of insurance came into effect. Section 157's provisions are subject to provisions to the contrary in the application and the policy. In my opinion, there were provisions to the contrary in the application, whether or not the required premium was paid with the application.

[50] I do not agree. There is a potential argument that the policy provisions extending the commencement of the two-year incontestability period are to be read down because of the conflict with s. 184(2). However, I need not address it or detail the argument, because the provisions in the policy are not in conflict with s. 180(1).

3. WHETHER CANADA LIFE'S MEDICAL DIRECTOR'S EVIDENCE RAISES A TRIABLE ISSUE

[51] The plaintiff's objection to Dr. Empringham's affidavit and expert report is that he was an employee of the insurer and therefore cannot have been impartial. He was not cross-examined on his relationship with the insurer and his qualifications. Therefore, the objection remains contingent and, at this point, unfounded.

[52] I reject the idea that an employee medical professional cannot be impartial. Life insurers employ or retain doctors and other regulated health professionals for consistency and quality control in the assessment of claims. If they instruct their experts to skew assessments toward coverage denial, insurers risk bad faith liability and the professionals risk discipline including licence cancellation.

[53] Dr. Empringham's evidence could be admitted, not as an expert on the actual medical condition of the life insured during the interval between the application and the policy

delivery, but on his role as a participant in the review of Mr. Trebell's claim. Opinions from such witnesses are admissible, subject to the usual gatekeeper role of the court in the admission and reliance on opinions as an exception to the rule against hearsay: *Westerhof v. Gee Estate*, 2015 ONCA 206, 124 O.R. (3d) 721, at para. 64.

[54] The first aspect of Dr. Empringham's evidence related to an underwriting reassessment of the application. In particular, he stated that if Ms. Trebell had disclosed her daily consumption of a half-bottle of wine, as well as the result of her GGT blood test showing liver damage, London Life would have charged her a higher premium. I decline to consider this change in insurability, because it concerns the ss. 183 and 184 process for voiding policies for non-disclosure or misrepresentation. The two-year incontestability provision bars this ground for denial of the insurance claim.

[55] The second aspect of Dr. Empringham's evidence concerned the medical appointments from May to September 2018 relating to rectal bleeding and pain, as well as the scheduling of a colonoscopy:

> The second way in which London Life's decision would have changed related to Ms. Wallace's history of rectal bleeding. This is the portion of my review that is directly relevant to this proceeding. If London Life had known the information [about the bleeding, pain, and medical examinations], it would have postponed the Policy pending the results of the colonoscopy.

[56] Dr. Hariri recommended the colonoscopy for screening and his working diagnosis was that Ms. Trebell was suffering from fissures. There was no evidence that Ms. Trebell had reason to be worried about cancer, until the results of the colonoscopy. Insofar as her knowledge of a change in insurability is immaterial to s. 180(1)(c), what the insurer would have done with similar knowledge is also immaterial in the absence of a statutory mechanism for the insurer to acquire the knowledge or a practice of re-submitting the life insured to a further health examination. I do not consider the negative-option wording of the delivery receipt form as creating such legal jeopardy for the life insured and beneficiary, since it occurs after delivery of the policy. Section 180 does not require the delivery to be acknowledged. I need not decide whether the declaration in the receipt form imposed additional disclosure requirements on Ms. Trebell as owner of the policy, because she was unaware of the cancer.

[57] Since I have already determined that s. 180(1)(c) does not create grounds for voiding the policy beyond the two-year period in s. 184, Dr. Empringham's evidence does not change the legal outcome. Neither Ms. Trebell nor the insurer knew there was a change in health status to a condition which she could die from resulting from the underlying cause of the rectal pain and bleeding. Dr. Empringham's evidence therefore fails to raise a triable issue requiring trial, because s. 180(1)(c) does not permit a forensic examination of insurability more than two years after the presumed inception of the policy by delivery to the insured.

CONCLUSION AND COSTS

[58] I therefore grant summary judgment in accordance with a finding that the life insurance was in effect at the time of Elizabeth Trebell's death. If required, counsel may submit a draft judgment with appropriate wording for my review.

[59] In the event the parties are unable to settle the costs of the motion and the action, counsel may contact my judicial assistant to establish a timetable for exchange of bills of costs and submissions.

Akazaki J.

Released: May 14, 2025

CITATION: Scott Trebell v. Canada Life Assurance Company, et al., 2025 ONSC 2884

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SCOTT ROBERT WESLEY TREBELL

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REASONS FOR JUDGMENT

Akazaki J.

Released: May 14, 2025