

In the matter of the Estate of Denise McLaughlin (deceased) and  
André LeBreton v. Foresters Life Insurance Company –  
2025 NBKB 010

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

BC-215-2019

BETWEEN:

IN THE MATTER OF THE ESTATE OF  
DENISE MCLAUGHLIN (deceased) and  
ANDRÉ LEBRETON

Plaintiffs

– and –

FORESTERS LIFE INSURANCE  
COMPANY

Defendant

**DECISION**

BEFORE: Madam Justice J. Danie Roy

AT: Bathurst, New Brunswick

DATES OF HEARING: August 18 and 19, 2025

DATE OF DECISION: January 21, 2026

APPEARANCES: Emma J. Neynens and Coralie Robert, for the  
Plaintiffs

Renée M. Fontaine and Tristian Gaudet, for the  
Defendant

[TRANSLATION]

**Roy, J.**

## **OVERVIEW**

[1] A \$100,000 CPP Simplified Elite 20-year Term life insurance policy (number DH00107590) was issued on March 14, 2017, on the life of the late Denise McLaughlin. Her spouse, Mr. LeBreton, is the sole beneficiary.

[2] Foresters voided the life insurance policy based on a misrepresentation by Ms. McLaughlin regarding her weight in the life insurance application form she completed on March 10, 2017.

[3] One of the questions on the form (Question C-11) reads as follows:

Is your weight outside the range shown for your height in the following table?

NOTE: For females, deduct 5 lbs. or 3 kg from the lower range for the given height.

[4] The question is followed by a table of height and weight ranges.

Ms. McLaughlin's height was 162 cm. The following range is relevant:

Height	Weight
156-163 cm	40-98 kg

- [5] Ms. McLaughlin answered “No” to question C-11. That is, her answer indicates that her weight was between 40 and 98 kg.
- [6] The evidence convinces me that on March 10, 2017, the date on which the insurance proposal was completed, Ms. McLaughlin’s weight was outside the range specified in the table of question C-11.
- [7] The evidence is also sufficient to conclude that the height/weight ratio is a material piece of information in determining eligibility for the relevant insurance product.
- [8] The height and weight were known to Ms. McLaughlin, but inaccessible to the insurer. This was material information in determining eligibility for the insurance product. Ms. McLaughlin should therefore have answered “Yes” to question C-11, given that her weight was outside the range, and answering “No” amounts to a misrepresentation.
- [9] Question C-11 in the life insurance application form completed by Ms. McLaughlin on March 10, 2017, when read in its plain, ordinary and natural signification, is not ambiguous and does not lend itself to different interpretations. The question is formulated in such a way that a reasonable person, on reading the question and looking at the table, can readily

determine whether, based on his or her height, his or her weight is outside the indicated range.

[10] Ms. McLaughlin made a false statement, entitling the insurer to void the contract.

[11] The Notice of Action and the Statement of Claim requesting payment of life insurance policy number DH00107590 are dismissed.

## **FACTS**

[12] Ms. Denise McLaughlin completed an insurance application for a life insurance policy with the defendant on March 10, 2017. A Simplified Elite 20-year Term life insurance policy bearing the number DH00107590 was issued on March 14, 2017, the amount insured being \$100,000. Her spouse, Mr. LeBreton, is the sole beneficiary.

[13] Ms. McLaughlin passed away on September 15, 2018, and Mr. LeBreton subsequently submitted a claim for payment of the policy.

[14] In a letter dated August 20, 2019, the defendant informed Mr. LeBreton that it had voided the life insurance policy. In this letter, it is stated as follows:

**[TRANSLATION]**

The medical information that we obtained during our investigation into the possibility of contestability confirms that Denise McLaughlin's weight was outside the required range indicated in the table in the life insurance application. We learned that this information existed during the period

indicated in the questions and should have been disclosed at the time the application was completed... Had accurate and complete information about Ms. McLaughlin's medical history been disclosed at the time of the application, Foresters would not have issued the policy as requested.

[15] The defendant refunded the premiums paid to Mr. LeBreton, in the amount of \$633.42.

[16] The following facts are admitted:

1. The deceased, Denise McLaughlin, was approximately 162 cm tall.
2. Between the beginning of Ms. McLaughlin's relationship with André LeBreton in 2013 and March 10, 2017, Ms. McLaughlin gained weight.
3. On December 19, 2013, Ms. McLaughlin had a medical appointment with her family doctor, Dr. Jean LeBlanc, during which she was weighed.
4. At the December 19, 2013 appointment, Ms. McLaughlin's weight was approximately 103.1 kg.
5. On July 6, 2016, Ms. McLaughlin had a medical appointment with Dr. LeBlanc, during which she was weighed.
6. At the July 6, 2016 appointment, Ms. McLaughlin's weight was approximately 117.9 kg.
7. On June 26, 2017, Ms. McLaughlin had a medical appointment with Dr. LeBlanc, during which she was weighed.

8. At the June 26, 2017 consultation, Ms. McLaughlin's weight was approximately 119.2 kg.
9. On March 10, 2017, Ms. McLaughlin completed a life insurance application form that was submitted to the defendant.
10. The application included the following contractual provisions:

[TRANSLATION]

By signing this application, I agree to the following:

1. The statements and answers contained in this application and other evidence of insurability provided or certified by me are true and complete and will be relied upon by the Insurer in deciding whether or not to issue a policy.

[...]

4. The Insurer may void the policy in the event of any misrepresentation made by me in this application or in any other document, or in any answers given to the Insurer with respect to this application.

11. Ms. McLaughlin answered "No" to question C-11 of the application.
12. On March 14, 2017, a life insurance policy was issued by the defendant insuring Ms. McLaughlin's life. The policy number was DH00107590.
13. The Policy included the following contractual provisions:

[TRANSLATION]

**MISREPRESENTATION & CONTESTABILITY:** We may contest the validity of the contract, treat it as void and refuse to pay a benefit if a statement or answer on the application misrepresents or fails to disclose a fact material to the insurance. Except for fraud, we will not contest the contract after it has been in effect during the lifetime of the insured for two years from the policy date. Fraud includes, but is not limited to, a material representation of the smoking habits of the insured.

In addition, if we allow you to reinstate this policy or make a change or addition to it, based on evidence of insurability, then we can contest the reinstatement, change or addition if there is a material misrepresentation or omission in the application for that reinstatement, change or addition. Except for fraud, we will not contest after a change, addition or the reinstated insurance has been in effect during the lifetime of the insured for two years from the effective date of that change, addition or reinstatement, as shown in our records.

14. On September 15, 2018, Denise McLaughlin passed away.

- [17] Mr. Éric Beaudin, the insurer's agent, was present with Mr. LeBreton and Ms. McLaughlin when she completed the life insurance application form and could answer any questions. According to Mr. LeBreton's testimony, Mr. Beaudin explained that the information provided had to be truthful.
- [18] On April 17, 2017, Ms. McLaughlin accepted delivery of the policy, signing a delivery receipt that states the following: [TRANSLATION] *The terms of the contract were explained to me, I understood them and they are suitable for my situation.*
- [19] Mr. LeBreton's evidence is that Ms. McLaughlin's weight varied. He said that [TRANSLATION] "it varied all the time". He also said that sometimes she gained weight and sometimes she lost weight. She followed diets.

- [20] In the file kept by Ms. McLaughlin's family doctor, Dr. Jean LeBlanc, the consultation notes of July 6, 2016, state the following: advice, diet and exercise to be improved.
- [21] Mr. Eli Wahby is a senior claims consultant with the defendant, and part of his job is to help the team handle complex claims. He testified. Mr. Doug Parrott is the Chief Underwriting Officer at Foresters Financial. He also testified.
- [22] The life insurance application form completed by Ms. McLaughlin is a form distributed by Canada Protection Plan, the insurance policy sales agent. The defendant is the life insurance company.
- [23] PartnerRe is the reinsurer under the reinsurance treaty, i.e., the contract that describes the agreement between the two parties. PartnerRe, as reinsurer, shares the risk with the defendant.
- [24] When a contestable insurance plan is submitted, it is outsourced to a third-party administrator (TPA outsourcing). At that stage, the forms are checked for completeness and medical records are requested.
- [25] Once the medical records have been received, they are examined along with the answers on the application form. If there is a misrepresentation, an

underwriting opinion is requested from Canada Protection Plan to determine whether the misrepresentation is material or not. Once the opinion has been received, the entire claim file is forwarded to the defendant. The reinsurer, PartnerRe, in accordance with the reinsurance treaty, is then asked to approve the claim recommendation.

- [26] The Canada Protection Plan life insurance application form completed by Ms. McLaughlin includes six different products, which are listed in ascending order from A to F. Higher-level policies have lower premiums and more extensive coverage.
- [27] The form includes an eligibility questionnaire. Eligibility for a product depends on the eligibility questionnaire found in each section, i.e., sections A to F. As you proceed through the application form, the insurer assumes that the risk of death decreases.
- [28] If an applicant answers “No” to all the questions in a section, he or she is automatically approved for the product corresponding to that section. If the applicant answers “Yes” to a question, he or she cannot proceed to the next section. And, if the applicant answers “No” to all the questions in section D, he or she only proceeds to section E if he or she wishes to apply for a Preferred/Preferred Elite life insurance policy.

- [29] Ms. McLaughlin answered “No” to all eligibility questions in sections A, B, C and D. She did not complete sections E and F of the application form. The product corresponding to section D is a “Simplified Elite” life insurance policy. That is the policy that was issued to Ms. McLaughlin.
- [30] The life insurance application form completed by Ms. McLaughlin included questions on weight.
- [31] In Section C, question C-11 seeks to determine whether an insured is within the weight range corresponding to his or her height, in order to determine whether there is a health problem that could result in a weight that is below or above that indicated for his or her height. Ms. McLaughlin answered “No” to question C-11 on the application form.
- [32] The following table can be found in the application form completed by Ms. McLaughlin:

11 | Is your weight outside the range shown for your height in the following table?  
NOTE: For females, deduct 5 lbs. or 3 kg from the lower range for the given height.  Yes  No

Height	Weight	Height	Weight
4'8" — 4'10"	142 — 147 cm 79 — 85 lbs. 36 — 44 kg	5'6" — 5'10"	171 — 176 cm 115 — 260 lbs. 52 — 118 kg
4'11" — 5'1"	148 — 155 cm 87 — 109 lbs. 39 — 50 kg	5'11" — 6'1"	179 — 185 cm 125 — 282 lbs. 57 — 128 kg
5'2" — 5'4"	156 — 163 cm 94 — 215 lbs. 43 — 58 kg	6'2" — 6'4"	186 — 193 cm 139 — 325 lbs. 63 — 148 kg
5'5" — 5'7"	164 — 170 cm 104 — 235 lbs. 47 — 107 kg	6'5" — 6'7"	194 — 201 cm 149 — 332 lbs. 68 — 151 kg

- [33] Since Ms. McLaughlin’s death occurred within two years from the effective date, the policy was contestable, and the medical records kept by her physician, Dr. Jean LeBlanc, were reviewed.

- [34] Mr. Wahby was asked to give his opinion as to an indication of prediabetes after the policy had been issued. In an email dated February 28, 2019, he indicated that, in the absence of any indication of diabetes in the medical history prior to the issue of the insurance policy, and in the presence of a later indication of prediabetes, he would recommend that the policy be paid and that the file be forwarded to PartnerRe for their approval.
- [35] During his testimony, Mr. Wahby initially indicated, in response to a question regarding the height/weight ratio, that Ms. McLaughlin should have answered “No” to question C-11. He corrected himself when his attention was drawn to question C-11, at which point he indicated that she should have answered “Yes.”
- [36] Mr. Doug Parrott explained that underwriting is the process of assessing an insurance application and obtaining additional information through medical requirements or other data supplementary to the application, in order to make a final decision on a person’s insurability based on the information available.
- [37] Mr. Parrott explained that, for the life insurance application form completed by Ms. McLaughlin, the risks are controlled by the questions asked, and, in particular, by the transparency and honesty in the answers. Each question

is designed to obtain the information needed to underwrite a particular product. The height/weight ratio is very important information in determining eligibility for the insurance product.

[38] When asked about the weight range in question C-11 for a 5'3" woman, Mr. Parrott replied between 89 and 210 pounds. He then corrected himself by saying that this was incorrect, since only the lower range limit had to be lowered for a woman.

[39] PartnerRe was asked to approve the policy payment recommendation. PartnerRe requested an underwriting review for a person whose last known height was 162 cm and whose last known weight was 117.9 kg. The review determined that Ms. McLaughlin should have answered "Yes" to question C-11 and would therefore have been approved for the Deferred Elite plan, under section C of the application, and not for the Elite Term policy, under section D, which was issued.

## **POSITION OF THE PARTIES**

[40] The plaintiffs claim that the defendant unlawfully voided Ms. McLaughlin's life insurance and denied Mr. LeBreton's claim because (1) the insurance application was ambiguous and confusing, and (2) the defendant did not know what Ms. McLaughlin's weight was at the time she completed her

insurance application. Further, the plaintiffs state that the burden of proof is on the defendant to show that Ms. McLaughlin made a false statement.

[41] The defendant states that Ms. McLaughlin misrepresented her weight when she took out the insurance policy. Without this misrepresentation, it would not have issued the policy, and consequently, it denied the claim. Furthermore, the defendant states that question C-11 was not ambiguous. It asked the applicant, in clear and simple terms, to indicate whether his or her weight was outside the range indicated for his or her height.

## ISSUES

[42] The issues are as follows:

- 1) Was the defendant entitled to deny the claim because of a misrepresentation in the health questionnaire?
- 2) Is question C-11 of the life insurance application form ambiguous?

## LAW AND ANALYSIS

### ***Duty of utmost good faith on the part of the insured***

[43] Under the *Insurance Act*, c. I-12, in answers given as evidence of insurability, the applicant must disclose every fact within his or her knowledge that is material to the risk assessment and is not so disclosed by the other.

[44] The Act provides as follows:

Disclosure by applicant and person whose life is to be insured

144(1) An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

144(2) Subject to section 145, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer.

Failure to disclose or misrepresentation by applicant or person whose life is to be insured

145(1) This section does not apply to a mis-statement of age or to disability insurance.

145(2) Subject to subsection (3), where a contract 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 144 does not, in the absence of fraud, render the contract voidable.

145(3) In the case of a contract of group insurance a failure to disclose or a misrepresentation of, such a fact in respect of a person whose life is insured under the contract does not render the contract voidable; but if evidence of insurability is specifically requested by the insurer the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of the person, in which event it is not, in the absence of fraud, voidable.

[45] The duty to disclose all material facts is a well-established principle of insurance law. (*Gregory v. Jolley*, [2001] O.J. No. 2313, at paragraphs 31-32.)

[46] Insurance contracts are characterized by utmost good faith. This is due to the mutual vulnerability of the insured and the insurer. The Court of Appeal for Saskatchewan made the following observations in *Wynward Insurance Group v. Smith Building and Development Ltd.*, 2023 SKCA 57:

68 *As a matter of law, insurance contracts are characterized as uberrima fides, or the utmost good faith. This is because of the mutual vulnerability of both the insured and the insurer: see, generally, Carter v Boehm(1766), 97 ER 1162 (KB). Barbara Billingsley, General Principles of Canadian Insurance Law, 3rd ed (Markham, Ont: LexisNexis Canada, 2014) [Canadian Insurance Law], describes the mutuality of their vulnerability in this way (at 47):*

*The insurer is vulnerable because its assessment of the insured risk, and therefore its decision to provide insurance coverage is largely dependent upon information provided by the insured. Likewise, the insurer’s investigation and payment of a loss relies on information supplied by the insured. Further, the insurer frequently depends upon the insured to minimize the risk of a loss materializing. The insured is in turn vulnerable to the insurer because, upon a loss occurring, the insurer determines whether and in what amount the loss will be paid. From the insured’s perspective, an insurance policy provides peace of mind in the event of an unintended loss. This peace of mind relies upon “fair, objective, and even-handed” treatment by the insurer in the event of a claim.*

70 *The duty to disclose is not unbounded, however. The four limitations identified in Carter v Boehm, as summarized by Boivin, are these: “the duty to disclose applies to (1) facts, (2) within the knowledge of the applicant, (3) unknown and inaccessible to the insurer, and (4) material to the risk being insured” (at 134).*

[47] A fact is material if, had it been disclosed, it would have caused a reasonable insurer to decline the risk or request a higher premium. In *Linden Estate v. CUMIS Life Insurance Company*, 2014 NSSC 115, Boudreau J. made the following observations at paragraphs 27-28:

27. *Generally speaking, “...a fact is material if it had been truly disclosed it would have caused a reasonable insurer to decline the risk or to have stipulated a higher premium.” (Henwood v. Prudential [1967] S.C.R. 720, at par 19)*

28. *This is a question of fact for each case, based on objective criteria. The burden is on the insurer to show, on a balance of probability, that had certain facts been disclosed, those facts would have caused an insurer to decline the risk or request a higher premium...It stands to reason that only significant matters will be considered material misrepresentations.*

- [48] Innocent or inadvertent omissions can invalidate a contract of insurance (*Linden Estate*, at paragraph 50). Even with good faith, or negligence, or forgetfulness, or mistake, or misjudgment, if the matter is material, the contract may be voided (*Cooperants Mutual Life Insurance Society v. Cameron*, 1992 NSCA 18 (CanLII)).
- [49] Regardless of the good faith of the insured, all misrepresentations, however innocently made and regardless of the genuine lack of appreciation of materiality, will entitle the insurer to avoid the contract as long as the misrepresentation is of a fact known to the insured, which would be regarded by a reasonable insurer as material to the risk (*Silva v. Sizoo*, 1997 CarswellOnt 4677, at paragraph 26).
- [50] The plaintiffs state that the defendant cannot meet its burden of proving misrepresentation because Ms. McLaughlin's weight on March 10, 2017, is unknown. That it would amount to conjecture or speculation to conclude that her weight was outside the range indicated in question C-11.
- [51] The following principles are well established. A finding grounded in conjecture or speculation amounts to an error of law. A significant governing trial principle is that there must be an evidentiary foundation for findings and inferences of fact (*R. v. Martin*, 2010 NBCA 41).

[52] Ms. McLaughlin's weight on March 10, 2017, the date she completed the insurance application form, is unknown.

[53] However, the following facts are known. Ms. McLaughlin was approximately 162 cm tall. Her weight on December 19, 2013, was 103.1 kg, on July 6, 2016, it was 117.9 kg, and on June 26, 2017, it was 119.2 kg.

[54] Ms. McLaughlin's weight was therefore outside the range on December 19, 2013, July 6 2016 and June 26 2017, according to the table in question C-11, which indicates that, for a woman measuring between 156 and 163 cm, the weight must be between 40 and 98 kg.

[55] Furthermore, between the year 2013 and March 10, 2017, Ms. McLaughlin gained weight.

[56] Based on this evidence, I conclude that on March 10, 2017, the date the insurance application was completed, Ms. McLaughlin's weight was outside the range according to the table in question C-11.

[57] I accept Mr. Parrott's evidence that the height/weight ratio is a very important piece of information in determining eligibility for the insurance product.

[58] The plaintiffs say that the defendant should have requested Ms. McLaughlin's weight or a medical report as part of the eligibility process.

I do not accept that argument.

[59] In *Daoud c. Foresters Financial Co. (CPP)*, 2022 QCCQ 6499, at paragraph 38, the Court noted that an insurer can refuse to undertake further investigation when the answers are negative. It adds that, if the insurer had to verify every applicant's medical records for every negative answer, the underwriting process would be both lengthy and inefficient.

[60] The height and weight were known to Ms. McLaughlin, but inaccessible to the insurer. Eligibility for the insurance product issued depended on the completed questionnaire. Since Ms. McLaughlin's death occurred within two years from the effective date, the policy was contestable, and it was at this point that the medical records kept by Dr. Jean LeBlanc were reviewed.

[61] I conclude that Ms. McLaughlin should have answered "Yes" to question C-11. This was material information in determining eligibility for the insurance product. Answering "No" amounted to a misrepresentation.

### ***Ambiguity***

[62] The plaintiffs say that question C-11 of the insurance application is ambiguous and confusing, since it requires an answer to two questions at

once, namely (1) what is the weight, and (2) what is the height. And also because a mathematical calculation is required before answering the question.

[63] The plaintiffs rely on *The Metropolitan Life Insurance Company v. The Montreal Coal and Towing Company*, (1904) 35 S.C.R. 266, and *Ontario Metal Products Company v. The Mutual Life Insurance Company of New York*, [1924] S.C.R. 35.

[64] In *Metropolitan*, the Court adopted the following observations of Gwynne J. in *The Confederation Life Association v. Miller*, 14 S.C.R. 330:

*The rule of construction is that the language of the warranty being framed by the defendants themselves the warranty must be read in the sense in which the person who was required to sign it should reasonably have understood it.*

[65] In *Ontario Metal Products*, Mignault J. made the following observations:

*I do not attach any importance to the ex post facto statement of the medical officers of the respondent that, if they had known that Schuch had had this tonic administered to him as stated by Dr. Fierheller, they would have refused to accept the risk. The test is not what they now say they would have done, but what any reasonable man would have considered material to tell them when these questions were put to the insured.*

[66] In *Caverhill Estate v. Bank of Montreal*, [1994] N.B.J. No. 434, at paragraph 26, Stevenson J. explained the following:

26. A question contained in an insurance application form must be read in its plain, ordinary and natural signification. If there is any ambiguity, the ambiguity is resolved against the insurer who framed the question and in favour of the applicant.

32. An applicant completing the form does not analyze the question for grammar, punctuation and syntax. He or she does not dissect or parse the sentence. The applicant reads the question once and answers it according to the understanding he or she takes from that one reading.

[67] The plaintiffs state that the ambiguity of the question is demonstrated by the difficulty that witnesses Mr. Parrott and Mr. Wahby had with the question during their testimony. I do not agree.

[68] It was when Mr. Parrott was asked about the weight range in question C-11 for a 5'3" woman that he answered between 89 and 210 lbs, but he corrected himself by saying that this was incorrect, since only the lower limit had to be reduced for a woman. As for Mr. Wahby's testimony, when his attention was drawn to question C-11, he also corrected himself and replied that Ms. McLaughlin should have answered "Yes." I am not of the opinion that this shows ambiguity in question C-11.

[69] The plaintiffs also state that several people recommended that the policy be paid. However, the recommendations were subject to approval, according to the established process.

[70] We must remember that question C-11 of the application form reads as follows:

Is your weight outside the range shown for your height in the following table?

NOTE: For females, deduct 5 lbs. or 3 kg from the lower range for the given height.

- [71] The question is then followed by a height and weight range table.
- [72] Question C-11 must be read in its plain, ordinary and natural signification. In my opinion, the question is in no way ambiguous and does not lend itself to different interpretations. I am satisfied that a reasonable person, on reading the question and looking at the table, can readily determine whether, based on his or her height, his or her weight is outside the indicated range. It is also clearly indicated that, for females, 5 lbs or 3 kg must be subtracted from the minimal weight indicated. This is not a complex or ambiguous mathematical exercise.

## **CONCLUSION**

- [73] I find that Ms. McLaughlin made a false statement, thereby entitling the insurer to void the contract.
- [74] Question C-11 of the life insurance application form completed by Ms. McLaughlin on March 10, 2017, when read in its plain, ordinary and natural signification, is not ambiguous and does not lend itself to different interpretations.
- [75] Having considered Rule 59 of the *Rules of Court* of New Brunswick, the fact that the parties filed a joint Book of Exhibits and also the final results, I award costs of \$2,000 to the defendant, to be paid by the plaintiffs.

**DISPOSITION**

[76] The Notice of Action and Statement of Claim are dismissed with costs of \$2,000.

DATED at Moncton, New Brunswick, this 21<sup>st</sup> day of January 2026.

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J. Danie Roy  
Justice of the Court of King's Bench  
of New Brunswick