

COURT OF APPEAL FOR ONTARIO

CITATION: Trebell v. Canada Life Assurance Company, 2026 ONCA 481

DATE: 20260703

DOCKET: COA-25-CV-0790

Simmons, Paciocco and Osborne JJ.A.

BETWEEN

Scott Robert Wesley Trebell

Plaintiff (Respondent)

and

The Canada Life Assurance Company*, Darrell M. Kemp**, and John Doe
Insurance Agency a.k.a. Niagara Financial

Defendants (Appellant*/Respondent**)

Jeff Galway, Sanjit Rajayer and Rebecca Grima, for the appellant

Philip H. Horgan and Raphael T.R. Fernandes, for the respondent Scott Robert
Wesley Trebell

Michael Krygier-Baum, for the respondent Darrell M. Kemp¹

Linda Plumpton, for the intervener Canadian Life and Health Insurance Association
Inc.

Heard: February 27, 2026

On appeal from the judgment of Justice R. Lee Akazaki of the Superior Court of
Justice, dated May 14, 2025, with reasons reported at 2025 ONSC 2884.

Paciocco J.A.:

¹ Mr. Krygier-Baum appeared but made no written or oral submissions.

OVERVIEW

[1] Section 180(1)(c) of the *Insurance Act*, R.S.O. 1990, c. I.8 (the “Act”)² provides that a life insurance 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.” Almost four years after selling Elizabeth Trebell a life insurance policy (the “Policy”), the London Life Insurance Company relied upon this provision to deny a claim for insurance proceeds arising from her death. It took the position that the insurance contract relating to the Policy did not take effect pursuant to s. 180(1)(c), notwithstanding that Ms. Trebell had faithfully paid the premiums, since there had been a change in her insurability between the time her application was completed and the delivery of the Policy.

[2] As a result of the denial of his claim, the Policy’s designated beneficiary, the respondent Scott Robert Wesley Trebell sued London Life’s successor corporation, the appellant The Canada Life Assurance Company,³ and Ms. Trebell’s insurance agent, the respondent Darrell Kemp. On May 14, 2025, the motion judge granted Mr. Trebell summary judgment against Canada Life for the full amount of the Policy, plus interest, after concluding that “s. 180(1)(c) does not

² The relevant provisions of the Act, in English and French, are reproduced in Appendix “A” to this decision.

³ For simplicity, I will refer to both corporations as “Canada Life” in the balance of these reasons.

permit Canada Life to reach back into [Ms. Trebell's] medical records" and raise insurability issues beyond a two-year period specified in s. 184(2) of the Act.

[3] Canada Life appeals that decision. The issue in this appeal is whether the ability of an insurer to rely upon s. 180(1)(c) is time limited. For reasons that I elaborate below, I am of the view that it is not.

[4] In short, s. 180(1)(c) sets out a condition precedent for the formation of a life insurance contract. Where a change in insurability occurs between application and policy delivery, no contract forms and the insurer may deny coverage on this basis, regardless of the amount of time that has passed. While this may seem like a harsh result, it is the one the legislature intended. The motion judge's importation of a two-year contestability limitation is unmoored from the text of s. 180(1)(c) and divorced from its context and purpose. The parties also did not contract out of s. 180(1)(c), as there is no provision in the Policy that can oust its application.

[5] I would therefore allow the appeal and set aside the summary judgment and leave it to the parties to decide how they wish to litigate the insurability issue.

MATERIAL FACTS

[6] Ms. Trebell was obliged under a separation agreement with Mr. Trebell, her former husband, to maintain a life insurance policy for the benefit of their daughters. She had a policy in place but chose to move to Canada Life to secure a better rate. She applied to Canada Life for a \$500,000 life insurance policy on

July 8, 2014, and cancelled her existing policy. In her Canada Life application, she responded to questions about her health, and paid the initial premium. The Policy was issued on August 6, 2014.

[7] While awaiting delivery of the Policy, Ms. Trebell, who had a history of hemorrhoids and anal fissures, visited her family physician after experiencing symptoms of these conditions. She was treated for hemorrhoids and referred for further testing. On September 18, 2014, Ms. Trebell underwent a sigmoidoscopy. Discomfort prevented satisfactory examination. The attending physician, who noted a five-month history of rectal bleeding, expressed the opinion that Ms. Trebell had a problem with fissures but recommended a full colonoscopy to screen for colorectal cancer.

[8] On September 24, 2014, the Policy was delivered to Ms. Trebell at Mr. Kemp's office. At the time, Canada Life was unaware of any health concerns, and the colonoscopy was still pending. That same day, Ms. Trebell signed a delivery receipt that included a declaration that there had been no change in her insurability, including her health status, since she completed the application.

[9] The recommended colonoscopy was performed on December 2, 2014, and revealed a large lesion in the anal canal, which a biopsy confirmed to be malignant. Sadly, the cancer took Ms. Trebell's life on March 24, 2018, leading to Mr. Trebell's claim.

[10] In its evidence on the summary judgment motion, Canada Life confirmed that it relied on this medical history to conclude that there had been a change in insurability between the application and the delivery of the Policy that prevented the contract from taking effect pursuant to s. 180(1)(c). A medical doctor employed by Canada Life provided the opinion that if Canada Life had known about the bleeding, pain, and medical examinations that were underway, it would have postponed the delivery of the Policy, pending the results of the colonoscopy. Hence, the denial of the claim.

STATUTORY SCHEME AND DECISION BELOW

[11] In its entirety, s. 180(1) provides as follows:

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.

[12] I will refer to clauses (a) through (c), successively, as the “delivery requirement”, the “payment requirement”, and the “no change requirement”. As the motion judge noted, the delivery requirement and the payment requirement

describe events, whereas the no change requirement is a “non-event”, a point I will return to below.

[13] On the summary judgment motion, Mr. Trebell contended that there were three reasons why his action did not raise any genuine issue requiring trial and why summary judgment should be granted in his favour. First, he argued that s. 180(1)(c)'s no change requirement was not engaged because certain terms of the Policy displaced it. Second, he argued that in any event, Canada Life failed to prove that a change in insurability had occurred. Third, he submitted that the two-year contestability limitation in s. 184(2) of the *Insurance Act* precluded Canada Life from denying coverage.

[14] Section 184(2) provides:

(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.

[15] Section 184(3), referred to in s. 184(2), is not relevant to this appeal.

Section 183, also referred to, provides in relevant part:

183 (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 the person's knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to section 184 and subsection (3) of this section, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer.

[16] On the motion, Canada Life argued that its ability to raise s. 180(1)(c) was not subject to any time limitation. Accordingly, it contended that its evidence regarding a change in Ms. Trebell's insurability raised a genuine issue requiring trial, which necessitated dismissing Mr. Trebell's summary judgment motion.

[17] The motion judge rejected Mr. Trebell's submission that s. 180(1)(c) was ousted by the language of the Policy, a finding I will address below. However, he found that s. 180(1)(c) did not support Canada Life's denial of the claim, as a matter of statutory interpretation. He concluded that s. 180(1)(c) is "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)." Accordingly, Canada Life's evidence regarding changes in Ms. Trebell's insurability could not raise a triable issue because s. 180(1)(c) does not permit an examination of insurability beyond the two-year contestability limitation in s. 184(2).

[18] In concluding that s. 180(1)(c) was subject to a two-year contestability limitation, the motion judge reasoned that although no time limit is defined in s. 180(1)(c), giving it a literal, time-unlimited interpretation "appears invalid", since a literal interpretation would produce "absurd or extremely unreasonable results". He concluded that allowing this provision to be used retroactively to treat a policy as never having come into effect after the delivery requirement and the payment

requirement have been satisfied would leave the insurance applicant in a state of perpetual uncertainty as to whether they have insurance, thus defeating their reasonable expectations that the insurance exists.

[19] He concluded that a literal interpretation of s. 180(1) would also undermine its purpose, which he characterized as providing certainty as to when the insurance takes effect. And he noted that if s. 180(1)(c) were interpreted to permit retrospective challenges to the contract, the burden would fall to the beneficiary of “proving a negative – that the life insured suffered no change in insurability during the pre-delivery stage.” He asked rhetorically how the beneficiary could do so.

[20] He added that a literal interpretation would allow insurers a time-unlimited escape route for “innocent non-disclosure or misrepresentation”, despite there being a limited two-year contestability period provided for in s. 184(2) for the “more culpable disclosure breaches” identified in s. 183. This result, he reasoned, did not make sense.

[21] He concluded that s. 180(1)(c) must be read purposively in the context of the “organized progression of subjects” in ss. 180 to 184 as a “limited escape provision”, available for two years after policy delivery, but no longer. He said he was not directly applying the incontestability period in s. 184(2), but also said that “s. 180(1)(c) does not permit Canada Life to ... deny coverage, beyond the two-year period in s. 184(2)”, which he characterized as a “rational outer limit”.

THE ISSUES

[22] The general issue for consideration is whether the motion judge erred by granting summary judgment. Canada Life articulates three sub-issues relating to his reasoning, which I will identify and address below. Those sub-issues can conveniently be addressed together while considering the broader question of whether the motion judge erred in his interpretation of s. 180(1)(c). I will therefore address these sub-issues as component parts of the general issue of whether the motion judge committed error in finding that s. 180(1)(c) includes a limited two-year contestability limitation.

[23] Mr. Trebell has raised two further issues that should be given discrete attention.

[24] First, Mr. Trebell offers a supplementary interpretation of s. 180(1)(c) that would sustain the summary judgment. Although he supports the result the motion judge arrived at and endorses the motion judge's analysis, he argues that a "more coherent interpretation of s. 180(1)(c) is that coverage can only be refused for changes unknown to the insured if the insurer declines the risk prior to the delivery of the policy and payment of the first premium". Put otherwise, he submits that s. 180(1)(c) must be interpreted as operating prospectively and not retroactively. On the "prospective interpretation", once the events of delivery and payment have occurred without the insurer learning of a post-application change in insurability, s. 180(1)(c) is spent. This means that the only mechanism for voiding the Policy

retroactively would have to be based on knowing misrepresentation or failure to disclose through ss. 183 and 184.

[25] There is an obvious inconsistency between the prospective application of s. 180(1)(c) and the motion judge's reasoning. The motion judge's conclusion that there is a two-year contestability limitation that applies to s. 180(1)(c) would permit insurers to invoke the provision for up to two years after compliance with the delivery and payment requirements in ss. 180(1)(a) and (b). A prospective interpretation would not. Mr. Trebell argues that although the motion judge did not give s. 180(1)(c) the prospective interpretation he promotes, the motion judge did not reject it. In Mr. Trebell's view, the motion judge simply refrained from resolving this issue as a matter of judicial restraint because he did not have to do so, given that more than two years had passed and he could rely on the two-year contestability limitation that is described in s. 184(2). Mr. Trebell nonetheless asks us to endorse the prospective interpretation in preference to the motion judge's interpretation.

[26] Second, Mr. Trebell argues that even if Canada Life is correct and s. 180(1)(c) must be interpreted as a time-unlimited condition precedent for the existence of a life insurance contract, the summary judgment should not be disturbed because s. 180(1)(c) is not engaged in this case, as its operation has been ousted by the terms of the Policy.

[27] I will therefore state three issues for consideration:

- (1) Did the motion judge err in imposing a two-year contestability limitation on the operation of s. 180(1)(c)?
- (2) Should the summary judgment be upheld based on the prospective interpretation of s. 180(1)(c)?
- (3) Does the Policy oust s. 180(1)(c) in any event?

[28] The applicable standard of review with respect to each of these issues is correctness. Issues 1 and 2 are matters of statutory interpretation – i.e., purely legal questions where deference is not owed to the motion judge: *Ontario Securities Commission v. Tiffin*, 2020 ONCA 217, 150 O.R. (3d) 714, at para. 24. Resolving issue 3 requires interpreting the Policy, which is a standard form contract. The interpretation of standard form contracts also attracts correctness review: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23, at para. 24.

[29] I would answer “yes” to issue 1 and “no” to issues 2 and 3 and allow the appeal.

ANALYSIS

1. Did the motion judge err in imposing a limited two-year contestability limitation on the operation of s. 180(1)(c)?

[30] I am persuaded that the motion judge erred in imposing a two-year contestability limitation on the operation of s. 180(1)(c). It is not entirely clear whether he found that the two-year limitation applied by deciding that s. 184(2) directly applies to s. 180(1)(c), or whether he concluded that there is an implicit two-year contestability limitation in s. 180(1)(c) that is identical to the contestability limitation created by s. 184(2). Although his decision favours the latter approach, both readings find support in what he said. In my view, neither of the interpretations are supported by a proper application of the principles of statutory interpretation.

a. The general principles of statutory interpretation

[31] The modern approach to statutory interpretation requires the meaning of a statutory provision to be “determined by reference to its text, context and purpose”: *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, 502 D.L.R. (4th) 59, at para. 30. Specifically, “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21.

[32] As the Supreme Court of Canada has reaffirmed, “The starting point in any interpretive exercise is the text of the provision”: *Quebec (Commission des droits*

de la personne et des droits de la jeunesse) v. *Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316, at para. 28. Therefore, although “the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise”: *CISSS A*, at para. 24. Paying due attention to the text of a provision means focusing on the “‘natural meaning’ that appears when the provision is simply read through as a whole”: *CISSS A*, at para. 28, citing *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724, at p. 735.

[33] However, the plain meaning of a provision cannot be treated as determinative, and “a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms”: *Piekut v. Canada (National Revenue)*, 2025 SCC 13, 502 D.L.R. (4th) 1, at para. 45, citing *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31. Context and purpose assist in both identifying and resolving latent ambiguity in the text, so that “a meaning that is harmonious with the Act as a whole” may be discerned: *Piekut*, at paras. 43-44; see also *Hunt v. Canada*, 2026 FCA 88, at para. 13. That said, the text itself is the best indicator of legislative purpose, because it specifies “the means chosen by the legislature to achieve its purposes” and tells an interpreter just how far the legislature intended to go to achieve a more abstract goal: *CISSS A*, at para. 24. Therefore, “the overarching purpose of a legislative *scheme* informs, but need not

be the decisive factor in the interpretation of a particular *provision* within that scheme”: *R. v. Rafilovich*, 2019 SCC 51, [2019] 3 S.C.R. 838, at para. 30 (emphasis in original).

[34] Where a textual, contextual and purposive analysis of a provision yields ambiguity, an interpreter may resort to so-called secondary principles of interpretation: *Piekut*, at para. 48. Ambiguity means that “the provision must be reasonably capable of more than one meaning”: *R. v. Basque*, 2023 SCC 18, 482 D.L.R. (4th) 203, at para. 74, citing *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 29. One secondary principle of interpretation relied upon heavily by the motion judge is that “absent a clear intention to this effect, it must be presumed that Parliament [does] not intend to produce ... absurd results”: *Basque*, at para. 73. However, where a provision does not admit of ambiguity, the legislature’s intention “must be enforced however harsh or absurd or contrary to common sense the result may be”: *R. v. McIntosh*, [1995] 1 S.C.R. 686, at para. 34.

b. Section 184(2) does not apply directly to s. 180(1)(c)

[35] For convenience, I reproduce s. 184(2):

(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.

[36] This provision cannot possibly apply directly. By its plain language, s. 184(2)'s two-year contestability limitation applies to "a failure to disclose or a misrepresentation of a fact required to be disclosed by section 183". The operation of s. 184(2) is therefore expressly directed at the voiding events identified in s. 183 alone. There is no textual avenue for applying it to s. 180(1)(c).

[37] Even disregarding the explicit reference to s. 183 in s. 184(2), s. 184(2) addresses the failure to disclose facts and misrepresentations of fact. It therefore focuses on communications by the insured relating to facts known to the insured. On a plain reading, s. 180(1)(c) is not about communications of fact, but about a state of fact, namely, whether there have been changes in insurability between the application and the delivery of the policy.⁴ On this basis, in *Wagner Brothers Holdings Inc. v. Laurier Life Insurance Co.* (1992), 8 O.R. (3d) 609 (C.A.), at p. 615, leave to appeal refused, [1992] S.C.C.A. No. 455, Osborne J.A. interpreted s. 157(1)(c), currently s. 180(1)(c), as including a "change in insurability, not known to the life insured".⁵ The Court of Appeal of Newfoundland and Labrador, in *Ryan v. Canada Life Assurance Co.* (1999), 179 Nfld. & P.E.I.R. 306 (N.L. C.A.), at para. 137, leave to appeal refused, [1999] S.C.C.A. No. 548, came to the same

⁴ Insurability is not defined in the Act. However, it is generally thought to refer to "factors affecting the risk" an insurer assumes when agreeing to insure an applicant: see David Norwood and John P. Weir, *Norwood on Life Insurance Law in Canada*, 3rd ed. (Toronto: Carswell, 2002), at p. 97. Professor Billingsley states "[b]y definition a change in insurability is a change which increases the risk of loss: that is a material change of facts": Billingsley, at §2.03[2][b], citing Norwood, at p. 101.

⁵ Technically, this was *obiter dictum* because he concluded that the terms of the insurance application ousted the application of s. 157 (now s. 180). However, it is closely considered, instructive *obiter dictum*, since the comment was made to correct the trial judge's misconception that s. 157 was about "disclosure".

conclusion on the same reasoning when considering a contractual provision that “essentially mirror[ed]” Newfoundland’s identical provision (s. 11(1) of the *Life Insurance Act*, R.S.N.L. 1990, c. L-14). Since they address different concerns, s. 184(2) cannot sensibly be applied to 180(1)(c).⁶

[38] Moreover, s. 184(2) applies only if “a contract ... has been in effect for two years”. By its terms, a “contract” does not take “effect” under s. 180(1) “unless” its three requirements are satisfied. It follows that if the condition in s. 180(1)(c) is not met, the triggering circumstance described in s. 184(2) does not arise. Hence, s. 184(2) cannot apply.

[39] Finally, s. 183(2) renders a contract “voidable”, subject to the two-year limitation in s. 184(2). In this context, voidability, of course, is a mechanism for resisting an insurance claim. A finding under s. 180(1) that the insurance contract is not in effect serves the same purpose. It would be pointless to apply a voidability mechanism to contracts that are not in effect.

[40] I am therefore persuaded that s. 184(2) does not apply directly to changes in insurability during the period designated in s. 180(1)(c). If the motion judge concluded that s. 184(2) applies directly, he erred.

⁶ As I explain below, the legislative purpose of s. 180(1) also shows that it goes beyond addressing the disclosure of facts, addressing instead the material state of fact of insurability itself.

c. The two-year contestability limitation in s. 184(2) cannot be imported into s. 180(1)(c)

[41] Although aspects of the motion judge's reasoning suggest that he purported to apply s. 184(2) directly, it is more probable that he imported the two-year contestability limitation into s. 180(1)(c) by analogy to s. 184(2). His conclusion appears to be that s. 180(1)(c) has an implicit two-year contestability limitation identical to the two-year contestability limitation in s. 184(2). Most tellingly, he said, after introducing his conclusion, that "[t]he 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." He went on to comment that the "two-year period is a practical way to resolve the textual and grammatical ambiguity of the statute."

[42] In my view, even if the motion judge imported the two-year contestability limitation into s. 180(1)(c) by analogy rather than by directly applying s. 184(2), he erred. When properly applied, the principles of statutory interpretation are incapable of supporting this outcome. With respect, the motion judge's decision to impose what he perceived to be a rational outer limit to the insurer's ability to reach back into the issue of the life insured's insurability exceeds the judicial role in interpretation and constitutes impermissible judicial re-drafting: see e.g., *Beattie v. National Frontier Insurance Co.* (2003), 68 O.R. (3d) 60 (C.A.), at paras. 16-17.

[43] To be sure, where a provision is ambiguous, judges are to select a plausible interpretation that best suits the purpose and context of the legislation: *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715, at para. 23. However, even where ambiguity exists, this greater emphasis on legislative purpose does not authorize judges to impose a meaning on a provision that its text does not support: *Placer Dome*, at para. 23; *R. v. Shearing*, 2002 SCC 58, [2002] 3 S.C.R. 33, at para. 95.

[44] In my view, the text of s. 180(1)(c) is not ambiguous, but even if it were, it cannot be interpreted as supporting a contestability limitation. The motion judge recognized this. Indeed, he found this to be a gap in the provision. In my view, he led himself astray by believing that the absence of a contestability limitation in s. 180(1)(c) empowered him to impose such a mechanism by analogy to another provision in the same legislation. I would caution that a gap in legislation cannot be taken as an invitation to innovate, because gaps in legislation may result from “a considered policy choice” embodying “the actual intentions of the legislature, which courts are bound to respect”: *Beattie*, at para. 18, citing Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham: Butterworths, 2002), at p. 136. As I explain below, the gap identified by the motion judge was the result of the actual intention of the legislature.

[45] In the absence of language in s. 180(1)(c) supporting a two-year contestability limitation, the motion judge relied on the proximity between ss. 180,

183 and 184 to fill the gap he perceived. Although the legislative scheme or structure is an important contextual consideration, the proximity of ss. 180(1)(c) to 184(2) cannot provide a basis for importing the statutory mechanism in s. 184(2) into s. 180(1)(c), once again, because the text does not support doing so. The fact that the legislature expressly enacted a two-year contestability limitation in s. 184(2) that applies to s. 183 alone is a strong indication that it did not intend a two-year contestability limitation to apply to or be adapted for s. 180(1)(c).

[46] Moreover, s. 184(2) contains a precisely worded, closed list of subjects to which it applies – misrepresentations and non-disclosures covered by s. 183. This creates a strong expectation that if changes in insurability were also subject to a two-year contestability limitation, this would have been expressed in the statute: see *Kosicki v. Toronto (City)*, 2025 SCC 28, 507 D.L.R. (4th) 1, at paras. 37-41. The absence of any language expressly limiting s. 180(1)(c)'s application does not provide a basis for importing such a limit. Instead, it supports the inference that the legislature intended no such limitation: *Kosicki*, at para. 39; *Beattie*, at para. 19. In my view, the proximity between s. 184(2) and s. 180(1)(c) cannot overcome the textual impediments to treating the limitation expressed in s. 184(2) as applying by implication to s. 180(1)(c).

[47] The motion judge also relied on his understanding of the purpose of s. 180(1) to support his interpretation. In my view, his reasoning relating to the purpose of s. 180(1)(c) is problematic. He concluded that its purpose was to provide certainty

to the parties as to when a contract takes effect. An examination of the history of s. 180(1) shows that this is not correct. As described by Marshall J.A. in addressing the enactment of the Newfoundland equivalent to s. 180(1)(c), the no change requirement was enacted “to provide a scope for [life insurers] to avoid liability for risk, the full extent of which was unknown to the company when it issued the policy”: *Ryan*, at paras. 145, 136-37. Put otherwise, the legislative purpose behind s. 180(1)(c) is to preserve the meeting of the minds relating to the essential terms that were agreed to.

[48] The place to begin explaining the legislative purpose of *Insurance Act* provisions is the common law, because the *Insurance Act* does not codify the whole law of insurance: *Saskatchewan River Bungalows v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490, at p. 505. Instead, the *Insurance Act* relies heavily on the common law, codifying it and modifying it as necessary: Barbara Billingsley, *General Principles of Canadian Insurance Law*, 4th ed. (Toronto: LexisNexis, 2026) (online), at §1.01[2].

[49] At common law, an insurance contract was not formed until the insurer had accepted the application, delivered the policy, and the first premium was paid: *Canning v. Farquhar* (1886), 16 Q.B.D. 727 (Eng. C.A.), at pp. 731-32, *per* Lord Esher M.R.; *The Provident Savings Life Assurance Society of New York v. Mowat* (1902), 32 S.C.R. 147, at p. 156, *per* Taschereau J. But insurers were free to add additional conditions to the formation of the contract in the contract itself: see e.g.,

Donovan v. Excelsior Life Insurance Co. (1916), 53 S.C.R. 539. Apparently, insurers were quite ready to do so, creating the perception that they were abusing this entitlement to delay the formation of the contract to reduce their exposure: see *Patterson v. Gallant*, [1994] 3 S.C.R. 1080, at p. 1094.⁷ This perception led to the enactment in 1914 of legislation which provided that insurance contracts were binding on delivery of the policy, even if the premium had not been paid and even if the policy was delivered by an agent who lacked authority to do so: *Insurance Act*, R.S.O. 1914, c. 183, s. 159.⁸

[50] This remedial legislative change was viewed by life insurers as “particularly obnoxious”, given their view that they “should not be bound where the health of the applicant has become impaired or he had engaged in a more hazardous occupation between the time of making the application for insurance and the time when the contract is completed by delivery and payment”: Superintendent of Insurance (Ontario), *Detailed Report of the Superintendent of Insurance and Registrar of Friendly Societies* (Toronto: Clarkson W. James, 1924), Appendix A, at p.10., laid before the Legislative Assembly in 1924 (see Ontario, Legislative Assembly, *Journals*, 16-1 (1924), Vol. LVIII, at p. xlvii). Life insurers were also aggrieved that they would be bound without premium payments: H.J. Sims, *The*

⁷ Here, the court was interpreting s. 96 of the *Insurance Act*, R.S.P.E.I. 1988, c. I-4, which is identical to s. 134 of the Ontario Act and governs non-life insurance provisions.

⁸ This provision applies to this day for non-life insurance contracts: *Insurance Act*, R.S.O. 1990, c. I.8, s. 134.

Uniform Life Insurance Act of Canada, 2nd ed. (The Life Underwriters Association of Canada, 1937), at p. 18.

[51] As a result of these concerns, the Conference of Commissioners on Uniformity of Legislation in 1923 recommended legislative change. Its recommendation led in 1927 to the enactment of the precursor to s. 180(1), which provided, in effect, that a life insurance contract would not take effect until “the policy is delivered to the insured ... and payment of the first premium is made”, and “no change [has] taken place in the insurability of the life about to be insured subsequent to the completion of the application”: *Insurance Act*, R.S.O. 1927, c. 222, s. 129(1).

[52] This accommodation to the interests of insurers survived opposition until 1962, when the provision was amended to clarify that the no change requirement is limited to changes in insurability that occur “between the time the application was completed and the time the policy was delivered”: *An Act to amend The Insurance Act*, S.O. 1961-62, c. 63, s. 4. This provision remains in the current legislation: *Insurance Act*, R.S.O. 1990, c. I.8, s. 180(1)(c).

[53] This legislative history demonstrates that the amendments in 1927 and 1962 both codified and modified common law rules of contract formation in the life insurance context. Sections 180(1)(a)-(c) of the Ontario *Insurance Act* mirror the common law requirements for acceptance, consideration, and meeting of the

minds on essential terms, respectively. But some of the specifics of the common law offer/acceptance (delivery) requirement have been ousted, and the 1962 amendments clarify the 1927 codification of the principle from *Donovan* that an insurer should not be bound to a risk that changes between the time of application and the time the policy is delivered: see *Superintendent's 1924 Report*, at Appendix A, p. 10; *Donovan*, at p. 548, *per* Davies J. (dissenting, but not on the general principle), pp. 550-51, *per* Idington J., and pp. 552-53, *per* Anglin J.

[54] In my view, the motion judge did not have a complete appreciation of this legislative history when he found that interpreting s. 180(1)(c) literally is inconsistent with its purpose.

[55] His conclusion that it would be arbitrary to interpret s. 180(1)(c) as a condition precedent to an insurance contract arising is also incorrect. As I have explained, this interpretation preserves the meeting of the minds relating to the risk the insurer agreed to assume, a non-arbitrary goal. When Marshall J.A. addressed the reason for the enactment of the Newfoundland equivalent to s. 180(1)(c) in *Ryan*, he provided further explanation. He noted that “[p]remiums are set on the basis of [the] assessment of risk in providing the coverage applied for”: *Ryan*, at para. 136. Although he did not say so explicitly, he was no doubt alluding to the unfairness of making an insurer bear a greater risk than the one they are being paid to assume. Whatever one may think of the legislative policy choice to prefer these interests to the subjective certainty of the parties relating to when a life

insurance contract comes into force, the history of the legislation makes clear that this is the legislative choice that has been made, and that the choice is not an arbitrary one.

[56] The motion judge also rejected Canada Life's time-unlimited interpretation on the basis that it would lead to absurd consequences and unreasonable results. This conclusion is itself problematic for three reasons.

[57] First, the motion judge reasoned that a literal interpretation would put the burden on the beneficiary who is making a claim to prove that an event unknown to them, a change in the insurability of the insured, did not happen, even though such a burden would be impossible to meet. This concern was misplaced. It is the insurer, as the party asserting a change in insurability within the meaning of s. 180(1)(c), who bears the burden of invoking this section and proving that the risk it assumed was higher than that which it agreed to: *Ryan*, at paras. 162-63; *Nuraney v. MBA Insurance Brokers Inc.* (1989), 38 C.C.L.I. 243 (Ont. H.C.J.), at p. 254.

[58] Second, the motion judge found that it would be absurd for s. 180(1)(c) not to provide a limited contestability period for relying on changes in insurability unknown to the insured, given that s. 184(2) provides a limited two-year contestability period for the "more culpable" non-disclosures and misrepresentations identified in s. 183. These disparate outcomes are not absurd,

but, as I have explained, arise from the different roles these sections play, with s. 183 being concerned with ensuring full material disclosure and s. 180(1)(c) with changes that alter the risk agreed to, thereby undermining the essence of the contract.

[59] Finally, the motion judge made the overarching point that interpreting s. 180(1)(c) in a time-unlimited way leads to absurd consequences because it defeats the purpose of buying insurance by introducing indeterminate uncertainty into the bargain. In the motion judge's view, this required him to avoid the textual, literal reading of the provision: see *Rizzo*, at para. 27. But as noted above, the legislature made a clear and unambiguous policy choice in enacting s. 180(1)(c). In my view, the literal interpretation advanced by Canada Life is correct and admits of no ambiguity, in that no other meanings may be discerned after a consideration of text, context, and purpose. Thus, the motion judge was bound to give the provision the effect the legislature intended, regardless of how absurd he found the consequences to be: *McIntosh*, at para. 34.

[60] For the foregoing reasons, I am persuaded that if the motion judge imposed a two-year contestability limitation on s. 180(1)(c) by implication, he erred in doing so.

d. Conclusion on Issue 1

[61] I am persuaded that the motion judge erred in finding that a two-year contestability limitation applies to s. 180(1)(c). Neither of the interpretations that could yield that result can be sustained. I would find that on the plain language of s. 180(1)(c), read in context and consistent with the balancing of interests the legislature intended, there is no contestability limitation that applies.

[62] I recognize in coming to this conclusion that the decision in *Beldent c. Sun Life du Canada, compagnie d'assurance-vie*, 1997 CanLII 10112 (Q.C. C.A.) appears to favour Mr. Trebell's position. There, a majority of the Court of Appeal of Quebec held that the *Code civil* version of s. 184(2) does apply to its version of s. 180(1) and imposed a two-year contestability limitation on changes in insurability. This decision is distinguishable. *Beldent* involved the application of differently worded provisions, operating against a civil law rather than common law backdrop, and with respect, it was reached without engagement in a close interpretive analysis. In his dissenting judgment, Forget J.A. concluded that the majority decision was inconsistent with the text of the *Code civil*, and with the judgment of the Supreme Court of Canada in *General Trust of Canada v. Artisans Coopvie, Société Coopérative d'Assurance-vie*, [1990] 2 S.C.R. 1185, which considered the same provision, and where Gonthier J. said, at p. 1193:

It is beyond question that a change in the insurability of the risk occurring before the application is accepted will prevent the contract from being formed, as the risk is part

of the very subject-matter of the agreement and there will be no meeting of the minds if it differs from what was agreed to.⁹

[63] I would not adopt the result in *Beldent* and would give effect to this ground of appeal.

2. Should the summary judgment be upheld based on the prospective interpretation of s. 180(1)(c)?

[64] In arguing for a prospective interpretation, Mr. Trebell relies heavily on the fact that “s. 180(1)(c) contains no mechanism to void a policy retrospectively” after delivery. He notes that “s. 180(1)(c) does not state, for example, that a change in insurability during this period renders the policy voidable by the insurer after the delivery of the policy and payment of the first premium”. He argues that in the absence of such a mechanism, s. 180(1)(c) can only serve as a “limited escape provision”, as found by the motion judge. However, he adds that s. 180(1)(c) cannot be interpreted as a condition precedent to the insurance contract, even subject to a two-year contestability limitation, because the no change requirement describes a non-event. As such, it cannot be treated as a requirement to the contract taking effect without creating perpetual uncertainty. To avoid this

⁹ Canada Life relies on this decision in its appeal factum, but in my view, care must be taken in applying this decision in Ontario. In this quotation, Gonthier J. was referring to art. 2476 of the *Code civil*, which describes when the contract is formed, while art. 2516, the provision resembling Ontario’s s. 180(1), determines the coming into effect of the insurance. As indicated, and in contrast, Ontario’s s. 180(1) addresses when the “contract” will “take effect”. As noted by Forget J.A. in dissent in *Beldent*, Gonthier J. did also observe at p. 1196, albeit in the context of considering the duty of disclosure under art. 2485, that “the condition that insurability remain unchanged stated in art. 2516 ... is objective and independent of the general duty of disclosure otherwise dealt with in art. 2485”.

outcome, he argues that “[t]he phrase ‘unless no change has taken place in the insurability of the life to be insured’ entitles the insurer to refuse delivery and/or decline acceptance of the first premium if the insurer learns of such a change before delivery or payment of the first premium”, but not after delivery.

[65] He buttresses this submission by arguing that s. 180(1)(c) serves the additional function of clarifying that the disclosure duties found in s. 183 extend beyond the application to include changes in insurability that occur up to the date of policy delivery. He notes that the linkage between s. 180(1)(c) and the disclosure requirements in s. 183 is evinced by Canada Life requiring Ms. Trebell to sign a delivery receipt certifying that no changes to her insurability had taken place since the application.

[66] I do not accept the arguments he makes or the interpretation he advances.

[67] I will begin with the submission that s. 180(1)(c) performs a clarification function, because this argument can be dismissed concisely. Once again, the text does not support this interpretation. As I have explained, on its face, s. 180(1)(c) is about a state of fact, not disclosure. I see nothing in s. 180(1)(c) that clarifies the scope of s. 183, which does deal with disclosure. Moreover, there is no need for an additional legislative provision clarifying that s. 183 requires the disclosure of known changes in insurability that occur after the application. Section 183(1) stipulates directly that its disclosure requirement applies to “the application”, a

“medical examination”, and “any written statement or answers furnished as evidence of insurability”. This last phrase plainly covers a situation where an insurer asks the insured to sign a delivery receipt certifying that there have been no changes in insurability postdating the application, as occurred in this case.¹⁰ I would therefore reject the submission that s. 180(1)(c) was added to clarify the scope of s. 183.

[68] I am equally unpersuaded by Mr. Trebell’s remaining submissions in support of a prospective interpretation. First and most importantly, the text of s. 180(1)(c) does not support it. Section 180(1) lists three factual requirements and provides explicitly that “a contract does not take effect unless” they are satisfied. Both the language of the provision read as a whole and the use of the word “and” in listing these requirements make clear that they are cumulative, such that all three factual requirements must be satisfied before the contract takes effect. According to Mr. Trebell’s proposed interpretation, the contract still takes effect once the first two requirements are satisfied, even if there has been a change in insurability preventing the no-change requirement from being satisfied. There is nothing in the provision to support this reading and it is contrary to the language used.

¹⁰ The motion judge should not have treated Canada Life’s decision to request verification of no changes in insurability as evidence relevant to the interpretation of s. 180(1). The meaning of a statutory provision is derived from its terms, not the conduct of parties before the court. In any event, the choice of an insurer to seek such verification cannot logically be taken to be an acknowledgement that s. 180(1)(c) applies only prospectively. It is a prudent practice even if 180(1)(c) operates retrospectively, since it would permit insurers to respond immediately to any post-application changes in insurability that are disclosed.

[69] Moreover, Mr. Trebell’s proposed interpretation is premised on the absence of a “mechanism to void a policy retrospectively”. No such mechanism is required. As indicated, by the terms of s. 180(1), the policy does not “take effect” unless the requirements are satisfied. The French version of s. 180(1) provides that “le contrat n’entre en vigueur” – i.e., “does not come into force”. Although neither the French nor English phrases are defined, they can only mean that no contract arises. And it is axiomatic that if the insurance contract does not take effect or does not come into force, an insurer is not liable for a claim made pursuant to that ineffective contract. There is no need for a mechanism to void the policy retrospectively.

[70] In making this observation, I recognize that the *Insurance Act* uses a range of terms, declaring contracts to be “void” or “voidable” in some places, while in other places speaking of contracts as “binding”, “taking effect”, or being deemed “in force”: see ss. 178 (“void”), 183(2) (“voidable”), 134(1) (“binding”), 180(1) (“take effect”), and 172(2) (“in force”) . I also recognize that ordinarily, courts presume that where the legislature uses different words, it intends a different meaning: Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis, 2022) (online), at §8:04. This principle would appear to support an inference that whatever “does not take effect” means, it cannot mean the contract is “void”. However, this statute is an amalgamation of various pieces of model legislation drafted at different times. As Denis Boivin points out in *Insurance Law*, 2nd ed. (Toronto: Irwin Law, 2015), at pp. 188-89, courts and even legislatures sometimes

use the terms “void” and “voidable” interchangeably in the insurance context. In my view, the varied terms that are used in the Act do not provide support for the proposed prospective interpretation.

[71] A contextual reading of s. 180(1)(c) confirms its natural meaning. Clauses (a) and (b) mirror common law elements for contract formation. Specifically, the delivery requirement signals the insurer’s acceptance of the insured’s application for insurance, and payment of the first premium reflects the consideration paid by the insured: see Billingsley, at §2.01[3]-[4]. It is only logical, given this, that s. 180(1)(c) is also about contract formation.

[72] As I have explained, it addresses the common law requirement of contract formation that there must be a meeting of minds with respect to essential terms of the contract before the contract arises. As this court noted in *Van Huizen v. Trisura Guarantee Insurance Company*, 2020 ONCA 222, 149 O.R. (3d) 589, for an insurance contract to form, “[t]here must be ... agreement on all material terms, including ... the nature and duration of the risk to be covered”: at para. 24, citing *McCunn Estate v. Canadian Imperial Bank of Commerce* (2001), 53 O.R. (3d) 304 (C.A.), at paras. 18-19, leave to appeal granted but appeal discontinued, [2001] S.C.C.A. No. 203. Professor Billingsley notes that “[t]he nature of the risk, the duration of the risk and the value of insurance coverage are all factors relating to the consideration provided by the insurer; that is, the promise to compensate the insured if a specified loss occurs”: Billingsley, at §2.01[5]. Without agreement on

the material terms, it is “impossible for the courts to give effect to the parties’ contract except by virtually writing the contract for them, which is not the function of the courts to do”: *McCunn Estate*, at para. 19, citing Nicholas Leigh-Jones, *MacGillivray on Insurance Law*, 9th ed. (London: Sweet & Maxwell, 1997), at p. 89. There will be no true meeting of the minds if the fundamental subject matter of the contract, such as the insured’s insurability, is something essentially different from what it was believed to be: *General Trust*, at p. 1193; *Miller Paving Limited v. B. Gottardo Construction Ltd.*, 2007 ONCA 422, 86 O.R. (3d) 161, at para. 22; *Lee v. 1435375 Ontario Ltd.*, 2013 ONCA 516, 363 D.L.R. (4th) 222, at paras. 37-40.

[73] Therefore, a contextual reading supports the conclusion that s. 180(1)(c) is about contract formation. If any of the three conditions identified in s. 180(1) are not met, no contract has been formed to support a claim, even without a mechanism to void the policy retroactively.

[74] Mr. Trebell seeks to overcome the natural meaning of the language in s. 180(1)(c) by advancing a purposive interpretation, arguing, as the trial judge reasoned, that a prospective interpretation gives the parties certainty as to when the contract takes effect. I have already explained that it is not the purpose of s. 180(1)(c) to provide the parties with subjective certainty. The purposive interpretation argument Mr. Trebell advances is therefore flawed. A purposive interpretation does not support a prospective interpretation. Instead, it supports the

interpretation advocated by Canada Life that would permit s. 180(1)(c) to be relied upon indefinitely.

[75] Finally, interpreting s. 180(1)(c) as applying only prospectively would rob it of any real effect. No provision is required to empower an insurer to reject the risk by choosing not to deliver the policy after learning of a post-application change in insurability. This is because an application for insurance “is an offer and remains so until [it is] accepted” by the insurer receiving the first premium and delivering the policy: *Ramey v. Maritime Life Assurance Co.* (1972), 2 O.R. 169 (H.C.J.), at p. 175; see also *Mowat*, at p. 162. And a party receiving a contractual offer is always at liberty to reject it. Confining s. 180(1)(c) to prospective applications therefore adds nothing. An interpretation that deprives a provision of meaning should be avoided, and on this basis alone, the prospective interpretation must be rejected: *R. v. Hutchinson*, 2014 SCC 19, [2014] 1 S.C.R. 346, at para. 16; Sullivan, *The Construction of Statutes*, 7th ed., at § 8.03[1].

[76] Finally, case law and commentaries tend to support the view that a change in insurability between the application and delivery of the policy prevents an action to enforce a claim from succeeding, even if the change is discovered after the policy has been delivered. In *Pagliaroli v. Industrial Alliance Insurance and Financial Services Inc.*, 2012 ONSC 6862, at para. 36,¹¹ the terms “take[s] effect”

¹¹ This decision resolved a mid-trial ruling relating to the application of s. 180(1). An appeal from the ultimate jury verdict at the trial favouring the insured was dismissed by this court in *Pagliaroli v. Industrial Alliance*

and “comes into force” were found to be synonymous with denoting “when the insurer is at risk”. Accordingly, the trial judge found that a change in insurability meant that the contract would not take effect: *Pagliarioli*, at paras. 16, 60-61. I read Marshall J.A. in *Ryan* as having come to the same conclusion in considering policy language mirroring the identical Newfoundland provision, even though he used the term “voidable”. He said, “The consequence of a change in the insurability is that the contract will not be considered to have come into effect which is tantamount to holding voidable a policy that might otherwise have been enforceable”: *Ryan*, at para. 135. And the same interpretation was relied upon in *Anderson Estate v. Sun Life Assurance Company of Canada*, 2005 SKCA 130, with respect to s. 142(1)(c) of the *Saskatchewan Insurance Act*, R.S.S. 1978, c. S-26, which is identical to s. 180(1)(c) of the Ontario Act. After rejecting the submission that contractual provisions limiting the insured’s disclosure obligation ousted s. 142(1)(c), Vancise J.A. relied upon s. 142(1)(c) to conclude that an insurance contract had not taken effect because the insured developed cancer between her application and policy delivery. Sun Life did not invoke s. 142(1)(c) until long after policy delivery. The decision supports the view that changes in insurability occurring

Insurance and Financial Services Inc., 2014 ONCA 16, C.C.L.I. (5th) 169. The mid-trial ruling was not challenged on appeal.

during that period prevent a contract from taking effect and can be raised retroactively.¹²

[77] Leading commentators agree that if the requirements specified in s. 180(1) are not met, the contract never comes into force: David Norwood and John P. Weir, *Norwood on Life Insurance Law in Canada*, 3rd ed. (Toronto: Carswell, 2002), at p. 98; Billingsley, at §2.03[2][b][v], citing Norwood, at p. 98; Boivin, at pp. 248-49. I come to the same conclusion.

[78] I would add that it loads the issue to speak of s. 180(1)(c) operating “retroactively”. Since s. 180(1)(c) is a requirement for the contract taking effect, then a contract will never come into effect if there has been a change in insurability between the application and the delivery of the policy. Nothing needs to happen retroactively to invalidate the contract.

[79] I would reject the prospective interpretation that Mr. Trebell proposes and answer “no” to issue 2.

3. Conclusion on the proper interpretation of s. 180(1)(c)

[80] For the foregoing reasons, I am persuaded that a textual, contextual, and purposive analysis of s. 180(1)(c) requires it to be construed as a condition

¹² The decision in *Craig v. Empire Insurance Co.*, 2014 ONSC 6587, 123 O.R. (3d) 436 is less clear. There are passages that can be taken as supporting the opposing conclusion, but notably, McCarthy J. said, “In the absence of any change in insurability up to and including that critical date [i.e., the date of policy delivery], coverage is bound”: *Craig*, at para. 29. The implication, of course, is that coverage is not bound where there has been a change in insurability prior to policy delivery.

precedent of contract formation. I would interpret this provision as requiring no change in the factual state of the risk undertaken by the insurer in insuring the insured. Where this requirement is not met, the contract of insurance does not exist. Accordingly, s. 180(1)(c) can be relied upon at any time by the insurer to resist a claim for life insurance benefits.

4. Does the Policy oust s. 180(1)(c) in any event?

[81] Section 180(1) may be displaced by the terms of the Policy, since, by its terms, the operation of s. 180(1) is “[s]ubject to any provision to the contrary in the application or the policy”. Mr. Trebell argues that Canada Life’s ability to rely on s. 180(1)(c) to deny his claim was displaced through the operation of what I will call the Policy’s “incontestability clause”. He says that this clause was triggered in this case, thereby depriving Canada Life of any defence to the summary judgment motion. He asks us, on this basis, to decide not to set the summary judgment aside even if we find, as I would, that the no change requirement in s. 180(1)(c) would otherwise be a condition precedent to the contract arising.

[82] Without providing any reasons on this point, the motion judge held that the provisions in the Policy were “not in conflict with s. 180(1)”. I come to the same conclusion, for the following reasons.

[83] The incontestability clause of the contract states:

In the absence of fraud, we will not contest the validity of this policy after it has been in force continuously during the lifetime of the Life Insured for two years from the latest of:

- the date of issue of this policy,
- the date the policy takes effect, and
- the date of the last reinstatement of the policy.

[84] The material principles applicable to the interpretation of a contract of insurance that I must consider can be simply stated:

- If the language of an insurance contract is unambiguous, “effect should be given to that clear language, reading the contract as a whole”: *Emond v. Trillium Mutual Insurance Co.*, 2026 SCC 3, 509 D.L.R. (4th) 583, at para. 37. In this case, the whole of the contract consists of the application and the policy: *Insurance Act*, s. 174(2).
- In identifying the clear language of the policy, the “ordinary and grammatical meaning” of the words used in the material clause, read in the context of the entire contract, must be interpreted “as they would be understood by the average person applying for insurance, and not as they might be perceived by persons versed in the niceties of insurance law”: *Emond*, at para. 38.

- Things are more complex if the language of the insurance contract is ambiguous, which will be the case “where there are ‘multiple reasonable but differing interpretations of the policy’” that are not resolved by the definitions in the contract: *Emond*, at para. 41, citing *Sabean v. Portage La Prairie Mutual Insurance Co.*, 2017 SCC 7, [2017] 1 S.C.R. 121, at para. 42. Where this occurs, the meaning that is more reasonable in promoting the intention of the parties is to be selected: *MacDonald v. Chicago Title Insurance Co. of Canada*, 2015 ONCA 842, 127 O.R. (3d) 663, at para. 66, leave to appeal refused, [2016] S.C.C.A. No. 39. If considerations such as the reasonable expectations of the parties, commercial reasonableness, and consideration of similar insurance policies do not identify the interpretation that more reasonably promotes the intention of the parties, “the court must have resort to the *contra proferentem* rule ... which provides that the ambiguity must be resolved in a manner favourable to the insured”: *Emond*, at paras. 48-50.

[85] In my view, the average person reading the Policy’s incontestability clause in the context of the contract as a whole would conclude that it does not oust s. 180(1), but in fact incorporates its requirements for determining when the contract, and hence the Policy, will take effect.

[86] Mr. Trebell's argument to the contrary that the Policy's incontestability clause ousts s. 180(1)(c) proceeds on the basis that the calculation of the two-year "in force" period began on August 6, 2014, "the date of issue of [the] policy". He argues that "[e]ven if the Policy never 'took effect' in the meaning of s. 180 ... [the] two-year 'in force' period could start running from the date of issuance". I disagree. As the opening words of the Policy's incontestability clause specify, all three triggering events identified in the clause are predicated on the Policy being "in force". Therefore, for the date of issuance to be the date the incontestability period is measured from, the Policy must first be in force on that date. Mr. Trebell's argument begs the question.

[87] Moreover, I cannot accept Mr. Trebell's interpretation of the words "in force", the crucial words in the clause. He argued before us that "in force" must be interpreted to mean the point in time when the parties "acted as if it [the Policy] were 'in force'". Although he described this as the "plain meaning" of the term, he based this argument in large measure on the submission that since the Policy's incontestability clause uses both the terms "in force" and "the date the policy takes effect", "in force" cannot have the same meaning as "takes effect". There are three problems with this submission.

[88] First, the clause requires the Policy to have "been in force", which on its plain and ordinary language would be understood by the average person as describing an actual state-of-affairs, not an apparent one based on how the parties appear to

be acting. With respect, attempting to interpret “in force” as apparently being in force is not a plain meaning but a contrived one.

[89] Second, I do not accept that the fact that the Policy’s incontestability clause uses both the expressions “in force” and “takes effect” requires that distinct meanings be given to each term. In my view, based on the plain and ordinary meaning of the Policy’s incontestability clause, the average person would understand “in force” as a description of the Policy while it is in effect, and “takes effect” as the point in time when it comes into force.

[90] Third, the contract, when read as a whole, shows that the contract does not oust s. 180(1), but relies upon s. 180(1) to resolve when the Policy is in force. The application, which forms part of the contract, says explicitly that: “Insurance will only come into force once a policy has been issued as a result of this application and all statutory requirements for the policy’s coming into force have been met” (emphasis added). There is nothing to the contrary in the Policy. Indeed, the “Definitions” section of the Policy confirms this, in describing the term “Policy Date”:

The “Policy Date” is shown on the Policy Details page(s) and is the date from which policy months, policy years and annual policy anniversaries are measured. It is also the date used to calculate the age and attained age of any person insured at issue of the policy. However, the date on which the policy first takes effect will be determined by governing law. [Emphasis added.]

[91] The governing law that defines when a policy “first takes effect” necessarily includes the *Insurance Act*. The only provision in that Act or any other statute that describes when a life insurance contract, and hence a policy, will “take effect” is s. 180(1). In my view, the meaning of the Policy’s incontestability clause is plain, and it is contrary to the position Mr. Trebell advances. There is thus no need to resort to secondary rules of contractual interpretation or the *contra proferentem* rule. I would answer “no” to issue 3 and find that the contract has not ousted the operation of s. 180(1)(c).

CONCLUSION

[92] The motion judge erred in concluding that there is a statutory incontestability provision that prevents Canada Life from relying on s. 180(1)(c). Properly interpreted, this section is subject to no contestability limitation. Further, there is no provision of the Policy that ousts its application in this case. I would therefore allow the appeal and set aside the summary judgment.

[93] Canada Life seeks an order substituting a dismissal of Mr. Trebell’s summary judgment motion. This would necessarily entail finding that there is a genuine issue requiring a trial: *Ashak v. Ontario (Family Responsibility Office)*, 2013 ONCA 375, 115 O.R. (3d) 401, at para. 7. I would not grant this remedy. The record is far from clear that the issue of whether Ms. Trebell’s insurability changed between her application and the delivery of the Policy is one that requires a trial. The motion judge did not consider this point. The better approach is to set aside

the summary judgment in favour of Mr. Trebell and leave it to the parties to decide how they wish to litigate the insurability issue.

[94] Given the quasi-public interest nature of this litigation, Canada Life does not seek costs of the appeal, nor does it seek to set aside the costs awarded to Mr. Trebell below. Accordingly, I would not order any costs on appeal and would leave the motion judge's costs award undisturbed.

Released: July 3, 2026 "J.S."

"David M. Paciocco J.A."

"I agree. Janet Simmons J.A."

"I agree. Osborne J.A."

Appendix “A”

Sections 180 through 184 of the *Insurance Act* read as follows:

Contract taking effect

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. R.S.O. 1990, c. I.8, s. 180 (1); 2013, c. 2, Sched. 8, s. 9.

Delivery to agent

(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in clause (1) (a), it shall be deemed, but not to the prejudice of the insured, to have been delivered to the insured. R.S.O. 1990, c. I.8, s. 180 (2).

Default in paying premium

181 (1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the premium or part thereof shall be deemed not to have been paid. R.S.O. 1990, c. I.8, s. 181 (1); 2012, c. 8, Sched. 23, s. 16.

Payment by registered letter

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter. R.S.O. 1990, c. I.8, s. 181 (2).

Payment of premium

Who may pay premium

182 (1) Except in the case of group insurance or of creditor's group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or on behalf of the insured may pay any premium that the insured is entitled to pay. 2012, c. 8, Sched. 23, s. 17 (1).

Period of grace

(2) Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of,

(a) thirty days; or

(b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period. R.S.O. 1990, c. I.8, s. 182 (2); 2020, c. 34, Sched. 7, s. 5.

Contract in force during grace period

(3) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due and, except in the case of group insurance or of creditor's group insurance, the amount of the premium may be deducted from the insurance money. 2012, c. 8, Sched. 23, s. 17 (2).

Duty to disclose

183 (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 the person's knowledge that is material to the insurance and is not so disclosed by the other. R.S.O. 1990, c. I.8, s. 183 (1).

Failure to disclose

(2) Subject to section 184 and subsection (3) of this section, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer. R.S.O. 1990, c. I.8, s. 183 (2); 2012, c. 8, Sched. 23, s. 18 (1).

Failure to disclose, application for change, etc., in contract

(3) A failure to disclose, or a misrepresentation of, a fact referred to in subsection (1) relating to evidence of insurability with respect to the following kinds of applications renders the contract voidable by the insurer, but only in relation to the addition, increase or change applied for:

1. For additional coverage under a contract.
2. For an increase in insurance under a contract.
3. For any other change to insurance after the policy is issued. 2012, c. 8, Sched. 23, s. 18 (2).

Exceptions

184 (1) This section does not apply to,

- (a) a misstatement of age of a person whose life is insured; or
- (b) insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay insurance money or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease. 2002, c. 18, Sched. H, s. 4 (23); 2012, c. 8, Sched. 23, s. 19 (1).

Incontestability, general

(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. R.S.O. 1990, c. I.8, s. 184 (2); 2012, c. 8, Sched. 23, s. 19 (2).

Incontestability in group insurance, creditor's group insurance

(3) In the case of a contract of group insurance or of creditor's 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,

(a) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for the insurance in respect of the person, the insurance in respect of that person is voidable by the insurer; and

(b) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for an addition, increase or change referred to in subsection 183 (3) in respect of the person, the addition, increase or change in respect of that person is voidable by the insurer,

unless the insurance, addition, increase or change has been in effect for two years during the lifetime of that person, in which case the insurance, addition, increase or change is not, in the absence of fraud, voidable. 2012, c. 8, Sched. 23, s. 19 (3).

Sections 180 through 184 of the French version of the *Insurance Act* read as follows:

Entrée en vigueur du contrat

180 (1) Sous réserve de toute disposition contraire dans la proposition ou dans la police, le contrat n'entre en vigueur qu'aux conditions suivantes :

- a) la police est remise à un assuré, à son ayant droit ou agent, ou à un bénéficiaire;
- b) le paiement de la prime initiale est effectué à l'assureur ou à son agent autorisé;
- c) aucun changement ne s'est produit dans l'assurabilité de la personne à assurer entre le moment où la proposition a été remplie et celui où la police a été remise. L.R.O. 1990, chap. I.8, par. 180 (1); 2013, chap. 2, annexe 8, art. 9.

Remise de la police à un agent

(2) La police qui est établie conformément aux termes de la proposition et remise à un agent de l'assureur pour qu'il la remette inconditionnellement à une personne visée à l'alinéa (1) a) est réputée, si ce n'est pas au préjudice de l'assuré, avoir été remise à ce dernier. L.R.O. 1990, chap. I.8, par. 180 (2).

Défaut de paiement de la prime

181 (1) Si un chèque ou une autre lettre de change, ou un billet ou une autre promesse écrite de payer est donné en paiement total ou partiel d'une prime, et que le chèque, la lettre de change ou le billet n'est pas honoré selon sa teneur, la prime ou la partie de celle-ci est réputée ne pas avoir été payée. L.R.O. 1990, chap. I.8, par. 181 (1); 2012, chap. 8, annexe 23, art. 16.

Lettre recommandée

(2) Le versement d'une prime ou à valoir sur une prime, qui est envoyé par lettre recommandée à l'assureur et qui est reçu par lui, est réputé avoir été reçu au moment de la recommandation de la lettre. L.R.O. 1990, chap. I.8, par. 181 (2).

Personnes pouvant acquitter la prime

182 (1) Sauf dans le cas d'une assurance collective ou d'une assurance collective de créancier, le cessionnaire d'un contrat, le bénéficiaire ou la personne agissant pour le compte de l'un d'eux ou de l'assuré peuvent acquitter la prime que l'assuré a le droit de payer. 2012, chap. 8, annexe 23, par. 17 (1).

Délai de grâce

(2) La prime, sauf la prime initiale, qui n'est pas acquittée à son échéance peut être acquittée dans le plus long des délais de grâce suivants :

a) trente jours;

b) le nombre de jours, le cas échéant, indiqué au contrat pour le paiement d'une prime arriérée. L.R.O. 1990, chap. I.8, par. 182 (2); 2020, chap. 34, annexe 7, art. 5.

Contrat en vigueur pendant le délai de grâce

(3) Lorsque l'événement dont la survenance rend les sommes assurées exigibles se produit durant le délai de grâce et avant l'acquittement de la prime arriérée, le contrat est réputé en vigueur comme si la prime avait été acquittée à l'échéance et, sauf dans le cas d'une assurance collective ou d'une assurance collective de créancier, le montant de la prime peut être déduit des sommes assurées. 2012, chap. 8, annexe 23, par. 17 (2).

Devoir de divulgation

183 (1) Le proposant d'une assurance et la personne sur la tête de qui doit reposer l'assurance sont chacun tenus de divulguer à l'assureur dans la proposition, lors d'un examen médical, le cas échéant, et dans les déclarations écrites ou les réponses données comme preuve d'assurabilité, tous les faits dont ils ont connaissance et qui sont essentiels à l'assurance et ne sont pas divulgués par l'autre. L.R.O. 1990, chap. I.8, par. 183 (1).

Omission de divulguer

(2) Sous réserve de l'article 184 et du paragraphe (3) du présent article, l'omission de divulguer ces faits ou une déclaration inexacte portant sur ces faits rend le contrat annulable par l'assureur. L.R.O. 1990, chap. I.8, par. 183 (2); 2012, chap. 8, annexe 23, par. 18 (1).

Omission de divulguer : couverture supplémentaire, augmentation ou changement

(3) L'omission de divulguer un fait visé au paragraphe (1) ou une déclaration inexacte portant sur un tel fait relativement à une preuve d'assurabilité à l'égard d'un des types de propositions suivants rend le contrat annulable par l'assureur, mais seulement relativement à l'objet de la proposition :

1. Une couverture supplémentaire aux termes d'un contrat.
2. Une augmentation de l'assurance aux termes d'un contrat.
3. Tout autre changement à apporter à l'assurance après la délivrance de la police. 2012, chap. 8, annexe 23, par. 18 (2).

Exceptions

184 (1) Le présent article ne s'applique pas à ce qui suit:

- a) une déclaration erronée de l'âge d'une personne sur la tête de qui repose une assurance;
- b) l'assurance faisant partie d'un contrat d'assurance-vie, par laquelle l'assureur s'engage à verser une somme assurée ou d'autres prestations, si la personne sur la tête de qui repose l'assurance devient invalide par suite de lésions corporelles ou d'une maladie. 2002, chap. 18, annexe H, par. 4 (23); 2012, chap. 8, annexe 23, par. 19 (1).

Idem

(2) Sous réserve du paragraphe (3), lorsqu'un contrat, une couverture supplémentaire, une augmentation ou un changement visé au paragraphe 183 (3) a été en vigueur pendant deux années de la vie de la personne sur la tête de qui repose l'assurance, l'omission de divulguer un fait dont l'article 183 exige la divulgation ou une déclaration inexacte portant sur ce fait ne rend pas, sauf en cas de fraude, le contrat annulable. L.R.O. 1990, chap. I.8, par. 184 (2); 2012, chap. 8, annexe 23, par. 19 (2).

Incontestabilité dans le cas de l'assurance collective et de l'assurance collective de créancier

(3) Dans le cas d'un contrat d'assurance collective ou d'assurance collective de créancier, l'omission de divulguer ce fait ou une

déclaration inexacte portant sur ce fait à l'égard de la personne sur la tête de qui repose le contrat ne rend pas le contrat annulable. Toutefois :

a) si la non-divulgence ou la déclaration inexacte a trait à une preuve d'assurabilité exigée expressément par l'assureur au moment de la proposition d'assurance à l'égard de la personne, l'assurance à l'égard de la personne est annulable par l'assureur;

b) si la non-divulgence ou la déclaration inexacte a trait à une preuve d'assurabilité exigée expressément par l'assureur au moment de la proposition de couverture supplémentaire, d'augmentation de l'assurance ou de changement visée au paragraphe 183 (3) à l'égard de la personne, la couverture supplémentaire, l'augmentation de l'assurance ou le changement est annulable par l'assureur.

Toutefois, si l'assurance, la couverture supplémentaire, l'augmentation de l'assurance ou le changement a été en vigueur pendant deux années de la vie de la personne, l'assurance, la couverture supplémentaire, l'augmentation de l'assurance ou le changement n'est pas annulable, sauf en cas de fraude. 2012, chap. 8, annexe 23, par. 19 (3).

Section 134(1) of the *Insurance Act* reads as follows:

Effect of delivery of policy

134 (1) Where the policy has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it. R.S.O. 1990, c. I.8, s. 134 (1).

Right of insurer in respect of unpaid premium

(2) The insurer may sue for the unpaid premium and may deduct the amount thereof from the amount for which the insurer is liable under the contract of insurance. R.S.O. 1990, c. I.8, s. 134 (2).

Where note or cheque for premium not honoured

(3) If a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract promptly by giving written notice by,

(a) registered mail;

(b) personal delivery;

(c) prepaid courier, if there is a record by the person who has delivered it that the notice has been delivered; or

(d) electronic means, if the insured consents to delivery by electronic means. 2024, c. 20, Sched. 10, s. 5.

Section 134(1) of the French version of the *Insurance Act* reads as follows:

Effet de la remise de la police

134 (1) Lorsque la police a été remise, le contrat lie l'assureur comme si la prime avait été payée, même si, de fait, elle ne l'a pas été, et même si la police a été remise par un dirigeant ou un agent de l'assureur qui n'avait pas qualité pour le faire. L.R.O. 1990, chap. I.8, par. 134 (1).