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The formation of a life insurance contract – Recent case law

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Life insurance is a contract. Like any other contract it is formed by the process of negotiation between the parties. This involves an offer, acceptance and payment of consideration. However, the general rules of contract formation do not settle all questions of life insurance contract formation since the Insurance Act of the province overlays additional requirements and rules.

One such rule is that a change in insurability subsequent to the completion of the application but before delivery prevents consummation of the contract so that no contract goes into effect at all since there is no "meeting of the minds".

The case of Trebell v. Canada Life Assurance Company, 2026 ONCA 481 specifically considered this under the Insurance Act (Ontario).

Facts

On July 8, 2014, Ms. T applied for a $500,000 life insurance policy to satisfy an obligation under her separation agreement. In the application she responded to questions about her health and paid the initial premium (consideration). The policy was issued on August 6, 2014. This would be the offer under contract law.

While awaiting delivery of the policy, Ms. T went to her doctor with symptoms. She was referred for further testing. On September 18, 2014, she went for a test and the attending physician noted a 5-month history of symptoms and recommended a more comprehensive test to screen for cancer.

On September 24, 2014, the policy was delivered to Ms. T and she 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.

The recommended test was performed on December 2, 2014, and it showed a malignant lesion. Ms. T died of cancer on March 24, 2018. Canada Life denied the claim by the beneficiary Mr. T relying 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.

The Law

Subsection 180(1) of the Insurance Act (Ontario) provides as follows:

> 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.

A summary judgment (2025 ONSC 2884) was granted in favour of Mr. T. The Court of Appeal found that the motion judge erred in finding that Canada Life was limited to a two year contestability period in denying the claim in this case.

Reasons for Judgment by the Court of Appeal

The Court stated that "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 delivery of the policy." And in a footnote referring to and quoting from textbooks and academic writers explained: "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" and "by definition a change in insurability is a change which increases the risk of loss: that is a material change of facts."

Although the Insurance Act has other provisions (section 183 and subsection 184(2)) that render a contract "voidable" and that impose a two-year limitation (often referred to as a contestability period), the Court found that these provisions did not apply and could not be implied to impose a two-year limitation period on Canada Life in denying the claim. In essence no change in insurability is a condition precedent for a contract coming into existence. No contract can come into existence where there is such a change and there is no time limit for an insurer to assert this.

The Court did an examination of the history of section 180(1) and found the legislative purpose of this section was to "preserve the meeting of the minds relating to the essential terms that were agreed to" between the insurer and the insured. And, it is the "insurer, as the party asserting a change in insurability who bears the burden of invoking this section and proving that the risk it assumed was higher than that which it agreed to."

The Court distinguished section 183 as being "concerned with ensuring full disclosure" from paragraph 180(1)(c) as dealing with "changes that alter the risk agreed to, thereby undermining the essence of the contract."

What this decision means

This case finds that there is no time limitation for an insurer to assert a change in insurability occurred between application and delivery. However, there are very practical limitations in doing so. The onus is on the insurer to prove that a change in insurability occurred in asserting that the contract did not come into existence. In this case the Court set aside the summary judgment in favour of Mr. T and left it to the parties to litigate the insurability issue.

It is also important to not lose sight of the fact that in general, very few life insurance claims are denied. (See: Demystifying life insurance claims – How instant is "instant liquidity"? – Tompkins Insurance).

FOOTNOTE:

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