

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

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LEN FISHMAN,	)	for the plaintiff
	)	
plaintiff,	)	
	)	
- and -	)	
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BMO LIFE ASSURANCE COMPANY,	)	for the defendant
	)	
defendant.	)	
	)	Judgment Delivered:
	)	September 18, 2026

REMPEL J.

CORE ISSUE

[1] This application concerns the extent of an insurer's right to investigate a claim under a life insurance contract after receipt of the proof required by s. 180 of *The Insurance Act*, C.C.S.M. c. I40 (the "**Act**"). The central question is whether compliance with s. 180 of the **Act** entitles a beneficiary to payment of the death benefit as of right, or whether the insurer may require further disclosure to investigate a potential defence of civil fraud before paying the claim.

FRAMING THE ISSUES

[2] The life insurance policy at issue had been in force for more than two years at the time of the insured's death. Accordingly, by virtue of the incontestability provisions in s. 161(2) of the **Act**, the insurer may resist payment only upon proof of civil fraud.

[3] The plaintiff beneficiary submits that his obligations as a claimant are limited to providing the information prescribed by s. 180 of the **Act**: proof of the insured's death, her age, his entitlement to the proceeds, and the identity and age of the beneficiary. While he acknowledges that an insurer need not pay a claim where civil fraud is established, he argues that neither s. 180 nor any other provision of the **Act** requires him to answer further questions or provide additional information as a condition of payment.

[4] The defendant insurer submits that its entitlement is not so limited. It contends that it may make reasonable inquiries of the beneficiary, including into the insured's habits and conduct before her death, to determine whether a defence of civil fraud may be available. Further, the defendant insurer argues that it can require the plaintiff to answer questions concerning the habits and conduct of the insured as a condition of payout, provided those inquiries are relevant to the question of fraud. It argues that the obligation to pay insurance proceeds arises only where the policy is valid and not voidable for fraud.

[5] In short, the defendant insurer submits that a valid and enforceable contract is a pre-condition to payment and that the 30-day payment period prescribed by s. 180 of the **Act** is not engaged until it has had a reasonable opportunity to investigate whether the policy is voidable for civil fraud.

[6] Accordingly, there are two issues to be decided. The first is whether compliance with s. 180 gives rise to an immediate obligation to pay, or whether an insurer may first undertake reasonable inquiries to determine whether the policy is voidable for civil fraud. The second is whether, in the circumstances of this case, and under the terms of the life insurance policy at issue in these proceedings (the "Policy"), the defendant insurer was entitled to require the plaintiff to answer questions relevant to its fraud investigation before paying the claim.

DECISION

[7] I am satisfied that the position of the insurer is correct. Although an insurer may ultimately deny payment only on proof of civil fraud, that limitation does not prevent it from making reasonable inquiries of the claimant or beneficiary, here one and the same, necessary to determine whether such a defence is available.

[8] In this case, the insurer's right not only to make those inquiries, but also to require a response is confirmed by the authorization contained in section 13.1, item 6 of the insured's March 23, 2017, application for life insurance (the "Application"), which, pursuant to s. 151(2) of the **Act**, forms part of the Policy. In that authorization, the insured permits the insurer to obtain information for both risk assessment and evaluation of the claim.

[9] Interpreting the Policy and the **Act** as limiting the insurer, before paying a death benefit, to verifying only the perfunctory facts required by s. 180 of the **Act** as suggested by the plaintiff, would render the civil fraud defence under the **Act** largely illusory. It would also, in the circumstances of this case, deprive the contractual provision, in which

the insurer is authorized to "*acquire information about me for the appraisal of the risk or the evaluation of a claim*", of meaningful effect.

[10] Properly construed, I am of the view that when a life insurance policy has been in force for more than two years before the insured's death, the insurer remains entitled to make reasonable inquiries directed toward determining whether a defence of civil fraud may be available. Satisfaction of the evidentiary requirements set out in s. 180 does not preclude an insurer from investigating whether the policy is voidable for fraud.

[11] In this case, the insurer's entitlement to require answers to questions reasonably connected to that inquiry arises directly from the authorization contained in item 6, section 13.1 of the insured's Application, which forms part of the Policy. As I have already noted, under that clause, the insured authorized the defendant insurer to "*acquire information about me for the appraisal of risk or the evaluation of a claim*".

[12] Interpreting the Policy and the **Act** as limiting the insurer, before paying a death benefit, to verifying only the matters identified in s. 180 would substantially impair the effectiveness of the civil fraud exception preserved by s. 161(2) and render the contractual authorization for claim evaluation largely ineffective.

FACTS AND PROCEDURAL HISTORY

[13] The underlying dispute concerns the plaintiff's entitlement to the proceeds of \$300,000 under the Policy, which was issued by the defendant, BMO Life Assurance Company ("BMO"), on March 23, 2017. The holder of the Policy was the plaintiff's late wife, Gail Fishman (the "Deceased"), who designated the plaintiff as beneficiary.

[14] In her Application that gave rise to the Policy, the Deceased answered “No” to questions concerning the use of marijuana, tobacco, nicotine products, and related substances during the preceding five years.

[15] The Deceased died on December 11, 2024. In the following month, the plaintiff submitted a claim for the Policy proceeds. As part of the claims process, BMO required him to complete a form entitled “Claimant’s Statement – Proof of Death” (the “Claimant’s Statement”).

[16] In the Claimant’s Statement, the plaintiff indicated that the Deceased had used marijuana for “20+ years”. This information was inconsistent with the answers the Deceased had provided in her Application.

[17] It is common ground between the parties that the Policy had been in force for more than two years prior to the Deceased’s death and the statutory incontestability provision contained in s. 161(2) of the **Act** applies. BMO acknowledges that payment of the proceeds due under the Policy can only be avoided if it can establish the defence of civil fraud.

[18] The discrepancy between the information provided in the Application and that contained in the Claimant’s Statement gave rise to the present litigation. The parties brought a motion under Rules 21 and 22 of the **Court of King’s Bench Rules**, Man. Reg. 553/88, seeking a determination of the proper interpretation of s. 180 of the **Act**.

[19] The motion proceeded on the basis of an agreed statement of facts. The material facts may be summarized as follows.

The Parties and the Formation of the Policy

[20] The plaintiff was the Deceased's husband at the time of her death and the designated beneficiary under the Policy.

[21] On March 23, 2017, the Deceased applied for life insurance with BMO. The Policy was issued and came into force on that same date.

[22] In the Application, the Deceased answered "No" to all questions asking whether she had used tobacco, marijuana, hashish, nicotine products, or nicotine substitutes during the previous 12 months, 24 months, or five years.

The Deceased's Death and the Claim

[23] The Deceased died of cancer on December 11, 2024. At that time, all premiums had been paid and the Policy remained in force.

[24] Following the Deceased's death, the plaintiff provided BMO with a death certificate confirming the date of death and the Deceased's age, together with information identifying himself as the Policy's beneficiary.

[25] BMO subsequently provided the plaintiff with a blank Claimant's Statement and required its completion as part of the claims process. On January 3, 2025, the plaintiff submitted the completed form, which included the following exchange:

Q: To your knowledge, did the Deceased ever smoke or use tobacco products or marijuana in any form?

A: Yes.

Q: If "Yes", please advise as to the substance smoked and the length of time the Deceased had been smoking.

A: Marijuana – 20+ years.

BMO's Request for Further Information

[26] Following receipt of the Claimant's Statement, BMO requested additional information concerning the Deceased's history of marijuana use.

[27] By letter dated February 17, 2025, counsel for the plaintiff advised BMO that no further information would be provided. That letter also confirmed that the plaintiff was withdrawing all previously granted consents permitting BMO to collect personal information concerning either the plaintiff or the Deceased. The letter also asserted that, pursuant to s. 180 of the **Act**, the plaintiff had no obligation to provide additional information to BMO and demanded immediate payment of the death benefit.

Agreed Issues

[28] The parties agreed that the Application, brought pursuant to Rules 21.01(1) and 22 of the **Court of King's Bench Rules**, raises the following issues concerning the interpretation of the **Act**:

- a) What is the proper interpretation of s. 180 of the **Act**, including the meaning of each of the elements set out in clauses (a) through (d)?
- b) May an insurer require disclosure of information beyond that prescribed by s. 180 in order to determine entitlement to payment under a life insurance policy that has been in force for more than two years before the insured's death?
- c) Has the plaintiff satisfied the conditions for payment set out in s. 180?
- d) If so, does s. 180 require the insurer to pay the death benefit notwithstanding its position that the Policy is void for fraud?

RELEVANT SECTIONS OF THE *Act*

[29] Counsel agree that the following sections of the ***Act*** are relevant to this dispute.

Counsel also agree there are no substantive differences in the English and French versions of the ***Act*** that impact the meaning of these sections:

Duty to disclose

160(1) An applicant for life insurance and a person whose life is to be insured must each disclose to the insurer

- (a) in the application;
- (b) on a medical examination, if any; and
- (c) in any written statements or answers provided as evidence of insurability;

every fact within the applicant's or person's knowledge that is material to the life insurance and is not so disclosed by the other.

Failure to disclose — basic policy

160(2) Subject to subsection (3) and section 161, a failure to disclose or a misrepresentation of a fact referred to in subsection (1) renders the contract voidable by the insurer.

...

Incontestability

161(2) Subject to subsection (3), if a contract, or an addition, increase or change referred to in subsection 160(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 by section 160 to be disclosed does

Obligation de déclaration

160(1) Le proposant d'une assurance-vie et la personne dont la vie doit être assurée doivent révéler chacun à l'assureur dans la proposition, lors de l'examen médical, le cas échéant, et dans les déclarations écrites ou les réponses fournies comme preuve d'assurabilité tous les faits dont ils ont connaissance, qui sont essentiels à l'assurance-vie et qui ne sont pas déclarés par l'autre.

Défaut de déclarer — police de base

160(2) Sous réserve du paragraphe (3) et de l'article 161, le défaut de déclarer un fait visé au paragraphe (1) ou une déclaration inexacte à propos d'un tel fait rend le contrat annulable par l'assureur.

...

Incontestabilité

161(2) Sous réserve du paragraphe (3), si un contrat ou un supplément, une augmentation ou une modification que vise le paragraphe 160(3) a été en vigueur pendant deux années de la vie de la personne dont la vie est assurée, le défaut de déclarer un fait qui doit être déclaré conformément à

not, in the absence of fraud, render the contract voidable.

...

PROCEEDINGS UNDER CONTRACT

Proof of claim

180 If an insurer receives sufficient evidence of

- (a) the happening of the event upon which insurance money becomes payable;
- (b) the age of the person whose life is insured;
- (c) the right of the claimant to receive the insurance money; and
- (d) the name and age of the beneficiary, if there is a beneficiary;

it must, within 30 days after receiving the evidence, pay the insurance money to the person entitled to it.

...

Limitation of actions — insurance money payable on death

184(1) Subject to subsections (2) and (5), an action or proceeding against an insurer for the recovery of insurance money payable in the event of a person's death must be commenced not later than the earlier of

- (a) two years after the date evidence is provided under section 180; and
- (b) six years after the date of the death.

...

l'article 160 ou une déclaration inexacte à propos d'un tel fait ne rend pas, sauf en cas de fraude, le contrat annulable.

...

PROCÉDURES RELATIVES À UN CONTRAT

180 L'assureur doit verser les sommes assurées à la personne qui y a droit dans un délai de 30 jours suivant la réception de preuves suffisantes concernant :

- a) la survenance de l'événement qui rend les sommes assurées payables;
- b) l'âge de la personne dont la vie est assurée;
- c) le droit du demandeur de recevoir les sommes assurées;
- d) le nom et l'âge du bénéficiaire, le cas échéant.

...

Prescription — sommes assurées à verser au décès

184(1) Sous réserve des paragraphes (2) et (5), une action ou une procédure contre un assureur en recouvrement de sommes assurées à verser en cas de décès d'une personne doit être engagée au plus tard à la plus rapprochée des dates suivantes :

- a) la date qui tombe deux ans après la production des preuves visées à l'article 180;
- b) la date qui tombe six ans après le décès.

...

Declaration by court as to
sufficiency of proof

186 If an insurer admits the validity of the life insurance but does not admit the sufficiency of the evidence required by section 180 and there is no other question in issue except a question under subsection 4(1) of *The Presumption of Death and Declaration of Absence Act*, the insurer or the claimant may, before or after action is brought and on at least 30 days' notice, apply to the court for a declaration as to the sufficiency of the evidence provided, and the court may make the declaration or may direct what further evidence is to be provided and on the provision of the evidence may make the declaration or, in special circumstances, may dispense with further evidence and make the declaration.

Déclaration du tribunal sur le caractère
suffisant des preuves

186 Si l'assureur reconnaît la validité de l'assurance, mais déclare insuffisantes les preuves requises par l'article 180, et qu'il n'existe aucune autre question en litige qu'une question régie par le paragraphe 4(1) de la *Loi sur la présomption de décès et la déclaration d'absence*, l'assureur ou le demandeur peut, avant ou après l'introduction d'une action et sur préavis d'au moins 30 jours, demander au tribunal de faire une déclaration sur le caractère suffisant des preuves produites. Le tribunal peut faire la déclaration ou indiquer les preuves supplémentaires qui doivent être produites. Une fois les preuves produites, il peut faire la déclaration ou, dans des cas spéciaux, dispenser de la production de preuves supplémentaires et faire la déclaration.

[30] In my opinion, ss. 192(1) and 196(1) are also relevant to the interpretive exercise and I am satisfied there are no substantive differences in the English and French versions of these sections that impact their meaning:

Payment into court by insurer

192(1) If an insurer admits liability for insurance money and it appears to the insurer that

- (a) there are adverse claimants;
- (b) the whereabouts of a person entitled to the insurance money is unknown;
- (c) there is no person capable of giving and authorized to give a

Consignation auprès du tribunal par
l'assureur

192(1) S'il se reconnaît débiteur de sommes assurées, l'assureur peut, après qu'un délai de 30 jours s'est écoulé suivant la date à laquelle ces sommes sont devenues exigibles, présenter une requête sans préavis au tribunal afin d'obtenir une ordonnance prévoyant la consignation de ces sommes auprès de celui-ci, lorsqu'il lui semble, selon le cas :

valid discharge for the insurance money who is willing to do so;

(d) there is no person entitled to the insurance money; or

(e) the person to whom the insurance money is payable would be disentitled on public policy or other grounds;

the insurer may, after 30 days have elapsed after the date upon which the insurance money became payable, apply to the court, without notice, for an order for the payment of the money into court.

...

Court may order payment

196(1) If an insurer does not pay insurance money to some person competent to receive it or into court within 30 days after receipt of the evidence required by section 180, the court may on application of any person order that the insurance money or any part of the insurance money be paid into court, or may make any other order as to the distribution of the money that it considers just.

a) qu'il existe des demandeurs qui s'opposent;

b) que l'endroit où se trouve un ayant droit est inconnu;

c) qu'il n'existe aucune personne ayant la capacité et l'autorisation de donner une quittance valable à l'égard de ces sommes qui veuille le faire;

d) qu'il n'y a aucun ayant droit;

e) que la personne à laquelle ces sommes doivent être versées serait inadmissible pour des raisons d'ordre public ou d'autres motifs.

...

Ordonnance de consignation

196(1) Si l'assureur ne procède pas, dans un délai de 30 jours suivant la réception des preuves requises par l'article 180, au paiement des sommes assurées à une personne qui est habilitée à les recevoir ou à leur consignation auprès du tribunal, ce dernier peut, sur requête de toute personne, ordonner la consignation auprès de lui des sommes assurées ou d'une partie de celles-ci, ou rendre l'ordonnance de distribution des sommes qu'il estime juste.

PRINCIPLE OF HARMONIOUS INTERPRETATION OF A STATUTE

[31] The modern approach to statutory interpretation dictates that the words of a statutory provision cannot be read in isolation. Rather, the foundational rule dictates that 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 legislation, the object of the Act, and the intention of the legislature (*Rizzo & Rizzo Shoes Ltd. (Re)*,

1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21). In applying this approach, courts typically break the analysis down into three interrelated components, namely text, context, and purpose.

[32] The most recent appellate authority in Manitoba on statutory interpretation is summarized in ***Fehr v. Manitoba (Health Insured Benefits, Insurance Division)***, 2026 MBCA 52, as follows:

[117] In *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), the Supreme Court of Canada explained that statutory interpretation cannot be based on statutory language alone. The legislative words must be read in their entire context, not only in their grammatical and ordinary sense, but harmoniously with the scheme of the legislation, the object of the legislation, and the intention of the Legislature.

[118] Also germane to statutory interpretation is section 6 of *The Interpretation Act*, CCSM c I80, which provides:

Rule of liberal interpretation

6 Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

Solution de droit

6 Les lois et les règlements sont censés apporter une solution de droit et s'interprètent de la manière la plus équitable et la plus large qui soit, compatible avec la réalisation de leur objet.

[33] ***Fehr*** involved the interpretation of legislation and regulations "*designed to protect the health of eligible insured persons*" through the provision of publicly funded medical services, which in turn requires "*a liberal interpretation of the Act and the Regulation*" and that "*any doubt in legislative language should be resolved in favour of the claimant seeking benefits*" (citations omitted) (at para. 119).

[34] The statutory text is the starting point of any analysis because it serves as the “*anchor of the interpretative exercise*” (***R. v. Carignan***, 2025 SCC 43, para. 58). ***Manitoba Hydro v. Wawasum Energy Inc. et al.***, 2026 MBKB 53 (“***Wawasum***”), describes that starting point with reference to ***Rizzo***, and then comments on context and purpose:

[28] Although the text may be “*the anchor of the interpretative exercise*” it is not the only step in the process. The text must be read in its proper context and in harmony with the purpose of the statute as required by *Rizzo Shoes* which confirms “*statutory interpretation cannot be founded on the wording of the legislation alone*” (at para. 21).

[35] The analysis of the purpose of legislation must be guided by legislative intent and the broader statutory scheme in which the language is set. While engaging in an interpretive exercise, courts must show fidelity to the public policy choices made by legislators (***Fehr***, at para. 150).

[36] As I have already stated, a contextual analysis demands a reading of statutory provisions harmoniously and in context with the scheme of the ***Act***. By examining the relationship between different sections across the entirety of an ***Act***, courts ensure that the interpretation of one isolated provision does not create discordance, contradictions, or conflict with the rest of the law. As stated by the Supreme Court of Canada in ***La Presse inc. v. Quebec***, 2023 SCC 22:

[23] ... The apparent clarity of the words taken separately does not suffice because they “may in fact prove to be ambiguous once placed in their context. The possibility of context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation” (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10).

[37] Under the harmonious interpretation principle, provisions within a statute are presumed to work together as parts of a functioning, internally consistent whole. The legislature is presumed to intend for its statutory provisions to be interpreted and applied so that they fit together in a way that respects the legislature's multiple objectives and gives clear purpose and meaning to each individual provision.

[38] This coherent reading of different sections applies in several practical ways during legal analysis.

Reconciling General and Specific Provisions

[39] In legislative drafting, it is common practice to first formulate a broad, general rule and then subsequently clarify or narrow that rule using more specific provisions. Courts must read the general and specific rules in their proper context, recognizing that the specific rules qualify the general rule and reveal its true, intended scope in a particular situation. Examining the context of different provisions provides vital context to their proper interpretation (***R. v. Carignan***, 2025 SCC 43, at paras. 67-69).

Avoiding Surplusage

[40] A coherent reading of a statute requires courts to interpret sections in a way that gives them practical effect within the broader scheme. Interpretations that would render any words, phrases, or sections within the statute "*mere surplusage*", meaning redundant or meaningless, "*should generally be avoided*" (***R. v. Nguyen***, 2026 SCC 10, at para. 138). In ***Nguyen***, the Supreme Court of Canada comments that an "*interpretation that results in a harmonious fit between [related provisions of a statute are] to be preferred over discordant or disjointed readings*" (at para. 139).

Balancing Competing Objectives

[41] When a dispute involves the inter-relationship between two or more statutory provisions that might reflect different legislative goals, courts must analyze the broader scheme of the **Act** to find a fitting harmony. Primary legislative purposes are not meant to be pursued at all costs; instead, different sections must be read together and balanced to reflect the carefully calibrated framework that Parliament or the legislature intended. (See **R. v. Wilson**, 2025 SCC 32, at paras. 180-183.)

[42] **Wilson** teaches in particular that any interpretive exercise requires courts to “define a law’s purpose” by finding a balance between the extremes of a statute’s “animating social value” and a “narrow articulation” of the meaning of the words “divorced from their context” (at para. 180).

[43] **Wilson** then comments explicitly on the principle of harmonious interpretation as follows:

[181] In addition, related statutory provisions must be interpreted harmoniously to respect the multiple purposes or policy objectives of each provision. As this Court explained in *R. v. Rafilovich*, 2019 SCC 51, [2019] 3 S.C.R. 838, at para. 20:

Parliament . . . is presumed to intend for its provisions to be read harmoniously, and to be interpreted and applied so they fit together in a way that respects Parliament’s multiple objectives and gives purpose and meaning to each provision. . . . [W]here the dispute involves multiple legislative objectives and the inter-relationship between two or more statutory provisions, the scheme of the Act and the objectives underlying each of the relevant provisions are particularly significant.

[182] In *Rafilovich*, this Court also warned that “primary legislative purposes, however important, ‘are not pursued at all costs and are clearly intended to be balanced with other important interests within the context of a carefully calibrated scheme’” (para. 30, quoting *Sun Indalex*, at para. 174). The Court approvingly quoted Professor Sullivan’s observation that “the primary goals of legislation are almost never pursued single-mindedly or whole-heartedly”, and that “various secondary principles and policies are inevitably included in a way that qualifies or modifies the pursuit of the primary goals” (para. 30,

quoting *Sullivan on the Construction of Statutes* (6th ed. 2014) ("Sullivan (2014)"), at p. 271 (footnote omitted)). Secondary principles, as Professor Sullivan explained, are often only revealed "through analysis of the legislative scheme, and more particularly through analysis of the relation of each provision to the others in the Act" (para. 30, quoting Sullivan (2014), at p. 271).

THE PLAINTIFF'S POSITION- SECTION 180 OF THE *Act* IS PERFUNCTORY AND PROCEDURAL

[44] The plaintiff submits that the meaning of s. 180 is apparent from its "ordinary" or "first impression" meaning, which "spontaneously emerges when words are read in their immediate context" (*Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 S.C.R. 513, at para. 30). On this interpretation, the "happening of the event" refers to the insured's death, and the "right of the claimant" refers only to the claimant's entitlement, as beneficiary or representative, to receive the insurance proceeds. The plaintiff argues that this interpretation accords with Manitoba authority and with decisions from other provinces interpreting comparable insurance legislation. He also argues that this is the interpretation that emerges from a contextual reading of s. 180 of the *Act*. In his view, the requirements imposed by s. 180 are procedural rather than substantive.

[45] The plaintiff further submits that the *Act* is consumer protection legislation and must therefore be interpreted broadly and liberally. He argues that the purpose of the legislation is to protect beneficiaries from intrusive demands by insurers and to facilitate the prompt payment of insurance proceeds. Any ambiguity, he submits, should be resolved in favour of claimants.

[46] According to the plaintiff, s. 180 establishes a complete code governing proof of claim. A claimant need only provide proof of death, the insured's age, proof of entitlement to the insurance money, and the name and age of the beneficiary. Once

those requirements have been satisfied, the insurer must either pay the claim or deny it within the statutory period. The insurer may not postpone payment by requiring additional substantive information from him concerning matters such as the deceased's medical history or lifestyle habits.

[47] The plaintiff therefore submits that BMO had no authority under s. 180, or elsewhere in the **Act**, to require him to answer questions concerning the deceased's smoking or marijuana use as a condition of processing the claim. By insisting upon that information and advising that the Claimant's Statement had to be completed in full before the claim would be processed, BMO effectively imposed requirements not found in the statute.

[48] The plaintiff characterizes BMO's investigation into discrepancies concerning marijuana use as an improper fishing expedition that is inconsistent with the consumer protection purposes of the **Act**. He relies upon **N.S. Trust Co. v. Mut. Life Ins. Co., N.Y. (Annotated.)**, 1924 CanLII 366 (N.S. S.C.), [1924] 4 D.L.R. 707 (N.S.S.C.), for the proposition that insurance legislation is intended to encourage prompt investigation by insurers and to prevent them from delaying payment while searching for grounds upon which to avoid coverage.

[49] The court in **N.S. Trust Co.**, citing **Wright v. Mutual Benefit Life Ass'n** (1887), 43 Hun 61, describes incontestability clauses in contracts as an "*incentive for the insurer to exercise vigilance and good faith in investigating the truth or falsity of the representations upon which the policy is issued while the matter is fresh*" (at p. 710). **N.S. Trust Co.** states that this discourages insurers from collecting premiums during the

life of a policyholder only to deny claims after death, when the representations made by the deceased can no longer be tested.

[50] While the plaintiff accepts that insurers may investigate and deny claims on the basis of suspected fraud, he submits that such investigations must be based on independently obtained information, such as public records, voluntary disclosures, or other non-compelled sources. In his view, insurers are not entitled to compel claimants to provide information beyond that required by s. 180, including medical authorizations or responses to questionnaires concerning potential risk factors.

[51] The plaintiff further submits that, because BMO's suspicion of fraud arose from information that it allegedly had no authority to compel, BMO cannot rely upon that information as a basis for denying the claim. Further, he argues that BMO should not be permitted to examine him with respect to that information during discovery or cross-examination at trial. In the circumstances of this case, he submits that BMO must proceed as though those answers had never been provided.

BMO'S POSITION - SECTION 180 OF THE *Act* - OBLIGATION TO PAY ARISES ONLY IF POLICY IS VALID

[52] The main thrust of BMO's argument is that the requirements of s. 180 cannot be read in a way that establishes a deadline by which the insurer must make a coverage determination. BMO takes the position that the obligation to pay arises only where there is a valid policy against which the claim may be advanced, and that this is apparent when one reads s. 180 in context with other relevant provisions in the *Act*.

[53] As necessary corollary, BMO submits that s. 180 does not operate to restrict the ability of insurers to challenge the validity of a policy, but rather presumes that the policy is valid and establishes a procedure by which uncontested claims are to be paid under it.

[54] Regarding the plaintiff's contention that nothing in s. 180 or the **Act** more generally requires claimants to answer questions regarding an insured's habits and conduct as a condition of payout, BMO submits that their authority to require such information in this case comes not from the **Act** but from the contract between BMO and the Deceased. It specifically points to item 6, section 13.1 of the Application, which states:

I, we the undersigned, consent to the issue of a policy based on this Application for Insurance (Application) and confirm that the declaration made below is complete and true and I, we:

. . .

6. Authorize BMO Insurance or any personal information agents, third party investigation agencies or organizations hired by BMO Insurance to acquire information about me for the appraisal of the risk or the evaluation of a claim. I acknowledge receipt of the Medical Information Bureau-Notice and the BMO Insurance Privacy and Confidentiality Notice.

[emphasis added]

ANALYSIS

What is the Dispute actually About?

[55] The Supreme Court of Canada in **Carignan** teaches that, "*the modern approach to statutory interpretation makes the text the anchor of the interpretive exercise*" (at para. 58). As such, I begin my analysis with the key phrases of s. 180 which are in dispute. Those key phrases are:

- “*the happening of the event upon which insurance money becomes payable*” in s. 180(a);
- “*the right of the claimant to receive the insurance money*” in s. 180(c); and
- the insurer’s obligation to pay the insurance money to “*the person entitled to it*”.

[56] Having reviewed the parties’ written and oral submissions, I am not persuaded that the meaning of those phrases is the true source of disagreement between them.

[57] Both parties accept that s. 180 requires sufficient evidence of the insured’s death, the insured’s age, the claimant’s entitlement to receive the insurance money, and the identity and age of any beneficiary. Both parties rely on substantially the same authorities regarding those requirements. Further, both parties agree that the plaintiff has satisfied the evidentiary requirements described in ss. 180(a) to (d) of the **Act**.

[58] The dispute is therefore not about what evidence s. 180 of the **Act** requires. Rather, it concerns the legal effect of providing that particular evidence. Specifically, the parties disagree about whether compliance with ss. 180(a) to (d), standing alone, obliges an insurer to either pay the claim or formally deny it within 30 days, or whether payment remains contingent upon the insurer being satisfied the policy is valid and enforceable.

Finding

[59] I find that the parties’ dispute concerns the consequences of satisfying s. 180, not the meaning of the evidentiary requirements contained in that provision.

The Text of s. 180 of the **Act**

[60] The plaintiff acknowledges that an insurer is not required to pay insurance money where it possesses lawful grounds to deny the claim, including fraud. His position is

instead that s. 180 requires the insurer, within 30 days after receiving the prescribed evidence, either to pay the claim or provide a formal decision denying it.

[61] BMO, for its part, states that this is not so. While acknowledging that there is nothing in s. 180 that explicitly states that the validity of a policy is a precondition to payout, it submits that this is evident when one reads s. 180 in context and in harmony with other relevant statutory provisions. It is on this basis that it advances the position that s. 180 merely establishes a procedure by which uncontested claims are to be paid.

[62] I am unable to reconcile the plaintiff's interpretation with the wording chosen by the legislature.

[63] Section 180 of the ***Act*** provides that upon receipt of sufficient evidence of the matters set out in clauses (a) to (d), an insurer must pay out a policy within 30 days. The section contains no language requiring the insurer to either pay or deny the claim within that period. The plaintiff's interpretation is flawed as it requires me to read additional words into the provision.

Finding

[64] I find that the ordinary and grammatical meaning of s. 180 does not impose a statutory obligation upon the insurer to either pay the claim or formally deny it within 30 days. The text contemplates payment. It does not expressly address denial.

[65] The remaining questions are whether the statutory context demonstrates that payment under s. 180 presupposes a valid and enforceable policy, and whether s. 180 merely applies to uncontested claims.

Interpreting s. 180 of the *Act* in Context - Does BMO's Interpretation of s. 180 render s. 184(1) Ineffective?

[66] The plaintiff argues that BMO's interpretation of s. 180 would render s. 184(1) of the ***Act***, the limitation period specific to life insurance claims, ineffective, because the limitation period would not begin to run until the insurer had decided whether the policy was valid.

[67] I do not agree. Section 184(1)(a) expressly ties the limitation period to the provision of evidence under section 180. In other words, the claim crystallizes on the 31st day after the evidence required under ss. 180(a) to (d) has been provided to the insurer, and runs for two years from that date. The provision does not tie the limitation period to the insurer communicating a decision.

[68] This interpretation is supported by the authorities relied upon by both parties.

[69] In ***Kissoondial v. Prudential Insurance Co. of America***, (1987), 1987 CanLII 4121 (ON CA), 60 O.R. (2d) 797, the Ontario Court of Appeal held that the limitation period began to run upon the insurer's receipt of the prescribed evidence, notwithstanding that the claim had been denied on the grounds of misrepresentation. The obligation of the insurer to pay the claim upon receipt of the evidence required by the legislation was deemed to be a *prima facie* one (at p. 801).

[70] In ***Deveau (Estate of) v. Blue Cross Life Insurance Company of Canada***, 1996 CanLII 3700 (PE SCTD), 141 Nfld. & P.E.I.R. 286 (P.E.I. Sup. Ct.), the court citing ***Kissoondial***, held that the right of action arose when the insurer received sufficient evidence of the "four particulars" described in the legislation and not when the insurer communicated a denial, at p. 295:

For me, it follows logically from this analysis that the effective date was July 12, 1993, when the insurer received the information specified under the contract provisions in fulfilment of each of the four particulars - accidental death, age of insured, right of claimant to receive payment (meaning the identity of the claimant: *Kissoondial*, p. 800), and name and age of the beneficiary - listed in s. 151. The insurer then had sufficient information furnished by the claimant to establish the existence of a claim. The statutory language does not make any provision for the insurer's reaction or response to the claim, or for the insurer to be satisfied whether the claim is payable before s. 151 is satisfied. It requires only that the insurer receive this information.

[71] The same approach was taken in ***Heath-Ranger Estate v. Canada Life Assurance Co.***, 1998 CanLII 28161 (MB QB), 132 Man. R. (2d) 73. In ***Heath-Ranger***, this court found that the limitation period was held to run from satisfaction of the statutory proof requirements, notwithstanding that the insurer disputed liability (at para. 17).

[72] These authorities establish two propositions. First, the limitation period begins to run when the claimant furnishes the evidence contemplated by section 180. Second, s. 180 applies regardless of whether the insurer ultimately disputes liability. In other words, contrary to BMO's assertion, s. 180 does more than merely provide a procedure for the payment of uncontested claims.

[73] This conclusion is also supported by the statutory scheme. Section 184(1)(a) of the ***Act*** expressly ties the limitation period to the provision of evidence under s. 180. Had the legislature intended s. 180 to apply only to uncontested claims, there would have been little purpose in tying the commencement of the limitation period to compliance with that provision.

Finding

[74] I therefore reject the plaintiff's submission that BMO's interpretation renders s. 184(1) meaningless. I further reject BMO's submission that s. 180 applies only to uncontested claims. The statutory scheme contemplates that s. 180 applies whether the insurer ultimately accepts or disputes liability.

[75] As previously stated, the parties agree that the plaintiff has satisfied the evidentiary requirements set out in ss. 180(a) to (d) of the ***Act***. This agreement, however, does not resolve the dispute before me. Section 180 identifies the proof required to advance a claim and trigger the statutory payment process. It does not expressly address whether payment must be made where the insurer continues to challenge the enforceability of the underlying contract on the basis of fraud.

[76] The question therefore becomes whether payment under s. 180 presupposes a valid and enforceable policy.

[77] Before addressing that question, I would pause here to distinguish between two related, but conceptually distinct, issues. The first concerns the evidence required to advance a claim and engage the statutory payment process. The second concerns whether the insurer remains entitled to investigate the availability of a defence expressly preserved by the ***Act***. Section 180 addresses the former issue by identifying the proof required to support a claim for life insurance proceeds.

[78] Nothing in the language of that provision, however, expressly removes an insurer's ability to undertake reasonable inquiries directed toward determining whether a defence of civil fraud remains available under s. 161(2). Accordingly, the question before me is

not whether an insurer may investigate potential fraud after receiving the evidence described in s. 180, but whether compliance with that provision obliges an insurer to make payment before it has had a reasonable opportunity to determine whether the policy remains enforceable.

IS POLICY VALIDITY A PRECONDITION TO PAYMENT?

[79] The deep issue before me is whether payment under s. 180 of the **Act** presumes a valid and enforceable policy.

[80] In answering this question, BMO urges me to examine s. 180 in context with the structure of Part V and s. 186 of the **Act**. BMO asserts that when s. 180 is interpreted in this context, it becomes clear that a valid policy is a precondition to payment under that section.

[81] The plaintiff argues that the wording of s. 186 of the **Act**, upon which BMO relies, undermines rather than supports BMO's interpretation of s. 180. Relying on the implied exclusion rule of statutory interpretation, he submits that the legislature's express mention of policy validity as a precondition to a court application under s. 186, juxtaposed against the absence of such a precondition in section 180, reflects a deliberate intention by the legislature not to impose a validity precondition for payout upon receipt of sufficient evidence of proof of claim. That being so, the plaintiff contends that the court should not read this precondition into s. 180. He points to s. 196(1) of the **Act**, which also contains no validity precondition, as further evidence of legislative intent.

[82] In answering the central question of whether payment under s. 180 presupposes a valid and enforceable policy, I have examined s. 180 in context with the structure of

Part V, including relevant subheadings, and ss. 186, 192(1) and 196(1). I have also interpreted s. 180 in context with select terms and conditions of the Policy.

Interpreting s. 180 of the *Act* in conjunction with Part V Subheadings

[83] Part V of the ***Act*** deals with “Life Insurance”. Sections 155(1) to 178.1(3) are grouped under the subheading “FORMATION OF CONTRACT”. Section 160(1) imposes a duty on an applicant for life insurance to disclose to the insurer all facts within their knowledge that is material to the life insurance while ss. 160(2) and 162(1) outline the consequences for “*failure to disclose*” or “*misrepresentation of fact*” when discovered by the insurer before and after the contract has been in effect for two years (i.e., the policy is or may be voidable). Sections 180 to 199 of the ***Act*** under the subheading “PROCEEDINGS UNDER CONTRACT” refer to the information required to pay out an insurance claim. BMO argues that reading the two subheadings and their provisions, particularly the subheading “PROCEEDINGS UNDER CONTRACT” in conjunction with s. 180, supports an interpretation of s. 180 that calls for the existence of a valid contract before claims can be paid.

[84] Whether headings or subheadings found in legislation should be used as interpretive aids is something of an open question in Manitoba. As noted in ***Wawasum***:

[74]... s. 14 of ***The Interpretation Act***, C.C.S.M. c. I80, provides:

Reference aids

14 Tables of contents, headings, notes, historical references, overviews, examples, and other readers' aids are included in an Act or regulation for convenience of

Indications complémentaires

14 Les tables des matières, les intertitres et les titres, les notes, les mentions ayant trait à l'historique législatif, les aperçus, les exemples ainsi que les autres éléments qui visent à faciliter la consultation des

reference only and do not form part of it.	textes ne font pas partie des lois ni des règlements; ils y figurent seulement à titre de repère ou d'information.
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[75] Decisions of this court have, however, relied on headings from time to time to resolve ambiguities in statutory provisions (See *Bell ExpressVu Inc. v. City of Winnipeg*, 2010 MBQB 26, at paras. 45-47).

[85] To the extent that I can rely on these subheadings as interpretive aids, I find that they support BMO's position that a valid contract is a pre-condition to payout of the Policy.

Interpreting s. 180 in context with ss. 186, 192(1) and 196(1) of the *Act*

[86] Section 186 of the Act is limited to circumstances where:

- the insurer admits the validity of a policy, and
- there are no unresolved issues other than whether sufficient proof of death exists under ***The Presumption of Death and Declaration of Absence Act***, C.C.S.M. c. P120.

[87] The public policy objective of s. 186 of the ***Act*** is procedural efficiency. Instead of requiring a full civil action involving pleadings, discoveries, and trial, the parties can obtain a discrete judicial determination on the narrow evidentiary issue of proof of death.

[88] If s. 186 of the ***Act*** requires an insurer to be satisfied as to the validity of a policy prior to an application to the court to determine the evidentiary issue of proof of death, BMO submits that the validity of the policy is a precondition to payment under s. 180 as a whole. In short, BMO argues that s. 186 of the Act makes it clear that s. 180 should be interpreted on the facts before me as if BMO must already be satisfied that the Policy is valid.

[89] The plaintiff says that what s. 186 truly demonstrates when read in conjunction with s. 180, is that the legislature knows how to include a validity precondition in a statutory provision, and that it does so only when it expressly intends there be one. He argues that the absence of express wording establishing this precondition in s. 180 is both deliberate and significant. In making this argument, the plaintiff relies on the implied exclusion rule of statutory interpretation.

[90] In *Wawasum*, the court quoted Ruth Sullivan regarding the implied exclusion rule:

[77] Ruth Sullivan in *The Construction of Statutes* (Seventh Edition) (Toronto: LexisNexis Canada Inc., 2022), explains the implied exclusion rule, and how and when it is to be applied, as follows at pp. 247-248:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied. As Laskin J.A. succinctly put it, "legislative exclusion can be implied when an express reference is expected but absent." The force of the implication depends on the strength and legitimacy of the expectation of express reference. The better the reason for anticipating express reference to a thing, the more telling the silence of the legislature.

. . .

The reasoning here is essentially counterfactual: if the legislature had intended to include comparable items, it would have mentioned them expressly or used a general term sufficiently broad to encompass them; it would not have mentioned some while saying nothing of the others. This reasoning is grounded not only in drafting convention but also in basic principles of communication. If I am with a group of people arranging rides and announce that my car can carry four passengers, my statement would be true and informative even if the car was capable of carrying six. However, my listeners would rightly assume that four was the maximum I could carry. A basic convention of communication is that speakers say as much as is required to achieve the communicative goal. ...

[91] The plaintiff further points to s. 196(1) of the **Act** as proof that BMO's interpretation of s. 180, in context with s. 186, should be rejected. Like s. 180, s. 196(1) does not include a validity precondition.

[92] Section 196(1) allows parties, in circumstances where the insurer has not paid out the insurance money within 30 days of receiving the evidence required under s. 180, to apply to the court for an order that the insurance money be paid into court, or alternatively, "*make any order it as to the distribution of money it considers just*".

[93] I do not accept the plaintiff's reliance on the implied exclusion rule in this case. To my mind there are valid reasons, apparent on the face of the two provisions he references, as to why the legislature expressly included a validity precondition in s. 186 but not in 196(1). I am satisfied from my reading of the **Act** that the legislature chose to expressly mention the validity precondition in s. 186 to ensure that parties, and the court, both understand the narrow issue that the court is empowered to decide in an application made under s. 186. An applicant under s. 186 can only ask for a declaration that sufficient evidence of the insured's death has been provided. A court may make that declaration or "*direct what further evidence should be provided*" or declare the insured is to be presumed dead.

[94] By contrast, under s. 196(1) of the **Act** involves a refusal to pay insurance proceeds "*to some person competent to receive it or into court*". The determination that a court is being asked to make, and the remedy that it can provide, in these circumstances, is much broader in scope. It could potentially include a determination that the policy should be paid out because the policy is both valid and the requirements

s. 180 have been met. This is clear from the fact that the court is empowered to both make an order of interpleader and/or “*make any order for the distribution of the money that it considers just*” in response to a refusal to pay.

[95] These interpretations of ss. 186 and 196(1), and my decision not to rely on the implied exclusion rule when interpreting s. 180, are likewise supported by reference to s. 192(1) of the **Act**.

[96] In contrast to s. 196(1), s. 192(1) applies only to applications for interpleader orders made by insurers. Section 192(1) specifies that insurers may apply for an interpleader order if an insurer admits liability for the insurance money (i.e., is satisfied that the policy is valid) but takes issue with whether the statutory proof requirements under s. 180 have been met.

[97] It is logical that an insurer in such circumstances would be able to avail themselves of an interpleader process, and the court would be empowered to issue an interpleader order if the insurer was satisfied the claim was valid on a *prima facie* basis. An express validity precondition is essential to the proper functioning of s. 192(1).

[98] Read together, ss. 186, 192(1) and 196(1) of the **Act** distinguish between disputes concerning proof of entitlement to insurance money and disputes concerning the validity of the policy itself.

[99] Section 186 applies only where the insurer admits the validity of the life insurance policy and the dispute concerns the sufficiency of proof of the insured’s death.

[100] Section 192(1) likewise proceeds on the premise that liability for the insurance money is admitted, while uncertainty exists concerning entitlement to receive it.

[101] Section 196(1) authorizes the court to make orders concerning payment or distribution of insurance money where the insurer has not paid a claim within 30 days following receipt of the evidence required under s. 180.

[102] Collectively, these provisions support the conclusion that Part V of the **Act** draws a distinction between disputes concerning proof of claim and disputes concerning whether a valid objection to pay exists under the contract. That distinction supports a finding that payment under s. 180 presupposes a valid and enforceable policy.

[103] The absence of an express reference to policy validity in s. 180 does not foreclose the implication of such a requirement where the surrounding provisions demonstrate that validity is assumed throughout this portion of the statutory scheme.

Finding

[104] I find that payment under s. 180 presupposes a valid and enforceable Policy. Although this section does not expressly state that validity is a precondition to payment, that requirement is necessarily implied when s. 180 is read in statutory context and in conjunction with other provisions within Part V of the **Act**.

[105] In any event, even if I am incorrect in concluding that payment under s. 180 presupposes a valid and enforceable policy, I would nevertheless reach the same result in this case. Section 180 establishes the proof required to advance a claim and trigger the statutory payment process. It does not expressly address the insurer's ability to

investigate whether a defence of civil fraud remains available under s. 161(2). Having regard to the statutory scheme as a whole, I am satisfied that compliance with s. 180 does not require immediate payment where the insurer is undertaking reasonable inquiries directed toward determining whether the policy is voidable for fraud.

[106] To conclude otherwise would substantially undermine the fraud exception expressly preserved by s. 161(2). While an insurer may ultimately resist payment only upon proof of civil fraud, it must necessarily be afforded a reasonable opportunity to investigate whether such a defence exists. In my view, nothing in s. 180 demonstrates a legislative intention to require payment before that inquiry can reasonably be completed.

[107] Although the plaintiff has satisfied the evidentiary requirements found in ss. 180(a) to (d) of the **Act**, he cannot successfully maintain that BMO cannot investigate whether the Policy is voidable for fraud or that BMO is precluded from challenging the enforceability of the Policy.

Purpose and Objects of the Act

[108] Having examined the plain and ordinary meaning of s. 180 of the **Act** in isolation, and in context with other relevant provisions in the Part V of the **Act**, I now move to an analysis of s. 180 in accordance with the purpose and objects of the statute, as identified by the parties.

[109] The plaintiff argues that the **Act** was designed to function as consumer protection legislation, and that the central purpose of Part V, as evidenced by s. 161(2), the incontestability provision, and by s. 180, is to protect beneficiaries from arbitrary or overly

intrusive demands by insurers prior to payout, and to require the prompt payment of insurance benefits. The plaintiff relies primarily on one historical source and one case to support its position.

[110] The historical source is H. J. Sims, K.C., *The Uniform Life Insurance Act, Canada* (Toronto: The Life Underwriters Association of Canada, 1937), online: <https://babel.hathitrust.org/cgi/pt?id=mdp.39015064340154&seq=5>. This handbook provides an overview of the provisions contained in Part V of the **Insurance Act**, R.S.O. c. 222 as amended in 1936. The author notes that Part V of this Act was largely based on the model statute, **The Uniform Life Insurance Act** developed in 1922-23. The contents of the model statute were essentially enacted without amendment in several Canadian provinces, including Manitoba in 1924. By the time H.J. Sims' handbook was written, all provinces which had adopted the model statute, including Manitoba, had significantly amended those statutes to provide a more comprehensive piece of legislation dealing with various type of insurance. The plaintiff argues that this handbook outlines the purpose that s. 180 in particular was designed to serve (at pp. 48-49).

[111] The plaintiff also relies on **N. S. Trust Co.** which reviews the purpose that incontestability provisions in contracts were designed to serve, namely to encourage insurers to investigate the truth or falsity of the insured representations and disclosures in a timely fashion (i.e., when the incontestability provisions do not apply, and the insured is more likely to still be alive and able to answer questions themselves). Further, the plaintiff submits there are fairness concerns associated with asking confirmatory

questions about an insured's conduct and habits of third parties, after the insured has died, and can no longer answer questions themselves.

[112] BMO, for its part, urges me to focus more on the purpose and objects of insurance contracts, rather than the purpose and object of the **Act** when interpreting s. 180. However, it does assert that part of the **Act's** purpose, as evidenced by ss. 160(1) and (2), is to compel applicants for life insurance to provide full and frank disclosure of all facts material to the risk of insuring them, as well as to prevent fraud (s. 162(2)). Without the ability to investigate the truth of an insured's responses in their application, BMO submits that it would be unable to properly assess risk or prevent fraud. This would lead to substantially increased premiums for policy holders or an inability to underwrite life insurance profitably, which cannot be public policy objectives the legislature intended to foster by enacting the **Act**, generally, or s. 180, more specifically.

[113] BMO relies on ***Thompson v. Maritime Life Assurance Co.***, 2003 MBQB 229, 178 Man. R. (2d) 299, to support its contention that it is common practice in the insurance industry to investigate fraud following the death of the insured that that courts have recognized and upheld denials of coverage where civil fraud is established.

[114] Having reviewed the plaintiff's historical source and caselaw I accept the plaintiff's submission that consumer protection and prompt payment are important objectives of the legislative scheme governing life insurance. I also accept that the proof-of-claim requirements established by s. 180 are intended to be straightforward and readily satisfied.

[115] However, neither the historical material nor the caselaw which the plaintiff relies on establish that s. 180 was intended to prohibit insurers from investigating potential fraud or obtaining information relevant to policy validity. At most, these materials demonstrate a legislative intention to protect claimants from unreasonable, oppressive or unnecessary proof requirements. They do not establish an intention by the legislature to prevent insurers from determining whether a policy is void or voidable before making payment.

[116] I accept that in addition to protecting consumers, Part V of the **Act** is also designed to allow insurers to properly assess risk associated with insuring someone and prevent fraud. It is accordingly necessary, as per **Wilson**, to balance these competing purposes when interpreting s. 180.

Finding

[117] Taking these varied purposes into account, I find that s. 180 is designed to support a straightforward proof of claim process, but does not support the proposition that insurers are barred from making reasonable inquiries concerning policy validity prior to paying out a claim.

Was BMO Entitled to Require Additional Information?

[118] The final question to be answered is whether, in the circumstances of this case, BMO was entitled to require further information concerning the Deceased's smoking history or cannabis use before paying the claim.

[119] BMO acknowledges that the **Act** does not contain a specific provision imposes upon claimants a duty to answer the type of confirmatory questions it asked the plaintiff as a condition of payout. However, it notes that nothing in the statute explicitly

prohibits insurers from asking such questions either and asserts that it is standard practice for insurers to do so.

[120] In this case, BMO argues that its authority to require the claimant to provide information concerning the Deceased's smoking history comes not from the **Act**, but rather, the contract between the Deceased and BMO. In oral submissions, BMO particularly focused on item 6, under section 13.1 of the Application, in which the Deceased authorized BMO to "*acquire information about me for the appraisal of the risk or the evaluation of a claim*".

[121] Given that BMO acknowledges that the **Act** does not expressly impose a statutory duty on claimants to answer the types of questions posed in this case, the question to be determined is a narrow one. The narrow question is whether BMO was contractually entitled, under the terms of this Policy, to require answers to questions reasonably connected to its investigation of potential fraud before paying the claim.

[122] BMO relies upon item 6 of section 13.1 of the Application, in which the Deceased authorized BMO and its agents to "*acquire information about me for the appraisal of risk or the evaluation of a claim*". I accept BMO's submission that this authorization forms part of the contractual framework governing the parties' contractual relationship.

[123] Unlike the specific medical authorization found elsewhere in the Application, item 6 contains no temporal limitation and expressly contemplates the acquisition of information for claim evaluation purposes.

[124] Having already concluded that payment under s. 180 of the **Act** presumes a valid and enforceable policy, I am satisfied that BMO was entitled to investigate whether the Policy was voidable for fraud before determining whether payment was required.

[125] I am further satisfied that item 6 of section 13.1 of the Application contractually authorized BMO to seek information reasonably connected to that investigation and to insist upon responses from third parties, such as the plaintiff, before completing its assessment of the claim.

[126] The information requested by BMO concerning the Deceased marijuana use was directly connected to an apparent discrepancy between the representations contained in the Application and the information subsequently provided by the plaintiff in the Claimant's Statement. In those circumstances, the request was reasonably directed toward determining whether a defence of civil fraud might be available.

Finding

[127] I find that in the circumstances of this case, BMO was contractually entitled to require answers to questions reasonably directed toward determining whether the Policy was valid and enforceable. This conclusion arises from the terms of this particular Policy and should not be understood as determining whether all life insurance contracts confer a similar entitlement.

CONCLUSION

[128] Pursuant to Rules 21.01(1) and 22 of the ***Court of King's Bench Rules***, I answer the parties' four questions as follows.

a) What is the proper interpretation of s. 180 of the *Act*, including the meaning of each of the elements set out in clauses (a) through (d)?

[129] Section 180 identifies the evidence that must be provided in support of a claim for life insurance proceeds and triggers the statutory payment process, namely:

- clause (a) requires proof of the insured's death;
- clause (b) requires proof of the insured's age;
- clause (c) requires proof that the claimant is the person entitled to receive the insurance money; and
- clause (d) requires proof of the beneficiary's identity and age, where a beneficiary has been designated.

[130] When read in its full statutory context, however, s. 180 presupposes a valid and enforceable policy. Although the provision does not expressly state that policy validity is a precondition to payment, that requirement is necessarily implied when s. 180 is interpreted in its full statutory context and harmoniously in conjunction with the surrounding provisions in Part V of the ***Act***.

b) May an insurer require disclosure of information beyond that prescribed by s. 180 in order to determine entitlement to payment under a life insurance policy that has been in force for more than two years before the insured's death?

[131] An insurer may make reasonable inquiries directed toward determining whether a defence of civil fraud is available. Whether an insurer may require a claimant to answer particular questions as a condition of payment will depend upon the terms of the insurance contract.

[132] In this case, item 6 of section 13.1 of the Application, which forms part of the Policy, contractually entitled BMO to require the plaintiff to answer questions reasonably

connected to its evaluation of the claim and its investigation of potential fraud before determining whether payment was required.

c) Has the plaintiff satisfied the conditions for payment set out in s. 180?

[133] The parties agree that the plaintiff has provided the evidence required by ss. 180(a) through (d), and I find that those evidentiary requirements have been satisfied.

d) If so, does s. 180 require the insurer to pay the death benefit notwithstanding its position that the Policy is void for fraud?

[134] Satisfaction of the evidentiary requirements contained in s. 180 does not require an insurer to pay a claim where the insurer continues to challenge the validity or enforceability of the policy on the basis of fraud.

[135] In the circumstances of this case, BMO is entitled to investigate whether a defence of civil fraud is available before determining whether payment is required under the Policy.

COSTS

[136] If the parties are unable to agree on costs, they may make further submissions to me, provided they file briefs in advance.

Rempel J.