

COURT OF APPEAL FOR ONTARIO

CITATION: T.C.O. Agromart Ltd. v. Sutton Farms (Nacona) Ltd., 2026 ONCA 371

DATE: 20260527

DOCKET: COA-25-CV-0496

Gillese, Coroza and Osborne JJ.A.

BETWEEN

T.C.O. Agromart Ltd.

Plaintiff (Appellant)

and

Sutton Farms (Nacona) Ltd.

Defendant (Respondent)

Alan L. Rachlin and Tino Kasi, for the appellant

R. Steven Baldwin, for the respondent

Heard: February 12, 2026

On appeal from the judgment of Justice Karen Jensen of the Superior Court of Justice, dated March 31, 2025, with reasons reported at 2025 ONSC 1996.

Osborne J.A.:

Overview

[1] This appeal engages the issue of when and in what circumstances an owner or occupier of land has a duty to warn about hidden dangers.

[2] An employee of the appellant T.C.O. Agromart drove a crop sprayer across a private bridge on land owned by the respondent Sutton Farms. The bridge partially collapsed and the sprayer fell into the river. The appellant brought this action (through its insurer) against the respondent alleging negligence and as emphasized at trial, breach of the statutory duty under s. 3(1) of the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2 (the "OLA").

[3] The trial judge determined that the accident was caused by the driver's negligence, rather than the design, maintenance or upkeep of the bridge. She found that the owner of the land owed no duty to warn users to stay in the centre of the bridge. Accordingly, by judgment dated March 31, 2025 (the "Judgment"), she dismissed the action.

[4] The appellant asks this court to set aside the Judgment, allow the action and award the appellant its damages as assessed by the trial judge with costs here and below.

[5] On appeal, the appellant submits that the trial judge erred in concluding that the respondent's failure to warn the driver of a hidden danger posed by a structural weakness in the bridge was not a proximate cause of the accident, and further erred in concluding that this failure did not breach the respondent's statutory duty to ensure that their premises were reasonably safe under s. 3(1) of the *OLA*.

[6] The hidden danger lay in the fact that the bridge was sixteen feet wide, but only the centre ten feet were supported by steel beams. The outer three feet on either side were unsupported.

[7] For the reasons that follow, I would allow the appeal, set aside the Judgment and order damages in favour of the appellant as assessed by the trial judge, together with costs of the appeal and the trial.

The Action and the Judgment

[8] The appellant provided crop spraying services to farms. The respondent operated a family farm near Napanee, Ontario with dairy cattle and cash crops on farmland of approximately 1,450 acres. The farm included fields used for crop farming on both sides of the Napanee River.

[9] In the early 1900s, the owners of the farm (the same family that still owned and operated it at the time of trial) constructed a bridge over the river for convenient access across the river. As found by the trial judge, the bridge was used to transport heavy farm equipment and heavy loads between the north and south fields of the farm. The bridge was used multiple times every day, particularly during harvest season.

[10] The owners rebuilt the bridge in 1980. The reconstruction included the placement of concrete abutments on either side of the bridge which anchored five

steel beams spanning the river. The steel beams were spaced such that the total width of the steel beams was ten feet, centred on the bridge.

[11] Wood decking was placed over the steel beams along the full length of the bridge (fifty seven feet). It was sixteen feet wide. That meant a three foot width of wooden deck extended beyond the outermost steel beam on each side. There was no structural support below that three foot overhang on either side.

[12] As it had done for approximately twenty years, the respondent hired the appellant to spray herbicides on the corn fields on both sides of the river. The employee of the appellant assigned to the work, Mr. Denyes, was driving a crop sprayer across the bridge to access the crop fields on the other side when the bridge gave way and the sprayer fell off the bridge landing in the river.

[13] The driver was initially trapped underwater in the sprayer, but fortunately escaped without serious injuries. The sprayer, however, was badly damaged.

[14] The appellant's insurer brought this action to recover from the respondent the amounts it had paid out to the appellant. The respondent, through its insurer, denied liability principally on the basis that the accident was caused by the negligence of the operator of the sprayer in veering off centre when crossing the bridge, causing the right front wheel to go over the side. It argued that such an event was not foreseeable or preventable.

[15] In her reasons, the trial judge considered s. 3(1) of the *OLA* and the elements of negligence. Section 3(1) of the *OLA* reads as follows:

An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

[16] The trial judge correctly noted that s. 3(1) assimilates occupiers' liability with the law of negligence. She then relied on established law in setting out the elements that the plaintiff had to establish to succeed in negligence: (1) that the defendant owed the plaintiff a duty of care; (2) that the defendant's conduct breached that duty by failing to observe the applicable standard of care; (3) that the plaintiff sustained compensable damage; and (4) that the damage was caused, in fact and in law, by the defendant's breach: see *Saadati v. Moorhead*, 2017 SCC 28, [2017] 1 S.C.R. 543, at para. 13; and *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 3.

[17] The trial judge viewed causation as the critical issue at trial, and accordingly, assumed without deciding that the first three elements of the test had been met. She then considered what caused the accident, in fact and in law.

[18] The trial judge found that the factual cause of the accident was twofold¹. First, she concluded on a balance of probabilities that the driver inadvertently steered to the right when he was travelling over the bridge, thereby bringing the right front tire of the sprayer onto the unsupported overhang. This caused the overhang to break and the sprayer to fall into the river. She further found that it was likely that the driver was not aware that the sprayer was drifting onto the overhang.

[19] Second, she found that the absence of steel beams supporting the overhang was another factual cause of the accident.

[20] The trial judge declined to find, however, that the absence of warnings was a factual cause of the accident. She found that a sign warning the driver of the risk of failing to stay in the centre of the bridge would not have prevented the accident since he already knew he had to keep the sprayer centred. Therefore, she found that signs warning of the need to stay in the centre of the bridge or that the overhang was not supported were not required by s. 3 of the *OLA* in this case.

[21] The trial judge then addressed the legal cause of the accident. She found that it was not reasonably foreseeable that the driver would inadvertently drift to the right side of the bridge. The bridge was a private bridge used primarily by skilled operators of heavy farm equipment. The operator of the farm equipment would

¹ The trial judge considered and rejected other alleged possible causes of the accident, such as the wood deck shifting laterally on the steel beams or the weakening of the wood decking due to rot.

drive this equipment over the bridge, staying centred on the bridge so that the steel beams supported the weight of the equipment. The bridge had been used frequently for many years (including earlier on the day of the accident). The driver himself had driven across the bridge with the same sprayer many times without incident.

[22] Accordingly, the trial judge found that a reasonable person in the respondent's position would not reasonably foresee that the driver would inadvertently let the sprayer veer to the right over the overhang. While there was always a possibility that a heavy equipment operator could lose focus for a moment and drift onto the overhang, she found that this possible occurrence was not reasonably foreseeable. Therefore, the trial judge found that the lack of supports under the overhang was not the legal cause of the accident.

[23] The trial judge then concluded that the factual and legal causes of the accident were not related to the design, maintenance or upkeep of the bridge, with the result that the respondent did not breach the standard of care owed pursuant to s. 3(1) of the *OLA*. She found that the appellant's claim must fail because causation had not been established.

[24] Accordingly, the trial judge dismissed the action with costs, but fixed damages to be awarded in the event of a finding of liability in the total amount of \$423,016.15².

Issues on Appeal

[25] The appellant submits the trial judge erred in finding that the respondent's failure to warn the appellant, and its employee driver in particular, of the nature and extent of a known risk to users of the bridge did not constitute a cause of the accident, and in finding that this failure was not a breach of the respondent's duty to take reasonable care as required by s. 3(1) of the *OLA*.

[26] In oral argument, the appellant framed the specific alleged errors of the trial judge as follows:

- (1) failing to make any findings with respect to the standard of care and whether the respondent breached that standard;
- (2) defining the duty to warn as including only a duty to warn users to stay in the centre of the bridge, rather than as requiring a duty to warn of the hidden danger posed by the unsupported overhangs; and
- (3) applying that erroneously defined duty to find that the breach of the duty was not a factual or legal cause of the accident.

² This total included the cost of a replacement sprayer of \$363,326.15, \$51,000 for the rental of a temporary sprayer and \$8,690 for sprayer preparation and towing.

The Applicable Legal Principles

[27] In negligence actions, the application of the standard of care and the determination of causation are questions of mixed fact and law: *Walters v. Ontario*, 2017 ONCA 53, 136 O.R. (3d) 53, at para. 31, leave to appeal refused, [2017] S.C.C.A. No. 100. The standard of review applicable to questions of mixed law and fact where there is an extricable error in principle is correctness. In the absence of extricable legal errors, questions of mixed law and fact are reviewable on the palpable and overriding error standard. The standard of review on findings of fact is palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 36.

[28] As noted above, s. 3(1) of the *OLA* states that “[a]n occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises and the property brought on the premises by those persons are reasonably safe while on the premises”.

[29] This court considered that provision in *Waldick v. Malcolm* (1990), 70 O.R. 2(d) 717 (C.A.) (“*Waldick (ONCA)*”), at p. 723, aff’d [1991] 2 S.C.R. 456:

A similarly worded statement of an occupier's duty occurs in all other Occupiers' Liability Acts. All courts have agreed that the section imposes on occupiers an affirmative duty to make the premises reasonably safe for persons entering them by taking reasonable care to protect such persons from foreseeable harm. The section assimilates occupiers' liability with the modern law of negligence. The duty is not absolute and occupiers are

not insurers liable for any damages suffered by persons entering their premises. Their responsibility is only to take "such care as in all the circumstances of the case is reasonable". The trier of fact in every case must determine what standard of care is reasonable and whether it has been met.

[30] On appeal, the Supreme Court affirmed the above principles in *Waldick v. Malcolm*, [1991] 2 S.C.R. 456 ("*Waldick (SCC)*"), at p. 472, emphasizing that:

[T]he statutory duty on occupiers is framed quite generally, as indeed it must be. That duty is to take reasonable care in the circumstances to make the premises safe. That duty does not change, but the factors which are relevant to an assessment of what constitutes reasonable care will necessarily be very specific to each fact situation -- thus the proviso "such care as in all circumstances of the case is reasonable". [Emphasis in original.]

[31] The Supreme Court recognized that the goals of occupier liability statutes such as the *OLA* are to "promote, and indeed, require where circumstances warrant, positive action on the part of occupiers to make their premises reasonably safe": *Waldick (SCC)*, at p. 477.

[32] However, as previously stated by this court in *Nolet v. Fischer*, 2020 ONCA 155, 2020 I.L.R. I-6231, at para. 37, the duty of care is not absolute:

The duty of care owed by an occupier to a person who enters on the premises is "to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises ... are reasonably safe

while on the premises.” The duty is to take reasonable care – it is not absolute.

[33] The duty of care does not require an occupier to guard against every possible accident that might occur: *Alchimowicz v. Schram* (1999), 116 O.A.C. 287, at para. 13, leave to appeal refused, [1999] S.C.C.A. No. 127. It requires neither perfection nor unrealistic or impractical precautions against known risks: *Lyng v. Ontario Place Corporation*, 2024 ONCA 23, 493 D.L.R. (4th) 302, at para. 25; *Kerr v. Loblaws Inc.*, 2007 ONCA 371, at para. 19.

[34] The standard of care is one of reasonableness in the circumstances: *Kerr*, at para. 28. Accordingly, there is no duty on the occupier to warn of obvious and self-evident dangers on their premises: *Winters v. Haldimand (County)*, 2015 ONCA 98, 33 M.P.L.R. (5th) 1, at para. 16.

[35] However, the trier of fact should consider the absence of warnings when determining whether an occupier has met the standard of care under s. 3(1) of the *OLA* if the particular circumstances of the case before the court so warrant: see e.g. *Lyng*, at paras. 28-29; *Campbell v. Bruce (County)*, 2016 ONCA 371, 349 O.A.C. 302, (“*Campbell (ONCA)*”) at para. 19, leave to appeal refused, [2016] S.C.C.A. No. 325; and *Woods v. Ontario (Ministry of Natural Resources)* (2003) 170 O.A.C. 88, at paras. 20-21.

Analysis

[36] I will consider each of the three alleged errors as submitted by the appellant. I will address the first two alleged errors - the alleged failure to make findings with respect to the standard of care and the alleged error in defining the duty to warn – together. I will then address the third alleged error, namely the finding that the duty to warn was not a factual or legal cause of the accident.

1. The Lack of Findings on the Standard of Care and Defining the Duty to Warn

[37] As noted above, the trial judge considered causation to be the critical issue, with the result that she approached her determination of liability by assuming without deciding that the first three elements required to establish negligence had been met. She then conducted an analysis to determine whether the conduct of the defendant was the legal and proximate cause of the accident. She did so for efficiency: if the conduct of the defendant was not the cause of the accident, as the trial judge stated, “the inquiry was over.”

[38] In so doing, the trial judge made a reviewable error in the manner in which she first defined the scope of the duty in the circumstances of this case, and then in concluding there was no such duty here.

[39] She then applied that erroneous definition to the causation analysis which led her to conclude that she did not need to make findings with respect to the other elements relevant to a claim of negligence and breach of s. 3(1) of the *OLA*.

[40] It was common ground at trial that there was no warning of any kind given, either by way of signage posted at the bridge or by way of direct communications to the appellant or its driver.

[41] The basis for the finding of the trial judge that the absence of any warning was not a factual cause of the accident is found at paragraph 96 of the reasons:

However, I am not prepared to find that the absence of warnings was a factual cause of the accident. A sign warning Mr. Denyes of the risk of failing to stay in the centre of the Bridge would not have prevented the accident since Mr. Denyes already knew he had to keep the Sprayer centred. Therefore, I find that signs warning of the need to stay in the centre of the Bridge or that the overhang was not supported were not required by s. 3 of the *OLA* in this case.

[42] In my view, the trial judge committed a legal error by conflating causation with the standard of care and effectively failing to perform a standard of care analysis. Once she decided that the presence of signage would not have prevented the accident, she determined that signage was not required to meet the standard of care, and therefore, there was no breach of that standard.

[43] This analysis was an error. The focus of the standard of care analysis must be on the conduct of the bridge owner and what duty he or she owes to all users of the bridge. Using causation as a proxy for the standard of care uses the conduct of one particular injured party to determine the scope of the bridge owner's general

duty owed to all users. A lack of causation in one particular case does not mean there was no breach of the standard of care.

[44] In this case, the respondent was an occupier of premises to whom s. 3 of the *OLA* applied. It follows that the respondent owed a duty of care, defined in that statutory provision as the duty to keep its premises “reasonably safe”.

[45] The relevant question is whether, in order to make the premises reasonably safe for the appellant and its employees in these circumstances, the respondent had a duty to warn them about the unsupported overhang of the bridge: see *Kennedy v. Waterloo County Board of Education* (1999), 45 O.R. (3d) 1 (C.A.), at p. 23, leave to appeal refused, [1999] S.C.C.A. No. 399. In my view, the answer to that question is yes.

[46] The authorities cited by the trial judge in her analysis are distinguishable: *Epp v. Ridgetop Builders Ltd.* (1978), 94 D.L.R. (3d) 505; *Paul Porchak v. Pizza Pizza Limited*, 2016 ONSC 4551. In those cases, the danger was plain and obvious and therefore no warning could be expected or required of the occupier.

[47] It follows that it was open to the trier of fact in those cases to find that a failure to warn about the danger was not the cause of the injury. That is not the case here because the danger was not plain and obvious. Because of the hidden danger here, an appropriate duty to warn arose. The issue then is what that duty to warn was required to include.

[48] I agree with the finding of the trial judge that a warning to Mr. Denyes to stay in the centre of the bridge was not relevant. There was no issue on the record that Mr. Denyes knew and understood that it was important to drive the sprayer down the centre of the bridge. His evidence was to the effect that he knew this as a matter of common sense.

[49] However, the error of the trial judge was in concluding that the duty to warn was limited to a warning to stay in the centre of the bridge. In the circumstances of this case, the duty to warn necessarily included the disclosure of the hidden danger that lurked beneath: the fact that the outer three feet on either side of the bridge (six feet in total) were completely unsupported by the steel beams below.

[50] That was the relevant information. Absent the adequate warning, the appellant and its employees lacked the requisite knowledge to make an informed decision about whether to accept the risks of crossing the bridge with the sprayer. In my view, the standard of care imposed on an occupier by s. 3(1) of the *OLA* in the particular circumstances of this case required such a warning.

[51] The evidence is clear that the respondent took no steps to warn the appellant (or anyone “entering on the premises”) of the risk that the outer three feet of the bridge on either side were unsupported and that they were unsafe for wide equipment.

[52] It follows that the respondent breached its duty to warn and breached its duty under s. 3(1) of the *OLA* to keep its premises reasonably safe.

2. The Causation Analysis

[53] The third error alleged by the appellant was the trial judge's application of the erroneously defined duty to warn to find that the breach of that duty was not a factual or legal cause of the injury.

a. Factual Causation

[54] The test for factual causation is the “but for” test, which requires a plaintiff to show on a balance of probabilities that “but for” the defendant's negligent act or omission, the injury would not have occurred: that is, the defendant's negligence was necessary to bring about the injury: *Clements v. Clements*, 2012 SCC 32, [2012] 2 S.C.R. 181, at para. 8; *Campbell (ONCA)*, at para. 53; *Hemmings v. Peng*, 2024 ONCA 318, at para. 61, leave to appeal granted and appeal heard and reserved February 10, 2026, [2024] S.C.C.A. No. 262 and [2024] S.C.C.A. No. 265.

[55] The trial judge summarized the driver's evidence that he lined up the sprayer with the centre of the bridge before crossing and that he knew he had to stay in the centre of the bridge because this was “common sense”. He was not told by anyone, including the owners of the farm, that he should not use the bridge, that

he had to stay in the centre or, importantly, that the overhangs on the sides of the bridge were unsupported.

[56] His evidence was also that prior to the collapse of the bridge, he was driving “in the centre slowly, obviously with caution ... and dead straight”. He remained in the centre as he crossed the bridge. It collapsed when he was approximately two-thirds of the way across.

[57] Prior to the collapse, he had not seen what was under the bridge and had not known how the wooden planks were supported.

[58] The trial judge noted that Mr. Denyes agreed that it was solely his decision and up to his discretion as to whether to use the bridge on the day of the accident. He acknowledged that it was his responsibility to know where and how he would operate the sprayer. As he testified, his decisions in that regard were “on him”.

[59] The trial judge made a reviewable error by considering that evidence in the context of the erroneously defined scope of the duty to warn. She concluded that the absence of warnings was not a factual cause of the accident because a sign warning the driver of the risk of failing to stay in the centre of the bridge would not have prevented the accident since he already knew he had to stay in the centre of the bridge.

[60] That conclusion becomes incorrect when the duty to warn is properly considered as including a warning that the outer three feet on either side of the

bridge were completely unsupported. That would have impacted the driver's decision to cross the bridge with the sprayer in the manner that he did.

[61] It follows that factual causation was established.

b. Legal Causation

[62] In determining whether the breach of the duty to warn of the hidden danger was a legal cause of the accident, the trial judge correctly noted that a defendant will not be found liable for damages that were caused by their actions if those damages were not reasonably foreseeable: *Hemmings*, at paras. 67-68.

[63] Foreseeability is assessed in the circumstances of a reasonable person in the position of the particular defendant: *Hemmings*, at paras. 67-68; and *Mustapha*, at para. 13.

[64] Whether or not something is “reasonably foreseeable” is an objective test, and is focused on whether someone in the defendant's position ought reasonably to have foreseen the harm, rather than whether the specific defendant did: *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19, [2018] 1 S.C.R. 587, at para. 53. This is a question of mixed fact and law.

[65] The trial judge concluded that the accident was not reasonably foreseeable, finding that a person in the respondent's circumstances would not reasonably foresee that a driver would inadvertently veer off centre and onto the overhang of the bridge. She reasoned that while such an occurrence was always possible, it

had never happened in nearly forty five years of regular and often heavy use of the bridge. She then concluded that the lack of supports under the overhang was not the legal cause of the accident.

[66] In so concluding, the trial judge committed a palpable and overriding error.

[67] The evidence at trial established clearly that the accident was both reasonably foreseeable and was in fact foreseen. The evidence of the owner and occupier of the property, Mr. Sutton, who was aware of the hidden overhang danger and associated risks (unlike the driver), was that he and his family elected to use the alternative bridge when they used wide equipment.

[68] The evidence of Mr. Sutton on this issue is important. He testified that:

- he and members of his family were aware of the unsupported overhang on either side of the bridge;
- they made sure the wheels of their equipment were always on the (steel) beams;
- it would be unsafe to drive too far to the right or left;
- they had some pieces of equipment they did not take across the bridge, such as their combine, because it was too wide and its wheelbase would be on the deck of the bridge but would not be supported by the steel beams underneath; and

- when he and members of his family were using wide equipment (i.e., wider than the supported width of ten feet), they would use an alternate bridge approximately five hundred metres away.

[69] Mr. Sutton conceded, however, that no employees of the appellant were ever expressly prohibited from using the bridge, nor were they warned about the unsupported overhang. Asked whether observers would know only that the middle ten feet of the sixteen foot total width were supported, Mr. Sutton responded: “perhaps not”.

[70] The respondent submitted the accident was not reasonably foreseeable because of the skill and expertise of the driver. Mr. Denyes was a long-time, experienced employee of the appellant when the accident occurred. He had been operating that particular sprayer for four years and it was the only machine he operated. He had done spraying at this particular farm many times in the past.

[71] As the trial judge found, Mr. Denyes knew the farm and had used the bridge often. He knew it was sixteen feet wide. When he had to spray both the north and south fields, he used either that bridge or the public bridge that was five hundred metres away.

[72] However, the trial judge’s conclusion on foreseeability was not driven by Mr. Denyes’ particular background and skills as an employee, but was based on

the evidence that he knew he had to stay centred on the bridge due to “common sense”.

[73] Even if experienced drivers knew as a matter of common sense that they had to keep their vehicles centred on the bridge, it was nonetheless foreseeable that one driving heavy farm equipment might veer slightly to the left or the right onto the unsupported overhang, risking an accident such as the one that occurred here. The fact that there had been no such previous incidents on the bridge does not negate the foreseeability of the risk, nor the respondent’s duty of care to take precautions against such harm: *Campbell v. Bruce County (ONSC)*, 2015 ONSC 230, at para. 206, aff’d 2016 ONCA 371.

[74] For these reasons, I am of the view that the accident that occurred here was reasonably foreseeable, with the result that the failure to warn was both a legal and factual cause of the accident.

c. Conclusion Regarding Negligence and s. 3 of the OLA

[75] In my view, the respondent is liable for breach of s. 3 of the OLA, given:

- (1) the duty of care owed by the respondent as an owner and occupier of the land;
- (2) the breach of that duty of care through the failure to adequately warn of the hidden danger in the form of the unsupported overhangs of the bridge;

- (3) that breach being a factual cause of the accident;
- (4) that breach also being a legal cause of the accident (i.e., it was reasonably foreseeable); and
- (5) the fact that injury was sustained as a result.

3. Additional Issue: Sufficiency of the Pleadings

[76] For completeness, I note that at the hearing of the appeal, counsel for the parties made submissions about the extent to which a breach of the duty to warn was pleaded, and whether it was argued at trial.

[77] While the pleadings are brief, I am satisfied that the allegation that the respondent failed to meet the duty of an occupier established by s. 3(1) of the *OLA* was squarely in issue at the trial.

[78] This is clear from a review of the evidence led by both parties, as well as by their extensive closing submissions which placed significant emphasis on this statutory provision and on the duty to warn about the structural deficiencies of the bridge. Further, as noted above, the trial judge expressly considered the duty to warn in her reasons.

[79] I further note that the respondent did not take the position, either at the conclusion of trial or on this appeal, that these issues were not properly before the trial judge.

[80] Accordingly, I am satisfied that the duty to warn and the scope of that duty were issues fully considered by the trial judge.

Disposition

[81] For these reasons, I would allow the appeal, set aside the judgment and award damages in favour of the appellant in the amount assessed by the trial judge of \$423,016.15 together with the costs of this appeal fixed at the agreed-upon all-inclusive sum of \$25,000.

[82] Given the appellant's success, it is entitled to costs below. I urge the parties to agree on quantum. If they cannot do so, they may file written submissions through the Registrar not to exceed two pages in length, together with their respective bills of costs, within seven days of the date of these reasons.

Released: May 27, 2026 "E.E.G."

"P.J. Osborne J.A."

"I agree. E.E. Gillese J.A."

"I agree. Coroza J.A."