

CITATION: *Dutremble et al v. Heartland Farm Mutual Inc.*, 2026 ONSC 3230
COURT FILE NO.: CV-22-00089798
DATE: 2026/06/02

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joseph Adelard Serge Dutremble and Jessica Smith, Plaintiffs

-and-

Heartland Farm Mutual Inc., Defendant

BEFORE: Justice A. Doyle

COUNSEL: Ashlee Barber for the Plaintiffs

David Zuber and Meaghan McCarthy for the Defendant

HEARD: May 21, 2026 (Ottawa, by Teleconference)

REASONS FOR DECISION

DOYLE J.

Overview

[1] The Defendant brings a motion pursuant to s. 128 of the *Insurance Act*, R.S.O. 1990, c. I.8, (Act) seeking the following:

- An Order compelling the Plaintiffs to participate in the statutory appraisal process;
- Appointing an appraiser on the Plaintiffs' behalf,
- Staying this proceeding pending the outcome of the appraisal; and
- Ordering the Plaintiffs to deliver a sworn proof of loss.

[2] The Defendant submits that the Plaintiff has been fully indemnified under the policy and acted in good faith throughout the adjustment and handling of the claim. The Plaintiffs have not mitigated their loss as they did not rebuild the structure upon receipt of the funds from the Defendant. The only issues remaining are the bad faith claim and that of quantum.

[3] The Plaintiffs oppose the motion and submit that the matter should proceed to summary judgment, as previously directed at a triage conference before Associate Justice Kamal. In addition, the parties cannot agree on the valuation date to be applied to the appraisal.

[4] For the reasons that follow, the court order the Plaintiffs to deliver a sworn proof of loss within 60 days.

Background

[5] The Plaintiffs held a homeowner's insurance policy covering their property in Brinston, Ontario. The policy provided coverage, including:

- \$671,000 for dwelling/replacement cost;
- \$536,800 for personal property; and
- \$134,200 for additional living expenses (ALE).

[6] On August 5, 2020, the property was damaged by fire.

[7] An estimate for rebuilding the property was prepared in the amount of \$477,289.33, inclusive of HST.

[8] The Defendant issued the following payments to the Plaintiffs:

- \$501,438.90 for the building loss;
- \$54,910.92 for ALE; and
- \$245,123 for personal property.

[9] The Plaintiffs commenced this action alleging that the Defendant failed to account for increased construction costs and acted in bad faith.

[10] They are currently living in a 900 square foot unit above the garage and unable to construct the building due to this dispute.

[11] The Defendant sought to initiate the appraisal process, while the Plaintiffs indicated willingness to participate only if a present-day valuation date was used. The parties were unable to agree on that issue.

[12] A triage conference was held on August 13, 2025, when Associate Justice Kamal directed that the matter proceed to summary judgment rather than appraisal.

[13] In the interim, the Plaintiffs have filed a proposed Statement of Claim dated April 29, 2026 in which the Plaintiffs seek general, aggravated and punitive damages and “damages in an amount to be determined before trial”.

[14] The Defendant opposes these amendments.

[15] The motion for the amendment was to have been heard at the same time as the hearing of the motion for summary judgment. The motions did not proceed on May 14, 2026 as scheduled due to lack of judicial resources.

Issue

[16] Should the Court compel the Plaintiffs to participate in the appraisal process under s. 128 of the *Act* ?

Analysis

[17] Section 128 of the *Act* provides a mechanism for resolving disputes relating to the quantification of losses of insured through an appraisal process. Each party appoints an appraiser, and disagreements may be resolved by an umpire. The Court retains discretion to appoint an appraiser where a party fails to do so.

[18] The appraisal process is intended to provide an expeditious and efficient determination of quantum. However, it is well established that it does not function as a comprehensive dispute resolution mechanism and does not address issues such as coverage, allegations of bad faith, liability or policy interpretation.

[19] Once written demand is made by a party, the process is mandatory.

[20] Each party selects a competent and impartial appraiser who acts like advocates/experts for each side.

[21] The appraisers independently assess the loss and attempt to reach an agreed quantum and if so, the decision is binding. If they disagree, they submit the dispute to an umpire.

[22] The two appraisers select the umpire and if cannot agree, the court appoints an umpire. The result is binding on quantum only.

[23] Section 148 of the *Act* states that terms outlined therein shall be deemed to be part of every contract in force in Ontario. This includes Statutory Condition 11 which gives the parties the right to elect appraisal when there is a disagreement as to the value of the property insurance, the value of the property or the amount of the loss.

[24] The Plaintiffs admit the receipt of the Defendant's letter dated November 21, 2024 requesting an appraisal and that the letter constitutes proper notice under the *Act*.

[25] In *Desjardins General Insurance Group v. Campbell* 2022 ONCA 128, the Court of Appeal confirmed the mandatory nature of the appraisals under *Act* that must proceed if either party requests it. The Court commented that the impartiality of the umpire is essential and that they become a "tie breaker"

[26] In *Northbridge General Insurance Corporation v. Ashcroft Homes-Capital Hall Inc.*, 2021 ONSC 1684, the court confirmed that the appraisal process is limited to valuation and is not a substitute for adjudication of broader legal disputes.

[27] While appraisal is often mandatory where there is a genuine dispute about quantum, that obligation is not absolute. The statutory framework recognizes that the Court retains discretion with the words "may" set out in s. 128(5), to determine whether an appraisal should proceed.

[28] In this case, the dispute between the parties is not confined to the quantification of the loss. Rather, it includes:

- disagreement over the appropriate valuation date; and

- allegations that the defendant acted in bad faith.

[29] The parties' inability to agree on the valuation date is fundamental. The Plaintiffs insist on a present-day valuation, while the Defendant rejects that position. Without agreement on this core parameter, the appraisal process cannot meaningfully proceed.

[30] As a result, the appraisal mechanism is effectively rendered impractical, if not impossible, in its present form.

[31] The issue of the appropriate date is, in my view, a policy interpretation which must be decided by the court before an appraisal process proceeds.

[32] This is an issue of the correct legal measure of indemnity and questions at play include:

- What does the policy require?
- Is indemnity fixed at date of loss?
- Does replacement cost coverage alter that?
- Are post-loss market changes relevant?

[33] The prior case management direction to proceed by summary judgment is also a relevant consideration. There is no basis to depart from that direction.

[34] Given my above determination, the court will deal with the Plaintiff's allegation of abuse of process.

Conclusion

[35] The Court declines to compel the appraisal process under s. 128 of the *Act*.

[36] The Defendant's motion for an appraisal is dismissed.

[37] The Plaintiffs must submit their sworn proof of loss within 60 days.

[38] I have reviewed the Parties' costs outlines filed in Case Centre.

[39] The Plaintiffs who were largely the successful parties are presumptively entitled to costs. Given the work completed and the narrow issues for court's determination, the Court awards costs to the Plaintiffs the amount of \$2000.

Justice A. Doyle

Date: June 2, 2026

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Released: June 2, 2026