

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Harris Victoria Chrysler Dodge Jeep Ram
Ltd. v. Insurance Corporation of British
Columbia,*
2026 BCSC 1380

Date: 20260724
Docket: S229901
Registry: Vancouver

Between:

Harris Victoria Chrysler Dodge Jeep Ram Ltd.

Petitioner

And

**The Insurance Corporation of British Columbia and Tracey Ann Ward by Her
Litigation Guardian and Committee Ellen Thelma Ward**

Respondents

Before: The Honourable Justice A. Ross

Reasons for Judgment

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Introduction

[1] This petition arises from a dispute over third-party liability coverage for Harris Victoria Chrysler Dodge Jeep Ram Ltd. (“Harris”), a car dealership in Victoria.

[2] In very broad overview, on August 27, 2018, a vehicle (the “Jeep”) being driven by Mr. Anthony Thomas (“Mr. Thomas”) struck a pedestrian, the respondent Ms. Tracy Ann Ward (“Ms. Ward”), and caused her catastrophic injuries.

[3] Ms. Ward sued Mr. Thomas. Pursuant to s. 86 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 (as it applied at the time), Ms. Ward also sued the owner of the Jeep. There was a dispute as to who was the owner of the vehicle: either Harris or a customer of the dealership, Ms. Aggatha Siah (“Ms. Siah”).

[4] After the trial of Ms. Ward’s action (the “Tort Trial”), in her judgment indexed as *Ward v. Thomas*, 2022 BCSC 1147, Justice B. Brown:

- a) awarded damages totaling approximately \$5 million;
- b) found that Mr. Thomas was negligent;
- c) found that Harris was the owner of the Jeep;
- d) found that Mr. Thomas operated the Jeep with the consent of Harris; and
- e) therefore, found Harris vicariously liable for the negligence of Mr. Thomas.

[5] After the Tort Trial, Ms. Ward sought to collect her damages from Harris. Harris sought indemnity from the Insurance Corporation of British Columbia (“ICBC”). ICBC denied coverage. ICBC’s position is that there was no third-party liability insurance on the Jeep.

[6] In this petition, Harris seeks a declaration that the Jeep was insured and that ICBC is liable to indemnify Harris for the damages that were awarded to Ms. Ward.

[7] As discussed below, the facts that formed the underpinning of this petition are, in large part, undisputed. The background is based on the evidence and the

findings of fact in the Tort Trial. Those facts must be overlaid onto the statutory and regulatory regime that governed automobile insurance for car dealerships in 2018.

[8] The hearing of this petition proceeded in a disjointed fashion:

- a) It started as a two-day hearing on October 19–20, 2023. The hearing did not complete. It was adjourned for continuation.
- b) The hearing was supposed to continue for a further day in December 2023.
- c) The parties decided that they should wait for the Court of Appeal's decision regarding the appeal from the Tort Trial. Hence, they adjourned the December 2023 hearing date.
- d) The appeal proceeded in November 2023 and was dismissed in December 2023: *Harris Victoria Chrysler Dodge Jeep Ram Ltd. v. Ward*, 2023 BCCA 478.
- e) This hearing recommenced September 11–12, 2025. Again, it did not complete.
- f) It was re-set and completed March 9–13, 2026.

[9] During the course of those hearings, the petitioner provided (in addition to oral submission): Written Submissions (October 23, 2023), Amended Written Submissions (September 11, 2025), and Amended Written Submissions (October 31, 2025).

[10] In turn, ICBC provided: Written Submissions (October 18, 2023), Updated Written Submissions (September 10, 2025), Written Submissions No. 2 (January 28, 2026), and ICBC's Further Submissions (March 13, 2026).

[11] The positions taken by the petitioner have not been consistent over the course of its multiple submissions. In these reasons, I have attempted to address all

the arguments presented, although I note that some arguments (for the petitioner) appear to have been abandoned in later versions of their argument.

[12] For the reasons set out below, I find that the Jeep that struck Ms. Ward was not insured for operation on a highway. As a result, I dismiss Harris' petition.

[13] Before beginning my reasons, I would like to thank counsel for their in-depth submissions, both written and oral.

Issues in, and Architecture of, these Reasons

[14] I note at the outset that the relevant events occurred in August 2018. My references to legislation and regulations refer to the regime of automobile insurance that was in place at the time. In particular, I reference the:

- a) *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [MVA];
- b) *Motor Vehicle Act Regulations*, B.C. Reg. 26/58 [MVA Regulations];
- c) *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231 [IVA]; and
- d) *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83 [IVA Regulation].

[15] The issues in this petition are framed by the dispute between the parties.

[16] Ms. Ward has a judgment against Harris for personal injury damages that she suffered in a motor vehicle accident. The trial judge found that Harris was the owner of the Jeep and that Harris had consented to Mr. Thomas operating that vehicle. Hence, Harris is vicariously liable for the damage award. Harris seeks indemnity from ICBC. Harris claims it was covered for third party liability under an automobile insurance policy, specifically a garage policy. ICBC concedes that the garage policy was in place but denies that it covered the Jeep in this circumstance.

[17] As explained in detail below, Harris' position is:

- a) The Jeep was an “owned vehicle” as described in ss. 63 and 64 of the *IVA Regulation*. As such, Harris is entitled to indemnity under ss. 63 and 64 of the *IVA Regulation*.
- b) In the alternative, pursuant to s. 149(2) of the *IVA Regulation*, the insurance purchased by Harris constitutes “an additional product certificate issued under subsection (1)” and as such that policy “evidences coverage under Parts 6”. Thus, the Jeep was insured for operation on a highway, and Harris is entitled to indemnity.
- c) In the alternative, ICBC’s denial of coverage is in error because it conflates “licensing requirements” with “coverage requirements”.
- d) Finally, Harris argues that if the Jeep was not insured, then Harris is entitled to relief from forfeiture.

[18] ICBC’s response to all of these positions is that, in the circumstances of this case, there was no insurance on the Jeep. Hence, it is not obligated to indemnify Harris. Further, ICBC says that Harris is not eligible to claim relief from forfeiture.

[19] After setting out the extensive factual background, and the applicable legislative and regulatory provisions, I proceed as follows:

- a) I set out Harris’s positions (which are stated in the alternative), and the evidence upon which Harris relies.
- b) I then set out ICBC’s response to each argument.
- c) I then set out my analysis regarding all of the petitioner’s arguments for coverage.
- d) Finally, I address the petitioner’s final argument which relates to relief from forfeiture.

Underlying Facts and the Findings in the Tort Trial

[20] The underlying facts of this petition are comprised of the findings in the Tort Trial and the insurance coverage purchased by Harris. In the hearing before me, both sides attempted to “nuance” or draw inferences from the findings in the Tort Trial. In my opinion, I am required to stay within the findings as made.

[21] The focus of the Tort Trial was described by Brown J. in the first three paragraphs of her reasons:

[1] On August 27, 2018 the plaintiff Tracy Ann Ward (“Ms. Ward”) was walking along Central Saanich Rd. in Saanich, BC. She was struck from behind by a Jeep vehicle being driven by the defendant Anthony Thomas. She suffered catastrophic injuries, including a severe traumatic brain injury. Her litigation guardian is her mother Ellen Ward (“Mrs. Ward”).

[2] Ms. Ward was 48 years old. She lived alone and was a self-employed bookkeeper.

[3] The nature of her injuries and damages are largely not in dispute. The most significant issue is which of the defendants are liable. At trial Mr. Thomas did not contest the claim against him. The claims against Aggatha Siah and Harris Victoria Chrysler Dodge Jeep Ram Ltd. (“Harris”) are based on the vicarious liability provisions of s. 86 of the *Motor Vehicle Act*, R.S.B.C. 1996 c. 318 (“MVA”) and are vigorously contested.

[22] The most important findings from the Tort Trial were that:

- a) the Jeep was owned by Harris, and not by Ms. Siah; and
- b) Harris consented to Mr. Thomas operating the Jeep.

Hence, Harris, as the owner, is vicariously liable for the driver’s negligence. Ms. Siah does not face any liability.

[23] There was substantial evidence at the Tort Trial regarding:

- a) the ownership of the Jeep;
- b) the proposed sale to Ms. Siah; and
- c) the steps that led to Mr. Thomas being in possession of the Jeep.

[24] I have quoted extensively from the reasons in the Tort Trial below. Before I get to the Tort Trial findings and evidence, it is important to understand that:

- a) In January 2018, Ms. Siah purchased a Chevrolet Cruze from Harris.
- b) In August 2018, she was in the market to trade the Cruze in and buy a Jeep.
- c) Ms. Siah and her partner, Ms. Sylvester, approached Harris and made these intentions known.

[25] Justice B. Brown wrote:

[134] Ms. Siah dealt with various employees of Harris with respect to the purchase of the Jeep. Wes Harrison was a salesperson at Harris. He had previously assisted Mr. Siah when she bought her Cruze from Harris in January 2018. Brody Harris was a sales manager at Harris. Allison Fryer was a finance director employed by Harris. Brittani Ison was the sub-prime director employed by Harris. Ms. Ison also assisted Ms. Siah with financing when she purchased the Cruze. Shane Heslop was a finance manager at Harris on August 18, 2018.

[135] In the weeks leading up to August 18, 2018 Ms. Sylvester and Ms. Siah were considering buying a larger vehicle for the family. Although Ms. Siah was happy with her Cruze, they contemplated trading Ms. Siah's Cruze in and purchasing a larger vehicle in her name because Ms. Siah had a better credit record than did Ms. Sylvester. However, Ms. Siah did not have a strong credit rating. She was described as a sub-prime borrower.

[136] Ms. Siah started communicating with Wes Harrison. He suggested that she might purchase a Jeep Cherokee. He knew that she would require financing, as she had for the Cruze purchase. He took some credit information from Ms. Siah so that the dealership could initiate a financing application before she attended the dealership. He gave the information to Ms. Ison. In the days before August 18, 2018 Harris continued to look for credit approval for Ms. Siah and postponed having Ms. Siah attend at the dealership because they were still working on financing but did not have something concrete from the lenders. Ms. Siah suggested that perhaps she should wait until she had owned the Cruze for a year. On August 17, 2018 Mr. Harrison spoke with Ms. Siah and told her that she would need a co-signer to obtain financing. Ms. Siah's mother-in-law, Hellen Jack, agreed to act as a co-signer for the vehicle loan.

[137] Ms. Ison submitted the loan application to Scotia Dealer Advantage ("SDA") on August 17, 2018. The initial application erroneously indicated that Ms. Jack was Ms. Siah's spouse. SDA pre-approved a loan on terms, the most significant:

1. No income verification required up to maximum monthly payment of \$800
2. Term 84 months, interest rate of 12.99%
3. Both Ms. Siah and Ms. Jack to sign financing documents
4. No vehicle or amount to be financed was specified.

[138] When SDA noticed a discrepancy with respect to Ms. Jack's age and residence they sought further information from Harris. Harris advised SDA that Ms. Jack was Ms. Siah's mother-in-law, not her spouse. SDA revoked the credit pre-approval at 3:40 am on August 18, 2018. The dealership was to correct and resubmit the application.

[139] Ms. Siah and Ms. Sylvester arrived at the dealership at approximately 3:00 pm on August 18, 2018. It was a Saturday, a busy day at the dealership.

[140] Ms. Siah and Ms. Sylvester met with Mr. Harrison. They discussed trading the Cruze in for a Jeep. They completed a work sheet. Mr. Harrison entered information regarding the proposed new vehicle and the trade in and took it to a sales manager to get pricing and payment options. The dealership proposed down payments which were rejected by Ms. Siah. Ms. Siah said that she was prepared to pay \$38,000 for the Jeep. Her trade-in allowance would be \$15,000. She was not prepared to make a down payment. The document notes on the front "deal okay at 350 BW OAC at 84M" which means "the deal is okay at payments of \$350 biweekly on approved credit over 84 months". Ms. Siah and a sales manager signed the document.

[141] Ms. Siah testified that it was her understanding that these were the numbers that she would be paying if she were approved for a loan.

[142] Later on August 18, 2018 Ms. Fryer received a second approval from SDA on the following terms:

1. A total financed amount of \$32,147.43
2. a term of 84 months
3. an interest rate of 16.29%
4. a maximum monthly payment of \$645
5. \$20,800 cash down payment
6. both the applicant Ms. Siah and the co-applicant Ms. Jack needed to sign the financing documents;
7. proof of the payout of Ms. Siah's trade-in lien was required.

[143] Ms. Fryer recognized that this did not match what Ms. Siah had agreed to on the worksheet. She knew that Ms. Siah's co-signer was not available. Mr. Harris had told her that Ms. Siah was in a hurry. Ms. Fryer was optimistic that they could come up with financing that would meet Ms. Siah requirements.

[144] Mr. Harris, the sales manager, understood that Ms. Siah had been conditionally approved but that nothing was fully signed. He stated that he was confident that the deal would work out and they would be able to obtain a

financing approval that matched her offer to purchase but decided to wait until Monday for Ms. Ison, the sub-prime specialist to take over.

[145] He testified that dealer plates were typically put on cars where financing had not yet been arranged. However, the policy at the dealership at the time was that if there were no dealer plates available, they could 'swap' a customer's trade-in plates onto the new vehicle to get the person in the car.

[146] Mr. Harris did not recall looking for dealer plates and thought that Mr. Harrison had told him there were no dealer plates available. Mr. Harris directed Ms. Fryer to prepare a "cash bill of sale". Mr. Harris described the "cash bill of sale" document as an interim measure: "She needed something when she drove off". There was no financing in place when Ms. Siah left. When financing was eventually arranged, a new bill of sale would be prepared which reflected those terms. If the financing offered was not acceptable to Ms. Siah, the deal would be at an end. This situation did not happen often.

[147] Ms. Fryer then gave the file to the finance manager, Mr. Heslop to prepare the "cash bill of sale" and have Ms. Siah sign it. Mr. Heslop had a very limited recollection of his interaction with Ms. Siah. He testified that Ms. Fryer told him that Ms. Siah was in a hurry to leave so he needed to have everything prepared and ready to go. He understood that Ms. Siah and the dealership had come to an agreement on terms for her purchase and that she was buying the Jeep. Mr. Heslop's understanding when he reviewed the cash bill of sale with Ms. Siah was that the lender had approved the loan. He would not normally do a bill of sale until the customer was approved for financing. He relied on Ms. Fryer who brought the deal to him for his understanding that there was an approval in place which would allow them to sell the customer the car. By approval he meant that the lender had agreed on lending a certain amount of money that fit in or matched the terms on the worksheet. He did not recall Ms. Fryer telling him that they were still working on the loan to obtain financing.

[148] He agreed that the cash bill of sale in this case was an interim document in that there would be information which would change in the final bill of sale, such as Ms. Siah's First Nations status (which would mean that she would not pay PST and GST as indicated on the cash bill of sale), and there would normally be financing terms in a bill of sale. He reviewed the numbers in the cash bill of sale with Ms. Siah. He had her sign the cash bill of sale and he signed on behalf of the dealership. His understanding of the cash bill of sale was that it would be done if the dealership did not have enough time to complete everything but the purchase was "final enough" for transfer and insurance. He said that he would not normally have generated a cash bill of sale and had Ms. Siah sign it if he had known that there was not an approved loan in place. He stated that (in hindsight) it was not the right time to have Ms. Siah sign the cash bill of sale. He agreed with his statement to the Vehicle Sales Authority that he "printed up the bill of sale ... went over the numbers with her, explaining that these were the numbers that would be seen on the final bill of sale with the finance information." That was his understanding at the time.

[149] Ms. Siah said that she and Ms. Sylvester waited for a while after signing the worksheet. Ms. Siah testified that she then met briefly with a man, perhaps for two minutes, to go over the paperwork. She saw the numbers on the document and commented to Ms. Sylvester “that’s a lot of money”. She said to Mr. Heslop “this is what I’ll be paying if I’m approved for credit?” He said yes. He did not tell her that this was a binding agreement, that she was agreeing to purchase the vehicle on these terms, even if financing was not available.

[150] She and Ms. Sylvester then returned to the lobby and waited. Ms. Siah said that she understood that she was waiting for the bank to approve her loan. She was not in a hurry and was prepared to wait.

[151] Mr. Harrison appeared and told them that the Jeep was ready. Ms. Siah was surprised. She had not, to her mind, completed the required documents and had not seen an insurance agent. Ms. Siah questioned Mr. Harrison about this and was told “everything is good, you are good to go. You can drive the Jeep for 10 days.” Ms. Siah understood that the dealership was still working on obtaining financing.

[152] The dealership was not able to arrange acceptable financing before the accident on August 27, 2018.

[153] I accept the evidence set out above. Although Mr. Heslop describes a longer review of the documents than Ms. Siah describes, their evidence is otherwise quite consistent. Mr. Heslop did not say: “by signing the document you are committing to purchase the Jeep regardless of whether you receive financing”. That was not what he thought was happening.

[26] For clarity, I note here that while Brown J. refers to a “dealer plate” in the above, I use the term “Demonstration Plate” in these reasons. The applicable regulations use the latter term.

[27] Although many of the findings in the reasons are important, the following two paragraphs contain the critical findings. First, at para. 158, B. Brown J. made the following findings of fact:

- a) The Motor Vehicle Purchase Agreement (“MVPA”, which is also referred to as the “cash bill of sale”) was drawn up on Mr. Harris’ instruction.
- b) He described it as an interim measure which would be ripped up when financing was obtained.
- c) Mr. Harrison told him that there were no dealer plates available, so they could not put a dealer plate on the Jeep to permit Ms. Siah to drive it.

- d) The cash bill of sale was simply an alternative when dealer plates were not available.
- e) Mr. Harris said that he had been told by management that in those circumstances, where no dealer plate was available and financing was still being negotiated, it was appropriate to swap the plates, so that insurance would be temporarily transferred to the new vehicle.
- f) He described the practice as Harris policy, although it did not happen often.
- g) He said that he did not know if the MVPA was necessary but agreed that Ms. Siah needed some documentation when she drove off in the Jeep.

[28] Then, at para. 178, Brown J. wrote:

[178] In conclusion, I am not persuaded that Harris had any intention of entering a binding agreement when it and Ms. Siah signed the piece of paper that Mr. Harris believed to be necessary to permit her to leave the dealership driving the Jeep. It was in Harris' interest, not Ms. Siah's, to drive the Jeep off the lot that day. As described above, Harris wants people to drive their vehicles. They are more likely to purchase vehicles when they are driving those vehicles. Thus Mr. Harrison and Mr. Harris wanted Ms. Siah to leave driving the Jeep. Because there were no dealer plates available, Mr. Harris understood that an alternative was to have the "cash bill of sale" executed which would permit them to swap the plates from the trade-in to her vehicle and let her drive away for 10 days. That they were prepared to do either suggests that these were alternatives, that there was no intention that the MVPA constituted a binding agreement. Moreover, the MVPA was missing essential terms regarding financing of the purchase. Everyone in the transaction knew that Ms. Siah required financing. Obtaining the financing was in Harris' hands. Only Harris could negotiate to arrange terms for financing that would permit Ms. Siah to conclude the transaction. If there were a binding agreement created by the execution of the MVPA, that agreement, as asserted by Harris, would be an unconscionable transaction and invalid.

[29] The circumstances of Mr. Thomas coming into possession of the Jeep were as follows:

- a) Ms. Siah lived with her common law partner, Ms. Sylvester. On the day of the accident, Ms. Siah and Ms. Sylvester went to Ms. Sylvester's mother's home (Ms. Hellen Jack) for a family dinner. Ms. Sylvester asked Mr.

Thomas, who was outside the home tinkering with a motorcycle, to go and pick up another family member who was roughly 10 minutes away. At the time, Ms. Siah was taking a nap on the couch. Mr. Thomas had not driven the Jeep before the day of the accident, and his use of the Jeep was a “one off”.

b) Justice B. Brown found that:

- i. Ms. Siah would not have consented to Mr. Thomas driving the Jeep (at para. 221).
- ii. Harris did (impliedly) consent to Mr. Thomas driving the Jeep, because Harris expected that others, such as family members and friends, would drive it (at para. 220).

c) Hence, Brown J. found Harris vicariously liable for Ms. Ward’s injuries pursuant to s. 86 of the MVA, on the basis that Harris was the owner of the Jeep at the time of the accident and that Harris had consented to Mr. Thomas driving the Jeep.

[30] The ownership of the Jeep was a significant issue in the Tort Trial. I infer that Brown J.’s finding that Harris was the owner of the Jeep was not anticipated by all of the parties. In the months after the accident (long before the Tort Trial), ICBC had written to the parties and indicated its position:

- a) Ms. Siah had become the owner of the Jeep when she signed the cash bill of sale (or MVPA) and taken delivery of the Jeep.
- b) Harris was not an owner because it was not in possession of the Jeep after the parties signed the cash bill of sale, and Harris no longer had a beneficial interest in it.
- c) ICBC confirmed this opinion in a letter dated October 15, 2018 (the “Ownership Letter”).

[31] Harris points to the Ownership Letter as evidence of the uncertainty that surrounded this situation. In response, ICBC's position is that ICBC was unable to take a final position on ownership and coverage until all of the evidence had been adduced at the Tort Trial and findings of fact were made by the trial judge.

[32] To some extent, Harris also relies on another position taken by ICBC. ICBC agreed to provide a defence to Harris in the tort claim (under a Reservation of Rights). In my opinion, ICBC providing a defence does not assist Harris in respect of Harris' claim for indemnity. The applicable tests are different for the duty to defend and the duty to indemnify.

[33] Justice Brown released her decision on the Tort Trial on July 7, 2022. On August 19, 2022, ICBC delivered a letter to Harris (through counsel) indicating ICBC's position on coverage for indemnification of the damages assessed in the underlying action (the "Coverage Denial Letter").

[34] In the Coverage Denial Letter, ICBC took the position that the Garage Policy only provided coverage with respect to vehicles owned by Harris that are described in owner's certificates or have Demonstration Plates attached to them. The Coverage Denial Letter states:

In the reasons for judgment, the learned trial judge made certain findings of fact, including that the Jeep had license plates from Ms. Siah's Cruze vehicle on it at the time of the accident and there was no owner's certificate or Demonstration Plate issued under the Garage Policy attached to or on the Jeep. Based on evidence provided by employees of Harris, there was no Demonstration Plate available (see paragraphs 158 and 178). Further, Ms. Siah had possession of the Jeep from August 18 to August 27, 2018, the date of the accident, i.e. more than 48 hours. Thus, at the time of the accident, the Jeep was not covered under an owner's certificate or a Demonstration Plate issued under the Garage Policy. In the circumstances, ICBC takes the position that the successful claim against Harris does not come within the terms of any policy issued by ICBC, it is not liable to indemnify Harris for the judgment against it, and it will not be paying any amount of the judgment on behalf of Harris.

[35] And so, based upon Brown J.'s findings of fact, and ICBC's denial of coverage, Harris brings this petition for a declaration of coverage. ICBC opposes.

The Positions and Submissions of the Parties

[36] ICBC's position is that this is a straightforward case. There was no coverage for the Jeep if it was operated on a highway. ICBC maintains the position set out in the Coverage Denial Letter.

[37] On the other side, Harris argues that, in these circumstances, the insuring provisions in the certificate of insurance plus the relevant provisions in the *IVA* and the *IVA Regulation*, although complex, lead to the conclusion that the Jeep was covered for operation on the highway.

[38] As to the complexity of these issues, the Court of Appeal noted, in a somewhat similar case, *Ocean Park Ford Sales Ltd. v. Insurance Corporation of British Columbia*, 2016 BCCA 337:

[1] This appeal requires us to interpret provisions of the statutory automobile insurance regime in British Columbia that temporarily extend insurance coverage to a vehicle acquired by an owner as a substitute for another vehicle. The complexities of the statutory provisions make this a difficult task.

[39] As noted above, Harris' arguments evolved over time:

- a) In its first submission, Harris argued that the Jeep was licensed for operation on highway for 10 days because of the "plate swapping" regime (described below).
- b) In its second submission, Harris argued that the garage vehicle certificate is either:
 - i. an owner's certificate and, therefore, provides coverage for an owned vehicle for operation on a highway and a corresponding licence is not necessary; or
 - ii. an "additional product certificate" which, by operation of the *IVA Regulation*, would also provide coverage on the Jeep.

- c) In its final reply submission, Harris argued that the facts of this case raise a licensing (as opposed to a coverage) issue.

[40] In addition, Harris argued that if its other arguments fail, then it should be granted relief from forfeiture.

[41] I have addressed each of these arguments below. With respect to the “plate swapping” argument, at the close of the hearing of the petition, it was unclear to me whether Harris had abandoned that position. I have addressed it briefly below. In my opinion, the Court of Appeal’s decision regarding the Tort Trial eliminated any basis for that argument.

The “Plate Swap” Regime

[42] In broad overview, in its first submission, Harris argued that the steps undertaken by its employees were very much akin to the mandated steps that a dealership are directed to take when selling a vehicle and taking a customer’s vehicle in trade. That process is set out in s. 3.08 of the *MVA Regulations*. As such, Harris characterized this circumstance as a slight deviation from the prescribed documentation.

[43] Harris’ submission on this point predated the decision of the Court of Appeal on the Tort Trial decision. The Court of Appeal specifically held that the plate swap regime would not apply to Ms. Siah’s circumstances:

[56] The “terms” of the “agreement” were also clearly incomplete, as the trial judge stated. It showed a “down payment” of \$50,372.89 and the “amount financed” was left blank. The “total finance charge” and “total deferred balance” were both left empty. As already mentioned, no registration of transfer took place; nor did Ms. Siah meet with an insurance agent. The ten-day period was evidently chosen because s. 3.08 of the *Motor Vehicle Act Regulations*, B.C. Reg. 26/58, allows licence plates to be moved to a vehicle acquired by a person who has removed them from another car, and displayed on the substitute vehicle for ten days from the time of ‘acquisition’. I do not regard s. 3.08 as having application in this case, but Harris’ employees evidently remembered the ten-day limit.

[Emphasis added.]

[44] Section 3.08(1) of the *MVA Regulations* provides that a person who purchases a vehicle from a dealership, and trades in their old vehicle, can “display the number plates on the substitute vehicle for a period not exceeding 10 days from the time of acquisition of the substitute vehicle and shall within that period comply with the requirements for licensing the substitute vehicle in his name.” That is the “plate swap” regime.

[45] I set out ICBC’s response to the plate swap argument below. However, I do not discuss it in depth. In my opinion, after the Court of Appeal’s ruling on the applicability of s. 3.08, the petitioner’s argument has no basis. For me to consider it would be a collateral attack on the Court of Appeal’s decision.

Harris’ Submissions on the Garage Policy

[46] I will address Harris’s other submissions in the order they were made.

[47] The main document that describes Harris’ coverage is entitled “Garage Policy Certificate”. A blank Garage Policy Certificate is an ICBC form called the APV4. That blank document has many empty boxes that must be completed (usually by an insurance agent). The dealership chooses the types and amounts of coverage that it wishes to purchase. The premium is based upon the coverages and amounts purchased.

Is the Garage Policy Certificate an “Owner’s Certificate”?

[48] First, Harris argues that the Garage Vehicle Certificate was an “owner’s certificate”. In support of this argument, Harris points to:

- a) the Garage Vehicle Certificate;
- b) the ICBC Garage Policy Booklet; and
- c) the Autoplan Insurance Guide for Garage Operators.

[49] Harris submits that:

- a) The Garage Policy Certificate is the insuring document. In the box entitled “Section 1”, it states that it provides indemnity for third party liability imposed by law upon the insured for loss or damage arising from the use or operation of “owned vehicles” as defined under the policy.
- b) “Owned Vehicle” is defined in the ICBC Garage Policy Booklet to include “any vehicle sold in the business as stated on the Garage Policy by the named insured but not yet delivered to the purchaser” of that vehicle.
- c) Given the finding in the Tort Trial that the contract of purchase and sale which Ms. Siah signed was not binding, Harris owned the Jeep.
- d) Section 1 of the ICBC Garage Policy Booklet is entitled “Owned or Customers’ Vehicles – Third Party Liability, Accident Benefits, First Party Coverage and Underinsured Motorist Protection Rider (APV4D)”. That document says the following under the heading “Insurance Agreements”:

In consideration of the premium paid for the subsection(s) for which a premium is specified under section 1 of the Garage Policy, and no other, the Corporation agrees:

- 1. Under subsection 1A of the Garage Policy to Indemnify the insured in accordance with part 6 of the Regulation and Division 4 of the Garage Booklet, if applicable, for third party liability imposed by law upon the insured, for loss or damage arising from the use or operation of an owned vehicle ...
- e) That provision is followed by exclusions, but none of them apply to this scenario.
- f) The Garage Policy Booklet says that its coverage is provided in accordance with Part 6 of the *IVA Regulation*.
- g) Section 64 (which is in Part 6) of the *IVA Regulation* provides:
 - 64 Subject to this Part, the corporation must indemnify an insured for liability imposed on the insured by law for injury or death of another or loss or damage to property of another that
 - (a) arises out of the use or operation by the insured of a vehicle described in an owner's certificate, and

(b) occurs in Canada or the United States of America or on a vessel travelling between Canada and the United States of America.

h) There are four requirements for coverage under s. 64:

- i. Be “an insured”. Harris submits it was an “insured”, being the named insured in the Garage Policy Certificate.
- ii. The liability must have arisen from the operation of a motor vehicle by the insured. Harris submits this requirement is met because of the findings of the trial judge. Under s. 86 of the *MVA*, Harris was vicariously liable for Mr. Thomas’ operation of the Jeep. (Harris submits that, for purposes of s. 64, this triggers ICBC’s indemnity requirement and to conclude otherwise would seriously undermine the legislative scheme.)
- iii. The vehicle which caused the injury must be named in an “owner’s certificate”.
- iv. The accident must have occurred “in Canada”.

[50] Harris submits that, of these four requirements, the only one that is in issue is whether the Jeep was named in an “owner’s certificate”.

[51] On that issue, Harris submits the Garage Policy Certificate meets the definition of an owner’s certificate under the relevant legislation:

- a) the *IVA* defines an “owner’s certificate” to be “a class of certificate issued under the plan to an owner”.
- b) A “certificate” is defined as “a certificate of universal compulsory vehicle insurance issued under Part 1 or the regulations under that Part.”
- c) The *IVA Regulation* does not define “owner’s certificate”. As noted above, the *IVA Regulation* does define “additional product certificate” as “a certificate issued under section 149”.

- d) The IVA defines “owner” as “the person in whose name a vehicle is registered and licensed under the *Motor Vehicle Act* or the *Commercial Transport Act*”. (This is the point that ICBC relies upon.)
- e) The IVA defines “plan” as “the plan of universal compulsory vehicle insurance referred to in section 2 and operated by the corporation under Part 1 and the regulations under that Part”.

[52] Based upon those submissions, Harris submits that the Garage Policy Certificate, as completed by Harris, meets the definition of an “owner’s certificate” under the relevant legislation and regulations.

[53] Harris concedes that there are no cases that comment on whether an “additional product certificate” is an “owner’s certificate”.

[54] Harris does point to the Court of Appeal decision in *I.C.B.C. v. Allianz Insurance*, 2001 BCCA 28. However, that case deals with other forms of automobile insurance, and the Court of Appeal did not address any question that I am required to answer.

[55] On the basis of the arguments above, Harris submits there is nothing in the definition of “owner’s certificate” that would seem to exclude an “additional product certificate”. Hence, Harris submits that the Garage Policy Certificate constitutes an “owner’s certificate”. Harris says that the Garage Policy Certificate covers all of the inventory on a dealership’s lot. Hence, when driven on a highway, those vehicles are covered for third-party liability.

Does s. 149 of the IVA Regulation Provide Coverage under the Garage Policy Certificate?

[56] Harris’ alternative argument is that if the Garage Policy Certificate is not an “owner’s certificate”, then it is “additional product certificate”. The Garage Policy Certificate is described under s. 149(k) of the *IVA Regulation* and is described as an “additional product certificate”. Harris says s. 149 constitutes a deeming provision.

[57] Section 149(1) of the *IVA Regulation* provides:

149(1) Subject to section 15.7 and subsection (1.1) of this section, the corporation shall, on application and payment of the applicable premium, provide the following additional product certificates, each in the form established by the corporation:

...

(k) garage vehicle certificate (APV-4);

[58] Section 149(2) provides:

(2) Subject to subsections (3) to (9), an additional product certificate issued under subsection (1) evidences coverage under Parts 6, 7 and 10 of this regulation and Parts 10 and 11 of the Act while a vehicle covered by the certificate is being operated in accordance with the terms set out in the additional product certificate.

[Emphasis added.]

[59] Harris submits that, because s. 149(2) is a deeming provision, it does not matter whether the Jeep was “described” in an owner’s certificate. Even if the Garage Policy Certificate is not an “owner’s certificate”, s. 64 of the *IVA Regulation* still applies because s. 149(2) directs that the Garage Policy Certificate evidences coverage under Part 6 of the *IVA Regulation*, which includes s. 64. Thus, the *IVA Regulation* affords broad liability coverage to Harris under the Garage Policy Certificate.

[60] Harris submits that both paths (“owner’s certificate” and “additional product certificate”) lead to s. 64 and afford coverage.

[61] Harris’ submissions then address whether there are any exclusions that would apply to the operation of the Jeep. Harris submits there are none. (I note that ICBC submits that there was no coverage for the Jeep. Hence, ICBC submits that the possible existence of exclusions is irrelevant.)

[62] Harris also submits that the entire automobile insurance scheme constitutes benefit conferring legislation and should be interpreted broadly.

Do these Facts Raise a Licensing (as Opposed to a Coverage) Issue?

[63] Finally, Harris submits that ICBC's denial of coverage is in error because ICBC conflates "licensing requirements" with "coverage requirements".

[64] Harris submits that any failure on its part to properly transfer and plate the Jeep constituted a licensing problem, not an insuring problem.

[65] Harris points to the decision of Judicial Justice of the Peace H.W. Gordon in *R. v. Rashead*, 2011 BCPC 94. That decision considered whether the failure to put a repairer plate on a vehicle caused the insured to forfeit coverage. The insured operated a garage. The owner instructed an employee to take a car which he had purchased from a customer out for a test drive. The employee failed to affix a garage plate on the vehicle. He was stopped while driving and charged under the MVA for driving without insurance. The Crown took the position that, without a valid plate affixed, the vehicle was not insured. The Court disagreed, with Judicial Justice of the Peace H.W. Gordon pointing to an earlier decision he made in *R. v. Reid*, 2009 BCPC 0100, which he had decided on similar facts, where he stated:

[11] The sole issue is whether the repairer's number plate must be attached to a vehicle when it is on the highway in order for the insurance to be effective on that vehicle. I cannot find anything, either in the legislation or the insurance policy, which specifically provides that the plate must be attached for the insurance to be effective.

[12] Approaching the issue from principle, and applying common sense, I find that not having the number plate attached does not invalidate the insurance coverage on the vehicle. All of the other terms of the policy had been met: the GMC was under the care of West Yale Auto for repair, it was being driven on a highway by an employee of West Yale Auto for the purpose of testing, and it was not covered by any other vehicle liability insurance.

[13] Insuring and licensing vehicles are separate but related requirements. A vehicle can be insured without it being licensed (when being stored, for instance). A vehicle probably cannot be licensed without being concurrently insured. The Garage insurance policy is a blanket policy covering all vehicles being repaired by West Yale Auto that meet the conditions referred to in paragraph 7 above. I did not find anywhere in the policy a condition that a number plate had to be attached to such a vehicle.

[14] As a matter of both principle and common sense, it makes no sense that if a vehicle was driving on the highway and the number plate fell off, the insurance would at that moment cease to be effective. In my view that principle would extend to the situation where the number plate had not been attached to the vehicle in the first place. Driving on a highway without the required number plates is an offence. But committing that offence does not mean that the insurance policy on the vehicle is ineffective. In the case of repairer's plates, only one plate is required, on the rear of the vehicle. For other plates, two plates are usually required, front and rear. It surely defies principle and common sense to conclude that if one the plates on a vehicle requiring two plates is missing, the insurance on that vehicle is thereby ineffective. The same conclusion would apply to single plated vehicles. It would require specific wording to find that insurance coverage ceases in those circumstances.

[Emphasis added.]

[66] Harris submits that, in this case, ICBC is asserting the same arguments that were rejected by the Court in *Rashead* and *Reid*. Harris submits that the essential principle is that the Garage Policy Certificate provides blanket coverage for all owned vehicles. A licensing gaffe does not deprive Harris of coverage unless that coverage can be linked to a specific exclusion. As observed in *Rashead* and *Reid*, the failure to have a plate affixed to a vehicle may be a licensing offence, but it is not one that is included as a condition of coverage under the Garage Policy Certificate.

[67] So, in summary, Harris' submissions are as follows:

- a) For practical purposes, coverage is afforded either way:
 - i. If the Garage Policy Certificate is an "owner's certificate", then any vehicle which Harris owns is "described in an owner's certificate" and s. 64 is engaged.
 - ii. If it is not an "owner's certificate", then s. 149(2) provides that the Garage Policy Certificate "evidences coverage" under Part 6. Therefore, s. 64 is engaged. Section 149(2) is a deeming provision which means that all of a dealer's owned vehicles attract the broad coverage afforded by s. 64 pursuant to the Garage Policy Certificate.

- b) ICBC's contention that the Jeep was not insured because it was not described in an "owner's certificate" and did not meet the licensing requirements of dealer inventory (not bearing a dealer plate) ignores the fact that, if Harris made a mistake, it was a licensing mistake, not a coverage mistake.

ICBC's Position

[68] First, ICBC acknowledges that Harris was an insured under a Garage Policy Certificate. ICBC also accepts that the Jeep was in the inventory of Harris. ICBC's position is that the Garage Policy Certificate did not cover the Jeep in these circumstances (*i.e.*, for operation on a highway).

[69] The foundation of ICBC's position relies on the difference between the regime that applies to regular owners of vehicles versus the regime that applies to dealerships.

[70] Regarding the operation of vehicles in BC (outside of the dealership environment), ICBC relies on the automobile insurance regime as a whole, which includes the *MVA*, the *IVA*, and the *IVA Regulation*.

[71] ICBC submits that the starting point for this analysis is that the regime required vehicles be registered, licensed and insured. The *MVA* provided:

Registration, licence and insurance

3(1) Except as otherwise provided under this Act, the owner of a motor vehicle or trailer must, before it is used or operated on a highway,

- (a) register the motor vehicle or trailer with the Insurance Corporation of British Columbia,
- (b) obtain a licence for its operation under this section, and
- (c) obtain for it an owner's certificate under the *Insurance (Vehicle) Act*.

[72] Hence, registration, licensing and insurance are all connected.

[73] Put simply, ICBC notes that the Jeep was not registered with ICBC. There was no licence for its operation. There was no owner's certificate. That was true both before and after Ms. Siah drove the Jeep off the dealer's lot.

[74] That is both the starting point and the ending point for ICBC's argument.

[75] ICBC's submissions then describe the automobile insurance regime that applies to automobile dealerships. In broad overview, ICBC's counsel described the program of insurance for automobile dealers as follows:

- a) The general rule for operation of vehicles in BC is that they must be licensed, registered and insured (as noted above).
- b) However, automobile dealerships are required to have inventory. The vehicles in inventory will not be driven, except by potential purchasers.
- c) It would be prohibitively expensive for dealers to license, register and insure all the vehicles in inventory.
- d) Under the long-established program in BC, dealerships are not required to license, register and insure all the vehicles that they hold in inventory. Hence, those vehicles are not "owned vehicles".
- e) Instead, dealerships purchase policies of garage insurance (*via* the Garage Policy Certificate). Third party liability coverage for inventory vehicles driving on the highway is provided by way of the "Demonstration Plate" regime.
- f) When purchasing a garage policy, each dealership decides how many "Demonstration Plates" it will need. That number is based upon the maximum number of inventory cars that will be test-driven at any given time. The dealership is then limited by the number of Demonstration Plates that have been issued. For example, 10 Demonstration Plates would mean that 10 vehicles can be test-driven at one time. The

dealership can adjust that number on an ongoing basis through the policy term (usually through an insurance agent).

- g) Under the garage policy, the dealership can also register vehicles as “owned vehicles”. This coverage is usually purchased for employees of the dealership who drive one of the inventory vehicles on a regular basis. The Garage Policy Certificate refers to these as “Private Passenger Plates”. There is also provision for “Commercial Plates” for commercial vehicles operated in the course of business. Neither of these definitions apply here, but ICBC notes the distinction between these vehicles (which are registered) and vehicles in inventory (which are not).
- h) When an inventory vehicle is taken on the road by a potential buyer, the Demonstration Plate must be attached.
- i) By that method (in 2018), third party liability coverage was provided on vehicles that were test driven.

[76] ICBC acknowledges that there are two methods by which a customer could drive off the dealership lot with a new vehicle:

- a) through the Demonstration Plate regime (if the vehicle had not been purchased); and
- b) through the plate swap regime (if the vehicle has been purchased).

Demonstration Plates

[77] ICBC’s position is that, with respect to Demonstration Plates, a vehicle (and therefore the dealership) is covered for third party liability if a potential purchaser drives an “inventory” vehicle on a highway with Demonstration Plates attached. Such a test drive can only last a maximum of 48 hours.

[78] ICBC notes that this regime does not apply to Ms. Siah’s transaction with Harris:

- a) There was no attempt to use Demonstration Plates.
- b) Justice Brown found that no Demonstration Plates were available.
- c) Ms. Siah had the Jeep for nine days before the accident. The 48-hour rule was far exceeded.

[79] ICBC acknowledges that there are prior decisions where courts have granted coverage despite the absence of a Demonstration Plate. ICBC distinguishes those cases. In the case of the Jeep, there was no attempt to use a Demonstration Plate with Ms. Siah.

[80] Further, the cases relied upon by Harris involved circumstances where the insured made a genuine mistake with the plates and where the garage had paid the appropriate premium for coverage. Neither of those facts existed in this case.

[81] Hence, ICBC argues that there was no coverage under the Demonstration Plate regime.

Plate Swap Regime

[82] The “plate swap” regime involves circumstances where the customer trades in a vehicle and purchases a replacement vehicle from the dealership. In many cases, the dealership will have an Autoplan agent attend at the lot to register that transaction. Hence, the new vehicle is registered, licensed and insured in the new owner’s name. However, if that does not occur, then s. 3.08 of the *MVA Regulations* allows the dealership to “swap” the plates from the customer’s trade-in vehicle onto the newly purchased vehicle. The customer then has 10 days to register the transaction.

[83] ICBC notes that the swapping of plates occurs only after the sale and trade-in transactions have been completed. There must be a binding contract whereby each party has accepted the terms. The only remaining steps that need to occur are insurance and registration. ICBC notes that Brown J. specifically found that the paper exchanged in this case was never meant to contractually bind either party. If

the paper had been contractually binding, then Ms. Siah would have been the owner of the Jeep. Hence, if the trade-in had been properly executed, Ms. Siah's insurance from the Cruze would have been transferred to the Jeep for a maximum of 10 days. ICBC notes that, under that regime, coverage would only have been provided to Ms. Siah. No coverage would be provided for Harris, because Harris would no longer be an owner.

[84] ICBC notes that the petitioner deleted the plate swap argument in its Amended Submissions. ICBC submits that if Harris continues to rely upon the plate swap argument, the Court of Appeal decision is a complete answer to it.

Is the Garage Policy Certificate an “Owner’s Certificate”?

[85] ICBC's position is that the Garage Policy Certificate is not an owner's certificate and that Harris' argument is entirely inconsistent with the legislative scheme. As noted, that scheme requires a vehicle to be registered, have a licence for operation on a highway and a corresponding certificate providing insurance coverage for operation on a highway.

[86] ICBC submits that the Garage Policy Certificate is not an “owner's certificate”. The starting point for this position is the definition section of the *IVA* (s. 1) which defines:

- a) an “owner's certificate” as meaning “a class of certificate issued under the plan to an owner”;
- b) a “certificate” as meaning “a certificate of universal compulsory vehicle insurance issued under Part 1 or the regulations under that Part”; and
- c) “owner” as meaning “the person in whose name a vehicle is registered and licensed under the *Motor Vehicle Act* or the *Commercial Transport Act*”.

[87] ICBC submits, on a very basic level, the Jeep was not registered or licensed in any fashion under the *MVA* or the *IVA*. Therefore, the Garage Policy Certificate cannot be an “owner’s certificate”.

[88] ICBC says that the Garage Policy Certificate is an “additional product certificate” which is defined in s. 1 of the *IVA Regulation* to mean “a certificate issued under section 149” (addressed below).

[89] An owner’s certificate can only be issued with a corresponding licence permitting the vehicle described in the owner’s certificate to be operated on a highway and that provides coverage for operation on a highway.

[90] A Garage Policy Certificate is not issued with a corresponding licence. It does not permit an inventory vehicle to be operated on a highway and does not provide coverage for operation on a highway (absent a Demonstration Plate).

[91] ICBC further clarifies that a Garage Policy Certificate must be distinguished from a “garage policy”. A “garage policy” may include a licence and corresponding certificate that permits operation on a highway and that provides coverage for operation on a highway. Each Garage Policy Certificate is different. Each dealership (through an insurance agent) chooses the types and extent of coverage that it requires. The coverage provided under the policy is defined by the coverages that are chosen by the dealership. As noted above, a dealership can include any number of private passenger plates on the garage policy (for staff-driven vehicles). Those types of coverage do not apply to the vehicles that are held in inventory.

[92] ICBC says that to find coverage, the insured must look to the terms of the licence and corresponding certificate to determine whether coverage is provided in the circumstances of the case. Harris had certain coverages under the Garage Policy Certificate. However, those coverages would not extend to the Jeep unless it was being operated “in accordance with” the provisions of Part 6 and as required under law. The Garage Policy Certificate does not deem any coverage for an unlicensed, unregistered vehicle for operation on a highway. To the extent the

Garage Policy Certificate provides third party coverage, its terms must be interpreted in accordance with Part 6.

[93] ICBC notes that the term “insured” has different meanings in the different sections of the *IVA*, *IVA Regulation*, and various certificates. Being an “insured” under a Garage Policy Certificate does not mean you are an “insured” under s. 64 of the *IVA Regulation*. The definition of “insured” in s. 64 comes from s. 63 where “insured” is defined, in part, to mean “a person named as an owner in an owner's certificate”. Again, there is no owner's certificate.

[94] ICBC further submits that the indemnity provided under s. 64 only applies to the “use or operation by the insured of a vehicle described in an owner's certificate”. The petitioner is not an insured under s. 63, and the Jeep was not described in an “owner's certificate”.

[95] ICBC notes that Harris could have insured the Jeep. Harris could have described the Jeep in an owner's certificate, but did not. Harris could have licensed it:

- a) under a Demonstration Plate (for 48 hours);
- b) under a private passenger plate and corresponding owner's certificate; or
- c) under a temporary operation permit and owner's certificate.

[96] Harris chose not to take any of these steps. Harris put the Jeep on the highway without a licence and corresponding certificate.

[97] ICBC further notes that the premiums paid by a dealership are adjusted through the policy year depending on the needs of the dealership. The dealership can increase or decrease the number of private passenger licences (e.g., staff vehicles), owner's certificates, and Demonstration Plates. The evidence in this petition demonstrates that Harris made those adjustments during the policy year in 2018. Such adjustments would clearly not be necessary if all of the inventory was insured to be driven on the road.

[98] On that basis ICBC submits that Harris's entire submission regarding the Garage Policy Certificate as an owner's certificate is without foundation. The Garage Policy Certificate is not an owner's certificate. Therefore the petitioner was not an "insured" under s. 64 for the operation of the Jeep on a highway.

Does s. 149 of the *IVA Regulation* Assist the Petitioner?

[99] ICBC submits that s. 149 of the *IVA Regulation* does not assist Harris. ICBC submits:

- a) The Garage Policy Certificate is an "additional product certificate" which is defined in the *IVA Regulation*, s. 1. It "means a certificate issued under section 149".
- b) Section 149(1)(k) refers to a Garage Policy Certificate. That certificate does not include a corresponding licence. Thus, by itself the Garage Policy Certificate does not permit operation of a vehicle on a highway and does not provide coverage for a vehicle operated on a highway.
- c) Section 149(2) of the *IVA Regulation* does not say (as Harris argues) that "an additional product certificate issued under subsection (1) is deemed to be owner's certificate coverage under Part 6". If this "deeming" had been intended, the term "deeming" would have been used.
- d) Instead, s. 149(2) states "an additional product certificate issued under subsection (1) evidences coverage under Parts 6, 7 and 10 while a vehicle covered by the certificate is being operated in accordance with the terms set out in the additional product certificate" (My emphasis).
- e) The word "evidences" in the insurance context means that it provides some evidence that there is an underlying contract. ICBC submits that, although the underlying contract may include elements of a policy and/or certificate, the certificate is not the contract. One must look to the underlying contract which gives rise to legal consequences.

- f) For this proposition, ICBC relies on the decision in *Van Huizen v. Trisura Guarantee Insurance Company*, 2020 ONCA 222, where Roberts J.A. wrote:

[25] An insurance policy may evidence the existence of an insurance contract because often parties will agree, as part of their contract, to be bound by terms and conditions as set out in an appropriate policy: Billingsley, at p. 59; Brown and Mercer, at p. 23. When an insurer uses a standard policy, it may issue a certificate of insurance as proof of the underlying contract on the terms set out in an applicable policy: Boivin, at p. 258. But an insurance policy or certificate of insurance is only the instrument; it evidences the existence of the insurance contract by which the parties have agreed to be bound.

[26] This relationship between an insurance contract and an insurance policy is recognized by the statutory definitions of "contract" and "policy": *Insurance Act*, R.S.O. 1990, c. I.8, s. 1. Under s. 1 of the *Insurance Act*, "contract" means an insurance contract, and *includes* a policy and certificate of insurance evidencing the contract. By contrast, "policy" means the *instrument* evidencing a contract.

[27] Therefore, while an insurance policy sets out terms that may govern the relationship between the parties to an insurance contract, it is the contract that gives rise to legal consequences and must be the subject of interpretation for the purposes of determining the parties' rights and obligations.

- g) In the present case, the underlying "contract" is the additional product certificate (this is a form called the "APV4D", which is referenced in the Garage Policy Certificate). The terms of that certificate govern the relationship. The APV4D does not include a licence and corresponding certificate permitting operation on a highway. It does not provide coverage for operation on a highway.
- h) ICBC submits that it is necessary to avoid conflating actual owner's certificate coverage under Part 6 with additional product certificate coverage under s. 149(1).

[100] Still further, ICBC submits that there is no corresponding licence or other authority which permits an "inventory" vehicle to be registered and licensed. Pursuant to the legislative scheme, a vehicle may not be operated on a highway,

and there is no coverage for operation on a highway, unless the vehicle has the appropriate licence or deemed licence and corresponding certificate of insurance.

[101] ICBC submits that Harris finds itself without coverage because it chose to ignore the legislative scheme and put the Jeep on the highway without a valid licence and corresponding certificate. It submits Harris is essentially seeking “coverage” through this petition: coverage that ICBC did not issue originally and which it cannot now issue after the fact.

[102] On that basis, ICBC submits that Harris cannot rely on s. 149 to create coverage that does not exist.

Response to Harris’ Argument that this is a Licensing (as Opposed to a Coverage) Issue

[103] As noted, Harris says that ICBC’s denial of coverage is in error because it conflates “licensing requirements” with “coverage requirements”. Harris submits that the failure to license the Jeep should not affect the coverage under the Garage Policy Certificate.

[104] First, ICBC notes that it is not arguing that Harris committed a breach of the policy. ICBC’s position is that there is no coverage under any certificate issued to the petitioner and, therefore, no breach issue arises with respect to it.

[105] In response to Harris’s submissions regarding the *Rashead* and *Read* decisions, ICBC submits that there are several problems with the petitioner’s argument.

[106] First, ICBC was not a party to that litigation. ICBC is not bound by these decisions.

[107] Second, ICBC says the *Rashead* decision is distinguishable. In that decision, the Court noted at para. 6 that it had not been referred to any provision in the *MVA* requiring that a trailer plate must be attached to a trailer in order to confirm that the trailer is insured under the garage automobile policy. Hence, in *Rashead*, unlike the

present case, there was a licence and corresponding certificate permitting operation on a highway and providing coverage for operation on a highway in existence. As noted, in the Tort Trial decision, Brown J. addressed the evidence on the availability of Demonstration Plates and found that no plate was available. Further, Ms. Siah had the Jeep for more than 48 hours. Hence, this was not a “mistaken placement of a valid plate” case.

[108] Third, ICBC notes that in *Rashead*, the onus was on the Crown to prove the case. The Crown simply did not satisfy the onus. For that reason, among others, *Rashead* is not good law in the civil context.

[109] On the issue of the distinction between “licensing” and “insuring” problems, ICBC points to the decision in *Painter Motors Ltd. v. Insurance Corporation of British Columbia*, 139 D.L.R. (3d) 759, 1982 CanLII 712 (B.C.S.C.). In that case, a BC automobile dealer purchased a Chevrolet Corvette at an auction in Quebec. The Corvette was involved in an accident in Ontario while being driven to BC. It was registered in Quebec and licensed for transit in Ontario. The dealership, Painter, sought coverage for the damaged vehicle under two grounds:

- a) its garage policy provided insurance in respect of licensed and unlicensed vehicles owned by a garage service (Reg. 11.43(c)); and
- b) the regulations and the policy's insuring agreement required ICBC to indemnify the insured for direct loss or damage caused solely by collision to any owned motor vehicle occurring anywhere in Canada.

[110] Justice Wallace (as he then was) dismissed both arguments:

[16] Section 1(1), [of Insurance (Motor Vehicle) Act] defines “owner's certificate” as a “certificate issued under this Act or regulations to an owner”.

[17] Since an automobile registered and operating in another jurisdiction does not require a licence under the Motor Vehicle Act, R.S.B.C. 1979, c. 288, any insurance covering such vehicle would not be “automobile insurance” as defined by the Insurance Act.

[18] It is apparent the legislature authorized I.C.B.C. under the Insurance (Motor Vehicle) Act to insure only those motor vehicles which require a licence under the Motor Vehicle Act for their use or operation.

[19] I accept the submission of I.C.B.C.'s counsel that the reference in the regulations to the corporation providing insurance in respect of "licenced or unlicenced" vehicles owned by or leased to the garage service cannot enlarge the ambit of the "automobile insurance" the corporation is authorized to provide under the Insurance (Motor Vehicle) Act. In the circumstances it is apparent the "unlicenced" vehicles referred to in Reg. 11.43 — "Compulsory Garage Policy" — are vehicles the use or operation of which would require a licence. The plaintiff's Corvette was not such a vehicle at the time of the accident.

[20] I have considered the authorities referred to me by counsel for Painter as to the appropriate principles of construction to apply when interpreting an insurance policy. In this case I find that the legislation and regulations, though complex and convoluted at times, are unambiguous in setting out the limits of the coverage provided by the comprehensive garage policy issued by the corporation. Accordingly I dismiss the plaintiff's case.

[111] In this case, ICBC notes that Harris is making the same argument as Painter: the Corvette was an "owned vehicle", Painter was an insured under a garage policy, and those two facts were sufficient to create coverage for a loss on a highway. Those arguments were rejected. In *Painter*, the Court held that the garage policy did not apply because ICBC cannot issue a certificate for coverage on a highway without a valid corresponding licence. In the present case, the Garage Policy Certificate did not provide coverage on a highway because there is no licence and corresponding certificate.

[112] Put simply, ICBC submits that the legislative scheme and the structure of the Garage Policy Certificate make it clear that it does not provide the "blanket coverage" for operation of owned vehicles on a highway as suggested by the petitioner.

[113] In summary, ICBC's arguments are:

- a) The Demonstration Plate regime does not apply.
- b) The plate swap regime does not apply.
- c) The Jeep was not named in an owner's certificate under ss. 63 and 64 of the *IVA Regulation*.

- d) Section 149(2) does not provide coverage for the Jeep in this circumstance.
- e) This is both a licensing issue and a coverage issue.

Discussion and Analysis

[114] Having set out the positions and submissions of the parties on the issues above, I now turn to my analysis.

[115] Before addressing the individual arguments, I will comment on the nature of the petitioner's arguments. My comments here do not form part of my reasoning for dismissing the petitioner's claims, but are provided to put those claims, and ICBC's positions, in context.

[116] First, I note that for me to accept the petitioner's positions as being correct, it would mean that the entire car dealer industry, plus ICBC, have misunderstood the fundamental nature of the automobile insurance provisions covering dealership inventory. Further, that misunderstanding has persisted for multiple decades. In other words, if I accept Harris' submission, then all inventory vehicles currently sitting on all car lots in BC can be driven on the highway without the need to attach a Demonstration Plate. Further, there would be no limit on the number of vehicles from inventory that could be on the street at any time. The inventory vehicles could just be driven at the dealership's whim.

[117] Second, I note that some of the arguments proffered by Harris at the close of this hearing differed from the positions that it took at the start of the hearing. Hence, it would appear that, at the time it commenced this petition, Harris did not realize the path to coverage that it would ultimately put forward.

[118] Those two points provide context for my analysis.

Plate Swap Regime

[119] In its first submission, Harris argued that the Jeep was licensed for operation on a highway for 10 days because of the plate swapping regime.

[120] As set out above, I do not accept the petitioner's argument on the plate swapping regime.

[121] As noted, Justice Newbury in the Court of Appeal reasons dismissed Harris' appeal of the Tort Trial decision. She stated at para. 56, "I do not regard s. 3.08 as having application in this case". Section 3.08(1) of the *MVA Regulations* provides for the plate swap regime.

[122] Again, it was not clear to me whether the petitioner continued to put forward that argument after the Court of Appeal's decision. In my opinion, it would be improper to consider any plate swap argument because it would be a collateral attack on that decision.

[123] Further, I accept ICBC's submission that the plate swap regime could only provide coverage to Ms. Siah. It could not provide any coverage to Harris.

Is the Garage Policy Certificate an "Owner's Certificate"?

[124] As noted, Harris' second position was that the Garage Policy Certificate is an "owner's certificate" and, therefore, provides coverage for an owned vehicle for operation on a highway and a corresponding licence is not necessary.

[125] Harris' position is that the Garage Policy Certificate meets the definition of an owner's certificate under the relevant legislation because:

- a) The *IVA* defines an "owner's certificate" to be "a class of certificate issued under the plan to an owner".
- b) A "certificate" is defined as "a certificate of universal compulsory vehicle insurance issued under Part 1 or the regulations under that Part."
- c) The *IVA Regulation* does not define "owner's certificate".
- d) The *IVA* defines "owner" as "the person in whose name a vehicle is registered and licensed under the *Motor Vehicle Act* or the *Commercial Transport Act*".

- e) The IVA defines “plan” as “the plan of universal compulsory vehicle insurance referred to in section 2 and operated by the corporation under Part 1 and the regulations under that Part”.

[126] In my opinion, Harris’ position fails because of the IVA’s definition of “owner”. That definition requires that the vehicle be registered and licensed in Harris’ name. The Jeep was in Harris’ inventory. The Jeep was never registered or licensed in Harris’ name.

[127] On this issue, I accept the submission of ICBC that an owner’s certificate can only be issued with a corresponding licence. That licence permits the vehicle (which must be described in the owner’s certificate) to be operated on a highway. The registration also confirms that the vehicle is insured under the mandatory coverage required for operation on a highway.

[128] ICBC is correct. A Garage Policy Certificate is not issued with a corresponding licence for inventory vehicles. It does not permit a vehicle in inventory to be operated on a highway and does not provide coverage for operation on a highway.

[129] On that basis, I do not accept that the Garage Policy Certificate is an “owner’s certificate”.

**If the Garage Policy Certificate is an “additional product certificate”
under s. 149, do those provisions provide a path to coverage?**

[130] Again, Harris’ position is that, if the Garage Vehicle Certificate is not an owner’s certificate, then it is an “additional product certificate” under s. 149(k) of the *IVA Regulation*. Section 149(2) provides that an additional product certificate issued under subsection (1) evidences coverage under Part 6 (including third party liability.)

[131] I do not accept Harris’ position on s. 149. In my opinion, Harris places too much emphasis on the word “evidences”.

[132] I accept ICBC's submission that the Jeep was not being operated in accordance with the terms set out in the additional product certificate. The Jeep was a vehicle in Harris' inventory. The Garage Policy Certificate does not include a provision for a licence and corresponding certificate which would allow that vehicle to be operated on a highway. Hence, it does not provide coverage for operation on a highway.

[133] In other words, Harris cannot rely on s. 149 of the *IVA Regulation* without being bound by the entirety of that section.

[134] I accept ICBC's statement of the law. There is no path to third party liability coverage of the Jeep through s. 149.

Is this a licensing, as opposed to a coverage, issue?

[135] As noted above, Harris relies on the *Rashead* and *Reid* decisions. In my opinion, those decisions do not assist Harris. The reasoning is not applicable in the civil or insurance context.

[136] I return to the mandatory system of automobile insurance in BC. Licensing, registration and insurance are all required under s. 3 of the *MVA*. Again, I accept the submission of ICBC that to operate a vehicle on a highway in BC, it must be licensed, registered and insured. The Jeep was not licensed, registered or insured for operation on the highway. I do not accept Harris' submission that this was only a licensing issue. It was also a registration and insuring issue.

Relief From Forfeiture

Harris' Position and Submission

[137] Harris' final argument is that, if the Court finds that there was no coverage, then ICBC should grant relief from forfeiture.

[138] Harris relies on s. 19 of the *IVA* which provides that ICBC can relieve an insured from forfeiture if they have lost coverage under s. 75 of the *IVA*.

[139] Section 19 provided:

Relief from forfeiture

19(1) [Repealed 2003-94-13.]

(2) If a forfeiture under section 75 would appear inequitable, the corporation may relieve a person affected by it from the forfeiture of all or any insurance money.

(3) The corporation must relieve an insured from a forfeiture of the benefits under section 75 that it considers equitable if, as a result of an accident, the insured dies or suffers a loss of function of mind or body that renders the insured permanently incapable of engaging in any occupation for wages or profit.

[140] Section 75 provided:

75 All claims by or in respect of the applicant or insured are invalid and the right of an applicant, an insured, or a person claiming through or on behalf of an applicant or insured or of a person claiming as a dependant of the applicant or the insured, to insurance money under the plan or an optional insurance contract, is forfeited if

(a) the applicant for coverage under the plan or the optional insurance contract

(i) to the prejudice of the insurer, falsely describes the vehicle in respect of which the application is made, or

(ii) knowingly misrepresents or fails to disclose in the application a fact required to be stated in it,

(b) the insured violates a term or condition of or commits a fraud in relation to the plan or the optional insurance contract, or

(c) the insured makes a wilfully false statement with respect to the claim.

[141] Harris submits that the reasons set out in s. 75 include losing coverage for failing to comply with a term or condition of coverage.

[142] Harris further notes that the only requirement for s. 19 is that the forfeiture “appear inequitable” and it result from the insured “violating” a term or condition under s. 75.

[143] Harris points to its employees’ evidence which established that its employees never knowingly released a car without insurance. The evidence at trial was that if the Harris employees had known that the plate swap regime would be ineffective:

- a) Harris would not have released the Jeep except with a Demonstration Plate affixed to it; and
- b) they would have ensured that it was not in Ms. Siah's possession for more than 48 hours.

[144] Harris notes ICBC's position (described below) is that relief from forfeiture does not apply because coverage for the Jeep never came into force, therefore there is nothing to forfeit. ICBC relies on *DeGrasse v. Insurance Corp. of B.C.*, 51 A.C.W.S. (3d) 1160, 1994 CanLII 1833 (B.C.S.C.), aff'd 1997 CanLII 2659 (B.C.C.A.). Harris distinguishes *DeGrasse* on its facts. In that case, the applicant was applying for Uninsured Motorist Protection ("UMP") coverage. He had been injured while knowingly riding as a passenger in an uninsured, unlicensed vehicle. On the facts, UMP did not provide coverage for those riding in unlicensed vehicles because they were not within the umbrella of coverage. The Court did not view this as a "violation" of a condition since the facts did not trigger coverage in the first instance.

[145] Harris submits that the facts in this case are different. Harris purchased valid coverage under a garage certificate. Prior cases have determined that affixing a Demonstration Plate to a vehicle is not a requirement to trigger coverage of all of Harris' "owned vehicles" under the garage policy. Since the Jeep was either "described in an owner's certificate" or granted coverage under s. 149(2) of the *IVA Regulation*, it was covered (to some extent) by the Garage Policy Certificate the moment that policy was placed.

[146] Harris submits that it would be equitable to relieve from forfeiture. The equitable argument arises from (what Harris describes as) the unintended gap in coverage created by the plate transfer scheme. (This is, of course, an argument in the alternative. Harris does not concede that there is a gap.)

[147] Harris submits that, looking at the automobile dealership industry as a whole, there are a number of situations wherein a court might find that a signed contract of

purchase and sale is invalid after the fact. Alternatively, a court might find that a purchaser failed to transfer her interest in a trade-in vehicle to the dealership. If ICBC's view of coverage is correct, then on the occurrence of such a ruling, the dealer's reliance on the plate swap scheme would result in an absence of third-party liability coverage. ICBC's position is that registration of the trade-in vehicle is a pre-requisite to a successful plate transfer. Harris submits that this coverage gap was not intended, and it would be inequitable to deprive Harris of coverage because of it.

[148] On this issue, Harris points to ICBC's 2018 Ownership Letter to Harris and Ms. Siah, which took the position that the Jeep was insured under the plate swap regime. That letter identified that ICBC's interpretation of the situation was that Harris' use of the plate swap regime was reasonable at the time. Hence, at the time Ms. Siah left with the Jeep, the parties had successfully negotiated the sale price, and Harris believed that it would place financing to permit the transaction to conclude.

[149] Harris says that it did have coverage regardless of the plate swap error, but if it forfeited coverage as a result of that error, then ICBC could grant it relief from forfeiture.

ICBC's Position and Submission

[150] ICBC's position is that the Jeep was not a vehicle insured for operation on the highway. Hence, there is no forfeiture. Hence, relief from forfeiture is not relevant or applicable.

[151] ICBC submits that before a claim for coverage may be made under an insurance policy, the claimant has the onus to demonstrate that it is an insured under the policy and that the claim comes within the insuring agreement. If those factors are established, the insurer may then either accept the claim or argue that the claim is excluded under an exclusion clause. If the latter, the onus is on the insurer. If the insurer satisfies that onus, the insured can then argue that the claim comes within an exception to the exclusion clause. That onus is on the insured.

[152] ICBC's position is that Harris has not satisfied the onus to prove that this claim came within an insuring agreement that provides coverage in the present case. Harris was an insured, but the claim did not come within the insuring agreement. As such, forfeiture and relief from forfeiture are not relevant.

[153] ICBC notes that Harris' submissions raise the possibility of a finding that there has been a "breach" of the policy. In doing so, Harris ignores the distinction between a breach of a policy versus the terms in the insuring agreement that define the scope of coverage (or are descriptive of the risk that is covered). ICBC says there was no breach of the policy in this case. The relevant issue is whether there was coverage.

[154] On that basis, ICBC submits that forfeiture is not relevant when the issue is whether a claim comes within the coverage under the policy. Forfeiture is only relevant after coverage is established and an insured has done something prohibited under the coverage or fails to do something that is obligatory under the coverage; in other words, where the insured commits a violation of existing coverage. ICBC submits that Harris putting the Jeep on the road was an act that fell outside the scope of coverage. Hence, there was never any coverage for the Jeep injuring Ms. Ward. This is not a violation, or breach, of the coverage. Hence, it does not raise any forfeiture issue.

[155] On this issue ICBC relies on the comments of Justice Melnick in *DeGrasse*, "One cannot 'violate' that which is excluded from coverage in the first place."

[156] In *DeGrasse*, the petitioner claimed for UMP benefits. However, he was riding in a car that he knew was uninsured. Hence, under the *IVA Regulation*, there was no UMP coverage. The Court found that the claim did not come within the insuring agreement because the vehicle was not licensed in the broader sense.

[157] ICBC submits that the case is directly applicable to the present case. The Jeep was not licensed under a private passenger plate and owner's certificate, and it was not licensed under a Demonstration Plate and certificate of insurance and was not licensed under the plate swap regime. The Garage Policy Certificate did not provide coverage on a highway. There is no coverage to forfeit.

[158] ICBC also cites *Insurance Corporation of British Columbia v. Turner*, 145 D.L.R. (3d) 203, 1983 CanLII 376 (B.C.C.A.) [*Turner*]. In that case, Ms. Betterton was injured in a car accident. She obtained judgment against two individuals, Mr. Ross Turner and his father, Mr. Donald Turner. ICBC denied any obligation to indemnify the Turners (and thus any obligation to pay Ms. Betterton).

[159] On the facts, Mr. Ross Turner obtained a temporary operation permit and owner's certificate of insurance which covered a trip from Campbell River to Victoria. He then drove south to Courtenay where he resided. Before embarking on the balance of the trip south to Victoria, his father, Mr. Donald Turner, borrowed the vehicle and drove it back north towards Campbell River. On the return trip south to Courtenay, he was involved in the accident and injured Ms. Betterton. ICBC denied coverage.

[160] The defendant (who was seeking coverage from ICBC) argued, in part, that the conduct of Mr. Donald Turner, in driving from Courtenay to Campbell River and return, constituted only a breach of the one-way trip term of the temporary owner's certificate and, therefore, fell within s. 20(4)(b). That section provided that no act of the insured, in contravention of the *Insurance (Motor Vehicle) Act* (as it then was), "shall prejudice the right of a person entitled under subsection (1) to have the insurance money applied on his judgment or claim, or be available to the corporation as a defence to his action." In other words, no breach by the Turners would affect Ms. Betterton's right to collect on her judgment.

[161] In *Turner*, the Court of Appeal held that the temporary operation permit and the temporary owner's certificate of insurance were to be interpreted as a whole and all the terms were applicable to both the permit and certificate: at paras. 32–34.

[162] The Court continued at paras. 39–40:

[39] The term "insured motor-vehicle" is not defined in the *Insurance (Motor Vehicle) Act* and is to be distinguished from the term "insured vehicle", the definition of which I have set out above. "Insured motor-vehicle" must be given its plain and ordinary meaning which is that it designates a motor vehicle covered by insurance. I think that the Ford Mustang was not an insured motor vehicle at the time of the collision. I say that because the only

insurance referable to it was that set out in the temporary owner's certificate of insurance which had been purchased by Ross Turner in Campbell River. That certificate of insurance was applicable only to a one-way trip between Campbell River and Victoria. The trip upon which Donald Turner embarked between Courtenay and the Fisherman's Lodge and return could not, by any stretch of the imagination, be construed as falling within the one-way trip described in the certificate.

[40] I am therefore of the opinion that Reg. 6.01 did not afford insurance coverage to Donald Turner at the time of the accident.

[163] At para. 39, the Court held that the claim was not covered because the insuring agreement was applicable only to a one-way trip south from Campbell River to Victoria.

[164] ICBC submits that *Turner* stands for the proposition that just because a claimant is an "insured" does not mean that a particular act, or a particular loss, is covered under the policy. The claim must still come within an insuring or indemnity agreement that provides coverage in the circumstances of the case. Thus, without there being any coverage, there cannot be a forfeiture, and the Court cannot grant relief.

[165] In answer to Harris' submission that the Court should give a broad and purposive approach to the legislation, ICBC submits that the legislative scheme worked as it was supposed to. Ms. Ward has access to the third-party limits provided under Mr. Thomas' driver's certificate, and her underinsured motorist protection claim under Part 10, Division 2 of the *IVA Regulation*.

Discussion and Analysis

[166] On this issue, I agree with ICBC: Harris' claim does not arise from the insured violating a term or condition of the insuring agreement; therefore, the claim does not come within that agreement.

[167] I have found above that Harris' claim for indemnity fails because the Jeep was not insured for operation on a highway. That lack of coverage does not arise from the insured violating a term or condition of the coverage. The claim did not

come within the insuring agreement. Hence, there was no forfeiture from which to relieve.

[168] In *DeGrasse*, Melnick J. addressed a similar issue when dealing with an appeal from an arbitrator's (Mr. Yule's) decision. In 1994, the provisions relating to relief from forfeiture (now s. 19) were at s. 18:

As I have already noted, Mr. Yule found that s. 110(2.2)(a) was properly characterized as an exclusion from coverage. Thus a person who falls within the scope of an exclusion cannot be said to "violate a term or condition of the plan" within the meaning of s. 18(1)(c). He took the approach that the relief from forfeiture provided by s. 18(3) was intended to be with respect to those situations enumerated in s. 18(1). There could be no forfeiture in the event of an exclusion and consequently no relief from forfeiture.

[169] On that basis, Melnick J. concluded that the Court could not grant relief from forfeiture. I find that I am in the same position. On that basis, in my opinion, the petitioner cannot fit itself into the necessary provisions to obtain relief.

[170] I note that ICBC also argued Harris' claim for relief should fail on two other grounds:

- a) Relief under s. 19(2) is under the discretion of the ICBC and leaves no discretion in the court provided the denial of the claim for relief has been made within the area of discretion: *Sharma v. I.C.B.C.*, [1998] B.C.J. No. 3116, 1998 CanLII 4517 (B.C.S.C.) at para. 14.
- b) Section 24 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, cannot be used to relieve against forfeiture imposed by statute, unless the statute expressly provides: *Lu v. Insurance Corp. of British Columbia*, 5 B.C.L.R. (3d) 71 at para. 28, 1995 CanLII 469 (S.C.); *Seignoret v. Bakonyi Holdings Ltd.*, 2019 BCCA 105 at paras. 39–40.

[171] On the first argument, given ICBC's position on coverage, ICBC has not exercised its discretion. I have found that relief from forfeiture is not available on the facts of this case. If I am wrong on that finding, then presumably, ICBC would have

to address whether to exercise its discretion to relieve from forfeiture. I am not in a position to direct that ICBC take that step.

[172] Finally, to the extent the petitioner may rely on s. 24 of the *Law and Equity Act*, the law is clear that s. 24 cannot be used to relieve against forfeiture imposed by statute, unless the statute expressly provides. In *Lu*, Justice Scarth wrote:

28. Here, the forfeiture of the plaintiff's entitlement to Part 7 benefits derives from s. 18 of the *Insurance (Motor Vehicle) Act*. The court, I conclude, cannot grant the plaintiff relief from forfeiture on this application because to do so would be to relieve against a forfeiture which is statutory in origin: *Peterson v. Bannon* (1993), 1993 CanLII 4719 (BC CA), 84 B.C.L.R. (2d) 350 (C.A.), at p. 364. ...

[173] That statement was confirmed by Justice Willcock in *Seignoret* at paras. 39–40:

[39] The parties to this appeal do not take issue with the general rule that no relief may be afforded against statutory forfeitures. That rule has recently been affirmed in *Ganitano* and in *Kriegman v. Wilson*, 2016 BCCA 122. In *Ganitano*, Frankel J.A. wrote the decision for a five-judge division of this Court. Citing *The King v. Canadian Northern Railway Company*, 1923 CanLII 444 (UK JCPC), [1923] A.C. 714 (P.C.) and *Martin Mine Ltd. v. British Columbia* (1985), 1985 CanLII 412 (BC CA), 62 B.C.L.R. 107 (C.A.), Frankel J.A. held the question whether the courts have the power to relieve against statutory forfeiture “was settled long ago”: at para. 34.

[40] In my view, the law in this province is fairly summarized in *Annotated British Columbia Law and Equity Act* (Gregory S. Pun, A. Wolfgang Rao, Charlotte C. Gregory, loose-leaf (Aurora, Ont.: Canada Law Book, 2001)), which set out the effect of s. 24 at LEA-80.2 as follows:

...

3. This section does not permit relief from statutory penalties or forfeitures (*i.e.*, those imposed by statute or regulation).
4. Relief from statutory penalties and forfeitures is possible if the statute specifically provides for such relief.
5. Relief may be granted from contractual penalties and forfeitures, such as loss of deposits or forfeiture of leases.

[174] Thus, I find that the facts of this case do not provide the petitioner with a basis to claim relief from forfeiture under the *IVA*. Further, to the extent that any forfeiture has occurred, that forfeiture was statutory.

Conclusion

[175] I dismiss Harris' petition on the bases described above:

- a) The Jeep was not an "owned vehicle" as described in ss. 63 and 64 of the *IVA Regulation*.
- b) No coverage is provided via s. 149(2) of the *IVA Regulation*.
- c) This was not a simple "licensing" error. It was a coverage error.
- d) Harris is not entitled to relief from forfeiture.

[176] I did not hear submissions on costs. In the ordinary course, costs would follow the event. If either party seeks a different order, they can provide written submissions within 30 days of the release of these reasons.

"A. Ross J."