

Court of King's Bench of Alberta

Citation: Tansey v Allstate Insurance Company of Canada, 2026 ABKB 525

Date: 20260721
Docket: 2501 09030
Registry: Calgary

Between:

Kyle Tansey

Respondent/Plaintiff

-and-

Allstate Insurance Company of Canada

Appellant/Defendant

**Reasons for Decision
of the
Honourable Justice N. M. Carruthers**

I. Introduction

[1] This hearing involved an appeal brought by Allstate Insurance Company of Canada (Allstate), arising from a decision issued May 9, 2025, in the civil division of the Court of Justice. Mr. Tansey was successful in seeking compensation from Allstate pursuant to a policy of insurance placed on his property, located on Riverglen Drive SE, Calgary, Alberta.

[2] The trial judge awarded the respondent indemnification under the policy.

II. Decision Under Appeal

[3] The appellant seeks to appeal the following findings of Justice L.L. Burt:

- (a) The declaration that the policy requires the siding on all sides of the respondent's house be replaced as the result of damage caused by a July 2023 hailstorm;
- (b) The declaration that replacement of just the north and west sides of the respondent's house with an inexact colour match of siding would not constitute a repair or replacement with property of like kind, as required by the policy;

- (c) The declaration that the respondent's estimate from RidgeCrest Developments for repairs to the siding and soft metals on all four sides of the house constituted the best evidence on which the court could assess the quantum of siding damages;
- (d) The declaration that the respondent's estimate for roof repairs should be preferred over the estimate of roof repairs obtained by the appellant.

[4] Section 53 the *Court of Justice Act* states as follows:

53(1) The Court of King's Bench shall

- (a) hear and determine an appeal,
- (b) give its judgment, and
- (c) make an order awarding costs, if any, to the parties, including costs of all proceedings previous to the appeal.

1.1 Unless section 46(4) applies, the Court of King's Bench may not refer the matter back to the Court of Justice for the purposes of conducting a new trial.

(2) The decision of the Court of King's Bench is final and cannot be further appealed.

[5] In this case, the appellant seeks to have this court reverse the decision under appeal, including with regard to costs, and grant the declaration that the property damage is limited to that which is identified in the appellant's assessments. The appellant also seeks costs of the appeal and the action, on a "solicitor and own client" basis or on an enhanced basis.

III. Standard of Review

[6] The standard of review on an appeal from a decision of the Court of Justice under Part 4 of the *Court of Justice Act* is well established: correctness on questions of law, and palpable and overriding error on findings of fact, factual inferences or issues of mixed fact and law: **Sassine Construction Corp v Proserve Cleaning & Restoration Services Inc**, 2022 ABKB 832 at para 13; **Edwards Land Services Ltd v Semrau**, 2022 ABKB 641 at para 3; **Baran v Can To Can Inc**, 2021 ABQB 827 at para 5; **Morin v Edmonton (City)**, 2018 ABQB 104 at para 6; **Singh v Smith**, 2025 ABKB 715, para 13.

[7] When considering findings of mixed fact and law where the issue is the application of a legal standard to a set of facts, the standard of review is palpable and overriding error. If, however, the judge makes an extricable error of law or principle with respect to the characterization of the standard or its application, the standard of correctness may apply: **ISH Energy Ltd v Weber Contract Services Inc**, 2021 ABCA 281 at para 7; **Housen v Nikolaisen**, 2002 SCC 33 at para 37; **Baran** at para 5; **Morin** at para 3; **Singh** at para 14.

[8] The interpretation of an insurance policy may be reviewed on a standard of correctness: **Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.**, 2016 SC 37, para 4. As stated in the recent Supreme Court decision of **Emond v Trillium Mutual Insurance Co**, 2026 SCC 3,

“[t]he insurance contract in this case is a standard form contract. The interpretation of standard form contracts is a question of law reviewed on a correctness standard. ... No deference is owed to the courts below on the interpretation of the contract...” (para 67).

IV. Issues

[9] The notice of appeal identifies eight separate issues and the appeal brief identifies six. As the appellant submitted at the oral hearing, the issues may be distilled down to the following broader issues:

- (a) Did the trial judge err in her interpretation of policy coverage, in finding that partial replacement of siding and the replacement of siding with an inexact colour match did not satisfy the “property of like kind and quality” provision in the policy? In particular, did she err with regard to the interpretation of physical loss, like kind and quality, and the coverage for parts?
- (b) Did the trial judge misapprehend the evidence with regard to the extent and cause of the hail damage to the respondent’s dwelling?
- (c) Did the trial judge err in her assessment of damages?

V. Summary of the Trial Decision

[10] The court below awarded the respondent \$52,510.27 in damages, plus interest and costs in a brief unpublished written decision of 6 pages. Costs were reduced due to the respondent plaintiff’s failure to provide full pre-trial disclosure, as directed.

[11] The respondent’s home had been damaged by a significant hailstorm on July 15, 2023. Hail damage was covered under his VIP Homeowner Policy. The respondent’s home was finished with vinyl siding, and the insurer’s appraiser and adjuster concluded it showed evidence of damage on the north and west exterior walls. The respondent claimed all sides had been damaged. The insurer advised him he could take a cash settlement or use their preferred contractor. Mr. Tansey knew he was able to get his own estimates and use his own contractors, so he did just that. He got estimates for repairing not only the roof and siding on all four walls, but also the damaged soft metals on the fascia, eavestroughs and downspouts. Not surprisingly, his estimates were greater than what the insurer had obtained. He believed the insurer’s appraiser and adjuster had missed several areas of damage.

[12] The respondent paid for his own roof repair a few months before trial. He was not aware that remedial work on the roof was in dispute. The insurer’s witness concluded that the adjuster must have determined the roof had been in good condition, as there was no evidence that the insurer had been seeking an adjustment.

[13] The insurer’s contractor continued to be involved and completed a colour match of the siding. The contractor matched the original colour by exposing those parts of the siding which had been covered and had not been bleached by the sun. The insurer took the position that the sight lines of the home meant an inexact colour match was not significant. It maintained that it was obliged to replace the siding on only two sides of the insured’s home.

[14] At trial, for reasons unknown, the insurer did not call its original appraiser and adjuster as witnesses. This is significant, in that the trial judge ultimately found that the plaintiff's evidence regarding the damage to all sides of his home had not been refuted. The insurer took the position that only the north and west sides had been damaged by hail, but they did not bring a witness with firsthand knowledge, nor did they have their expert attend the home to conduct an inspection. The insurer's expert based his findings on photographs from the insurer, and had no information from the respondent before preparing his report.

[15] Further, the trial judge found that the failure to provide an exact colour match for the siding meant that the insurer had not proposed a repair or replacement with "property of like kind and quality" as required by the policy. The court applied the case of *Acciona Infrastructure Canada Inc v Allianz Global Risks US Insurance Company*, 2015 BCCA 347. The relevant quote in her reasons from paragraph 38 of *Acciona* is that "direct damage denotes an alteration in the appearance, shape, colour or other material dimension of the insured property". She found that the colour mismatch proposed by the appellant would not be acceptable to a reasonable homeowner and would not constitute a repair or replacement with property of like kind, as "kind" includes colour. For clarity, the south side of the home faced the street and the west side was visible from the street. As such, if the insurer had their way, the front of the house would have old siding and the side would have new siding. The colour difference would be visible from the street.

[16] Turning to damages, the trial judge found that the best evidence of quantum was the RidgeCrest Developments assessment obtained by the respondent. Damages to the soft metals were also included in the claim, based on the RidgeCrest estimate and the plaintiff's own evidence. The insurance adjuster and appraiser would have had firsthand knowledge but did not testify and the insurer's witness had not attended the property. I understood from the decision and a review of the evidence that the presiding justice did not rely on the more expensive siding quote but rather a quote that considered siding of the same quality as that which had been on the respondent's house.

[17] The award from the trial judge may be summarized as follows:

Roof replacement	\$13,263.07
Siding replacement including soft metals	\$37,695.00
Betterment under the policy	\$2,500.00
<u>Deductible reduction</u>	<u>(\$800.00)</u>
Total	\$52,658.07

[18] The certificate of judgment confirms the net judgment is \$57,510.27.

VI. Discussion

[19] I first heard argument in this matter on February 6, 2026. In addition to the original appeal submissions, I requested that the parties provide supplemental briefs, to specifically address the case law that has developed in Canada regarding the interpretation of homeowners' policies and the extent of the obligation to replace with like kind and quality.

[20] Following is a review of the policy wording, the principles of construction when interpreting an insurance policy, and a summary of the relevant case law on which I have relied to arrive at my decision to deny the appeal.

A. Policy Wording

[21] It is helpful to have the relevant policy wording set out for the purposes of the decision. I note that I have not been provided with any evidence from the trial record of any endorsements that might affect coverage and believe there are none.

[22] In written submissions, the appellant identified the most relevant policy provisions to include the reference to Insured Perils, the statement of options which included repairs and replacement with property of like kind and quality, and the Additional Conditions dealing with “Parts”. I have excerpted the relevant passages below, as set forth in the trial exhibits:

COVERAGE A - Dwelling Building

We insure:

1. The dwelling and attached structures.
2. Permanently installed outdoor equipment on the premises.
3. Materials and supplies located on or adjacent to the premises intended for use in construction, alteration or repair of your dwelling or private structures on the premises. We insure against the peril of theft only when your dwelling is completed and ready to be occupied.
4. Building fixtures and fittings when temporarily removed from the premises for repair or seasonal storage.

...

INSURED PERILS

You are insured against all risks of direct physical loss or damage subject to the conditions of this policy and the following exclusions:

[exclusions are not listed for the purposes of these reasons]

...

BASIS OF CLAIM PAYMENT

We will pay for insured loss or damage up to your financial interest in the property, but not exceeding the applicable amount(s) of insurance for any loss or damage arising out of one occurrence.

Any loss or damage shall not reduce the amount of insurance provided by this policy.

Deductible: We will be responsible only for the amount by which the loss or damage caused by any of the Insured Perils exceeds the amount of the deductible shown on the Declaration page in any one occurrence.

If your claim involves Personal Property on which the Special Limits of Insurance apply, the limitations apply to losses exceeding the deductible amount.

OUR OPTIONS

In the event of loss, we have the option of taking all or part of the covered property at the agreed or appraised value. We have the option to repair, rebuild or replace the damaged or destroyed property with property of like kind and quality within a reasonable time. We must give you notice of our intention within 30 days after we receive your signed, sworn Proof of Loss.

[23] The policy also contains a provision for loss mitigation coverage, the wording of which I have not duplicated here. The insurer agrees to pay an additional amount of up to \$2500 to upgrade the roof and/or siding to a material that is resistant to hail and wind. It is paid if the loss exceeds the deductible.

[24] The appellant also relies on the reference to “Parts” in the Additional Conditions at the end of the policy. That provision reads as follows:

PARTS - IV. (where the whole is made up of several parts): In the case of loss of, or damage to, any part or portion of the insured property whether scheduled or unscheduled, the insurer is not liable for more than the cost to repair or replace the part or portion lost or damaged, including the cost of installation.

[25] Parts are specifically considered earlier in the policy wording, in Coverage C dealing with personal property. The language is repeated verbatim in both parts of the policy.

[26] There are exclusions, which I have not reproduced here, which exclude wear and tear, deterioration, or latent or physical defect, and which state the policy will not respond for the resultant cost or expense of replacing or repairing property or any defective part thereof.

[27] There is no suggestion that the insured respondent failed to comply with the policy, such that his ability to pursue replacement cost coverage has been compromised.

B. Principles of Interpretation

[28] I will next turn to a consideration of the law governing the interpretation of the coverage issue.

[29] The Supreme Court of Canada very recently issued the decision of *Emond v Trillium Mutual Insurance Co*, 2026 SCC 3. It was dealing with an exclusion for compliance costs associated with rebuilding. The decision sets forth at paras 33 to 50, the governing principles of insurance contract interpretation, which I have summarized as follows:

- First, the insured has the onus of establishing that the damage or loss claimed falls within the initial grant of coverage.
- Second, the onus shifts to the insurer to establish that one of the exclusions to coverage applies.
- Third, if the insurer is successful in demonstrating an exclusion, the onus then shifts back to the insured to prove that an exception to the exclusion applies. The exceptions to exclusions “do not create coverage — they bring an otherwise excluded claim back within coverage”.
- Endorsements are not self-contained and standalone contracts disconnected from the insurance policy of which they form a part. An endorsement “changes or varies or amends the underlying policy”. Aspects of the endorsement that affect coverage are considered as part of the coverage conferred by the insurance contract, aspects that create exclusions are considered later, followed by any exceptions to the exclusions created.
- Where the language of the insurance contract is unambiguous, effect should be given to that clear language, reading the contract as a whole. This is the first stage of the interpretive analysis. Other interpretive tools are only to be considered where the language is ambiguous.
- The words of the contract must be given their ordinary and grammatical meaning, as they would be understood by the average person applying for insurance, and not as they might be perceived by persons versed in the niceties of insurance law.
- In determining whether the language of a provision is ambiguous, the court must still read the contract as a whole. Ambiguity arises where there are multiple “reasonable but differing interpretations of the policy”.
- The text of an insurance contract cannot be read in isolation; it must be interpreted in light of the contract as a whole. The provision’s interaction with other contractual provisions may colour its meaning.
- Ambiguity will generally arise in two cases. First, ambiguity may arise when a provision appears *unclear* in isolation and continues to admit of more than one reasonable meaning when read in light of the contract as a whole. Second, ambiguity may arise when a provision that appears *clear* in isolation is capable of holding more than one reasonable meaning when the contract is read as a whole. For example, ambiguity may arise “where two or more provisions in the same contract, each clear in itself, are irreconcilable”.
- In the face of ambiguity, the court cannot rely on the language alone. Instead, it must move to a second stage and employ other rules of contractual interpretation to resolve that ambiguity.

- These rules include, but are not limited to: that the interpretation should be consistent with the reasonable expectations of the parties; it should not give rise to results that are unrealistic or that the parties would not have contemplated in the commercial atmosphere in which the insurance contract was formed; and it should be consistent with the interpretations of similar insurance policies.
- If ambiguity still remains after the two first stages, the court must have resort to the *contra proferentem* rule at a third stage, which provides that the ambiguity must be resolved in a manner favourable to the insured. In the context of insurance policies, *contra proferentem* means that interpretations that result in broader coverage, narrower exclusions and broader exceptions to exclusions are favoured at this stage. This rule recognizes the “unequal bargaining power at work in insurance contracts”. The insurer is the drafter of the contractual language and bears responsibility for residual ambiguity.

[30] The Court went on to discuss the nullification of coverage doctrine at paras 51 and 52. Courts in Ontario have refused to apply exclusion clauses in insurance contracts where the effect would be to virtually nullify the coverage provided by the policy. An example is provided in the decision, along with the statement that the doctrine prevents “insurance contracts from being construed so as to defeat the coverage the policy provides, thereby defeating the very objective of the insurance contract and rendering it nugatory” (para 53). The principle may apply in the extreme and specific scenario where coverage is nullified, such that the insurer is pocketing a higher premium without any material risk (para 65).

C. Review of Submissions and Relevant Case Law

[31] I will first comment on the ***Acciona*** decision to which reference was made by the trial judge, as set out earlier in these reasons. This decision involves the interpretation of a construction policy, which provided coverage for damages arising from faulty workmanship, but which excluded the cost of repairing faulty workmanship. The issues for determination were different than in this case, and there was no determination by the court in that case regarding replacement with “like kind and quality”.

[32] The ***Acciona*** decision was relevant to the definition of direct damage, as in that case the court was addressing damage caused by faulty construction methods and faulty supports, that resulted in the deformation of a concrete slab. Cases dealing with construction policies are otherwise not particularly helpful in this context as the central issue is usually related to the distinction between faulty workmanship and the insured damage which is caused by the faulty work.

[33] The appellant submits that the respondent’s damage coverage does not extend to requiring the insurer to replace siding and soft metals that had not sustained direct damage. More particularly, the appellant submits that the policy in this matter does not require the insurer to ensure that the replacement siding matches the respondent’s existing discoloured siding.

[34] The appellant stated that the policy is a contract of indemnity and not enhancement. It does not guarantee aesthetic uniformity following a partial loss. As such, Allstate says it is only obliged to repair or replace that part of the siding and soft metal that has sustained loss. It says the policy

does not insure against colour variation, aesthetic dissatisfaction or a desire for visual uniformity, absent physical damage. In oral submissions, the appellant submitted that the trial judge's emphasis on the mismatched colour of the proposed new and old siding was an error, in that she appeared to determine that this issue arose from the physical loss. In fact, the undamaged siding was bleached by the sun, such that an exact colour match was not possible. The appellant submits that the trial judge erroneously expanded the policy coverage to include aesthetic considerations that arise when remedial work results in an inexact colour match between new and old materials. She erroneously expanded the scope of coverage contemplated in the provisions that govern replacement of damaged property with materials of like kind and quality, such that an insured would be placed in a better position than prior to the loss. An insured should be restored to their pre-loss position and nothing more. In short, the insurer submits that there should be no obligation on it to replace property that has not been directly damaged and coverage should not be expanded to take into account aesthetic considerations. This was described as a "slippery slope", as the use of new materials will inevitably create a colour mismatch, particularly if the insured property is older.

[35] It was clear from the evidence that the insured respondent had lived in the premises since 2011, and the siding was at least that old, if not older. It had become sun-bleached over time. Counsel for the insurer submitted there was no evidence regarding the possibility that the new siding would or would not fade over time, such that it might eventually match the older siding. This, in my view, is something the insurer might have brought forward in its own trial evidence.

[36] The appellant insurer cited a number of cases in its first appeal brief, including **Workman Optometry Professional Corporation v. Certas Home and Auto Insurance Company**, 2023 ONSC 3356. In **Workman**, the court was dealing with a claim that the COVID-19 pandemic gave rise to physical loss or damage to property within the meaning of the insured's business interruption coverage. At paras 52-54, the court stated as follows:

[52] I am unable to accept this argument. While I agree with the plaintiffs that "all risks" is a broad category capable of including a world-wide pandemic, the additional phrase "direct physical loss of or damage to property", is properly understood as limiting language that restricts coverage for insurable risks to events that involve direct physical loss or damage.

[53] Normally, an adjective preceding a series of two or more nouns modifies all the nouns in the series and not simply the first one: *British Columbia v Surrey School District No 36*, 2005 BCCA 106 at para 22. I find this to be the case here. The word "physical" in the phrase "physical loss of or damage to property" in the defendants' policies, therefore, modifies both "loss" and "damage".

[54] Physical damage and physical loss have distinct meanings under Canadian law:

- (a) physical damage means a detrimental or harmful "distinct, demonstrable, physical alteration of property" *MDS Inc v. Factory Mutual Insurance Company*, 2021 ONCA 594, 465 D.L.R. (4th) 294 at para. 96, leave to appeal to SCC refused, 2022 CanLII 23899; or a "harmful" "alteration in

the appearance, shape, colour or other material dimension of the property insured”: *Prosperity Electric v. Aviva Insurance Company of Canada*, 2021 BCCA 237 at paras. 18-21; *Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Company*, 2015 BCCA 347, 77 B.C.L.R. (5th) 223.

- (b) physical loss refers to a situation where the insured property no longer exists or is lost to the insured; that is, tangible harm or deprivation: *Fandasia Restaurant Ltd v. Strathcona General Insurance Co*, [1984] B.C.W.L.D. 661 at para 2.

[emphasis added]

[37] The appellant also cited *Dion v Security National Insurance Company*, 2018 ABPC 242, in which the court was dealing with an insured’s claim for the diminished value of his vehicle after its involvement in an accident. The appellant says this case stands for the proposition that an insurance policy does not compensate an insured for diminished value or aesthetic considerations if the property can be repaired. It also submits that, absent clear policy wording to the contrary, an insured is not entitled to betterment or improvement beyond what is required to remedy the direct physical damage sustained. I note that, in *Dion*, the relevant policy specifically stated that the insurer’s liability would not exceed the amount that it would cost to repair or replace the vehicle with material of like kind and quality. This case is not directly on point as it deals with different coverage and does not address an insured’s potential concerns for aesthetics following a repair.

[38] The appellant also relied on *Scattergood v Ten Star Financial Services*, [2005] OJ No. 3752. In that case, the insureds made a claim for burn damage to their living room and dining room carpet. The carpet throughout the house was nine years old. The new carpet colour differed from that of the old carpet and the difference was visible when the bedroom doors were open. The court found in that case that there was no damage to the bedroom carpets and the scope of loss or damage in the policy did not give rise to an obligation to remedy a colour variation in the carpets throughout the entire premises. Of note, however, is that the court found the replacement carpet was very similar to what was in place. The replacement obligation was limited to the open-concept area in the living and dining room. The reference to the open area is of interest – the insurer was not able to simply place a new piece of carpet in the burned area. There were also other flooring surfaces in the home which were of a different colour and type, and the court made specific note of the kitchen flooring.

[39] I note, as well, that *Scattergood* is distinguishable from the case at hand. Justice Burt found that there was a significant colour difference between the old and new siding based on the evidence before her. In *Scattergood*, the court found the carpet colours in the bedrooms were similar to the replacement carpet.

[40] In the original appeal submissions, I did not receive case law from the parties that I considered to be directly on point, nor did the trial justice appear to receive any. I located relevant cases on my own prior to the oral hearing and requested the parties to provide supplemental briefs to address case law that has considered similar issues arising in respect of homeowners’ or property coverage.

[41] One of the cases that I located was the decision of *Easton v. Lanark Mutual Insurance Co.*, 2000 CarswellOnt 2227, [2000] I.L.R. I-3850, 98 A.C.W.S. (3d) 451. The homeowners suffered damage to their log house after large tree branches fell on the house and damaged the steel roof. There was also a dispute over whether damage to the lime mortar or sealant on the walls of the house had also been damaged by the storm or whether cracking was due to shrinkage. The court stated at paras 9 and 10 as follows:

9. On the basis of these contract terms, the defendants submit they were only obliged to pay for or replace those sections of the roof struck and obviously damaged, and not the remainder. The problem is if the repairs were so done the roof colour would be different because no match would be achieved for the new sections.
10. In such a situation, is the insured entitled to be reimbursed only for those portions of the roof which received "direct, physical damage" as the defendant company urges? I think not. The policy insures the building itself, not individual parts, and the payment provisions call for payment up to the financial interest of the owner in the property. While there are different approaches not only to payment, but also as between personal and real property losses — none would require acceptance of a method of payment which would leave the insured with an asset diminished in value, in my view. The uniformity of the roof colour must be maintained to preserve the plaintiffs' financial interest in the dwelling. This is what is insured. As such, I reject the defendant's contention on this aspect of the case and find that reimbursement must be made for the whole of the roof on both the house and the shed, which is also covered.

[42] The case of *Blanchet v. HB Gestion d'assurance groupe Ltée*, 2004 CanLII 29871 (QC CQ) is also instructive. I recognize it is not binding on this court and is considered under civil law and not common law, but it considers relevant case law, including *Easton*. In *Blanchet*, a fire in a neighbouring house damaged the insured's vinyl siding on three walls of her house. The insurer agreed to replace one side but proposed to clean the other two. The original siding or cladding was no longer available on the market, and the colour of the proposed replacement was not identical to the original colour. The insured rejected the cleaning option as the colour of the coating on the three walls would not be uniform. The court observed that the policy contained a replacement value clause.

[43] Of relevance in this matter, the court in *Blanchet* stated at paras 9 and 10:

[9] The difference in color between the sample of the new coating produced for testing and the existing coating is noticeable. This difference will be even more pronounced when applied to a large surface such as a wall. Finally, this difference is likely to increase due to the weathering and climate to which the walls will be exposed.

[10] In property insurance, the insurance indemnity aims to restore the insured to the full condition he or she was in at the time of the loss.

[44] The court went on to find that the insurer was obliged to replace the siding on the three walls. This was necessary to restore the building to its original state at the time of the loss. The court applied the reasoning in *Lamoureux v Axa Assurances inc.*, [1996] RRA 853 (CQ), discussed below, where the court found that it was impossible to adequately repair a roof without replacing all the shingles due to the disparity in colour between the old and new shingles. At paras 13 to 15 the court in *Blanchet* stated as follows:

[13] Cleaning only the coating on the west and south walls will affect the uniformity of the color of all three walls, resulting in aesthetic damage. This damage suffered by the insured will therefore not be "repaired" by the cleaning alone.

[14] Similarly, by analogy, a car must be completely repainted if only a part is repaired and the original color is not available. It cannot be assumed that the insured would not suffer any loss as a result of a car with two different colors against their will.

[15] To truly restore its insured to the state the building was in at the time of the loss, HB must therefore replace the coverings of the three walls.

[45] For ease of reference, I have also reproduced the following passages from CanLII's online English translation of *Blanchet*, in which the court summarized other relevant case law, as follows:

[16] This solution was adopted in the following decisions:

1. *Lussier v. L'Union Canadienne cie d'assurances*:

"Regarding the claim for the damage of March 22, 1999, the Court finds that the color and size of the shingles made it impossible to replace only part of the roof. [...] In this case, it was impossible to rebuild with materials of the same type and quality. Therefore, the entire roof had to be replaced." (page 3)

2. *Lamoureux v. Axa Assurances Inc.*:

"In short, the Tribunal must decide which method of repair is justified for the specific damage caused to the roof, bearing in mind that the insured is entitled to full compensation for the loss suffered, but without this resulting in unjust enrichment. The evidence clearly demonstrated that partial replacement of the roof shingles would leave aesthetic damage and that no other suitable repair method was offered by the insurer. Therefore, the conclusion to be reached is that the actual damage suffered in this loss required, as an appropriate remedy, the replacement of all the roof shingles. [...]" (page 5)

3. *Easton et al. c. Lanark Mutual Insurance Company* :

[quotation omitted as it is set forth above]

[17] The decision cited by HB at the hearing, *Meany v. Insurance Corp. of Newfoundland Ltd.*, is not applicable since the vinyl siding was still available on the market in the same color and quality. In fact, the decision would probably have been favorable to the insured otherwise:

" This might have been more problematic for the defendant had it been faced with replacement of a discontinued style or color of siding ."

(paragraph 8)

"I think the plaintiff is trying to have the defendant cover normal wear and tear or deterioration by pressing this claim. I would be much more readily disposed to his claim had the color and/or style of the vinyl in question been discontinued by the manufacturer."

(paragraph 13)

[18] In the other decision cited by HB, *Whelan v. Beothic General Insurance Co. Ltd.*, the Court concluded that the discoloration was minimal and temporary and did not justify replacing the siding of the entire house, even the undamaged part:

"There was considerable argument over other damage, particularly as to whether the vinyl siding on the house should be entirely replaced, even though more than half of it was undamaged. This problem arose because the siding was pale blue, and had faded slightly over the three-year life of the house. Murphy and Breton felt that one side of the house and the front should be replaced with the identical product, but not the other side and the back.

I know that not replacing all the siding will result in a slight color difference, at least for a while, but not such as would require all the siding to be replaced. The extra cost would be of the order of \$2,500 plus taxes and labor. If it were to be installed it would add nothing to utility, and little to appearance. I therefore decline to add any sum in respect of additional siding ."

[19] It can be observed that the facts of this case differ from those under study where the discoloration will be neither minimal nor temporary.

[20] The Court approves the opinion of the Provincial Court, Small Claims Division, of Newfoundland, which distinguished the *Whelan* case in these terms:

"If the same siding in the same color and from the same mold as is currently on Mr. Burry's house were still available, and the only difference would be a temporary and slight difference due to fading, I might arrive at the same conclusion in this case. However, the same siding is not available, and if a perfect solution does not exist and the disparity between the different approaches will not be great in

dollar terms, in a case such as this, the imperfection in remedy should favor the plaintiff, who is entirely blameless ."

[21] The Tribunal concludes that the wall coverings on the west and south walls must be replaced and not just cleaned.

[46] Both parties provided supplemental briefs, as noted. I will focus on the submissions of the appellant.

[47] The appellant attempted to distinguish the relevant case law that is adverse to its position. It says that **Blanchet** may be distinguished from the case at bar because an exact siding colour match was available for Mr. Tansey's home. The colour mismatch arose from sun bleaching, not the inability to source matching siding. This makes a partial repair possible in Mr. Tansey's case while it was not available in **Blanchet**. Further, there was no evidence that the partial siding replacement would have diminished the value of the Tansey home.

[48] With regard to **Easton**, the court considered that a colour match in roofing materials would be impossible. Again, the appellant says the case at bar may be distinguished as matching replacement siding existed and there is no evidence of a permanent or irreconcilable colour mismatch. The difference in colour was due to prior bleaching, or normal wear, tear and deterioration, which is expressly excluded under the Policy. And again, there was no evidence that the partial siding repair would have resulted in diminished value of the house.

[49] The appellant also relies on the "Parts" provision in the Policy to distinguish **Easton**. It asserts that it was only required to repair those pieces of siding that had suffered from damage. Further, the decisions in question, like **Easton**, do not provide the policy wording under consideration. It is not clear if there was a "Parts" provision or an exclusion for wear, tear, and deterioration in the **Easton** policy.

[50] The appellant states that **Meany v Insurance Corp. of Newfoundland Ltd.**, [2004] NJ No. 96, cited in **Blanchet**, supports its position. In that decision, the weathered vinyl siding would not match the proposed replacement. The insurer also offered to move weathered siding from the rear of the house to the damaged side and place the new siding on the rear of the house, or to replace the affected strips of vinyl and paint the entire house. However, the exact style and colour of vinyl was available, which met the requirements of similar kind and quality. The new siding would eventually age and be of similar colour, and it was not the insurer's obligation to guarantee perfection. The court also found that the insured was trying to get coverage for normal wear and tear, which the appellant points out is excluded under the respondent's policy.

[51] The appellant says that **Meany** was decided on the same fact pattern as the case at bar. Accordingly, it submits that the presiding trial justice in the court below incorrectly imposed a standard of perfection for acceptable repair results on the appellant insurer when she direct that all four walls of siding must be replaced to preserve aesthetic uniformity.

[52] The case of **Whelan v Beothic General Insurance Co**, [1992] NJ No 336, [1993] ILR, 2321, is another case cited in **Meany**. The appellant states that **Whelan** also supports its position. In that case the house had sustained fire damage. It was only three years old and the siding had faded only slightly. The court acknowledged a slight colour difference would exist, at least for a

while, but all the siding on the house did not have to be replaced. It would add little to the appearance and nothing to utility.

[53] The appellant also referred to the case of ***Carter v Intact Insurance Co***, 2016 ONCA 917. This case deals with a claim by an insured who proposed to build an entirely different structure after a fire destroyed the original insured building. The case also considers the treatment of building code upgrades which were required after a loss, which are not covered under the type of policy which we are considering in this case. The insurance policy in ***Carter*** provided for replacement cost and repair, construction or reconstruction with new property of like kind and quality. The insurer, however, denied replacement cost because the proposed structure was not like the original building that had been destroyed. An insured is not permitted to propose any kind of replacement that it likes, but rather it must be something equivalent.

[54] I wish to address the appellant's contention that an insured should not be entitled to betterment under a replacement policy. The court in ***Carter*** states as follows at para 48:

48 Finally, as I said earlier, indemnity is a main objective of insurance and, to the extent possible, coverage provisions should be interpreted with that objective in mind. Replacement cost coverage does go beyond mere indemnification of an insured because it allows for a measure of betterment. But allowing replacement cost only where the replacement is of like kind and quality to the damaged or destroyed property better reflects the indemnity principle. Replacement cost would then give insureds enough money to rebuild something equivalent to the property that was damaged or destroyed.

[emphasis added]

[55] The appellant submits that the case law cited supports its argument that it may replace only the siding that has suffered direct physical damages, provided that matching replacement material is available. The "like kind and quality" wording in the policy does not require the insurer to undertake complete replacement of all siding, even if it is not damaged, to achieve an aesthetically uniform result. This is particularly true when the colour discrepancy is due to weathering and not due to an inability to source matching replacement materials. The insurer or the courts may consider whether the colour difference is substantial and permanent.

[56] Allstate submits, on the basis of the foregoing, that the trial justice committed an error in law in finding that the insurer was obliged to replace undamaged siding for aesthetic reasons. Further, the appellant insurer relies on the wear, tear and deterioration exclusion. The insurer submits that the trial judge erred in requiring the insurer to indemnify the insured for prior deterioration and wrongly converted the policy from one of direct physical loss to one requiring aesthetic uniformity or enhancement.

[57] In response to concerns that I raised during the oral hearing, the appellant also states that it was not required to provide evidence as to how long it would take the new siding to weather and fade, such that the difference in colour might be ameliorated. In ***Meany***, the court commented that the insured plaintiff in that case had led no evidence to suggest that the difference in colour would be substantial. In any event, the appellant submits that the absence of evidence cannot justify expanding the property coverage to require replacement of undamaged property due to pre-existing

weathering and deterioration which results in a colour mismatch. The appellant relies on the fact that it was proposing to provide a technically identical replacement material that it asserts would fade to match the existing undamaged material with the passage of time.

VII. Decision

A. The Trial Judge's Assessment of Evidence and Damages

[58] I first turn to the issue of whether the evidence supported a finding of damage to all sides of the insured's home. The appellant also contests the finding of damage to the soft metals. The applicable standard of review is palpable and overriding error.

[59] The appellant submitted it is not seeking to reweigh the trial evidence. It contends that the trial judge misapprehended the evidence from Allstate and from the respondent regarding the existence of damage on the south and east sides of the dwelling. She did not consider the frailties of the respondent's evidence and the fact that some of his pictures were not contemporaneous with the loss or that their location was difficult to confirm. The appellant also pointed to the evidence of their expert who testified as to the nature of the damage that would have been expected as a result of the July 2023 hailstorm. He also spoke to the fact of intervening hailstorms which could have caused further damage. This sounds like weighing of evidence to me. Nonetheless, the appellant says the trial judge failed to grapple with the differences in the evidence regarding the nature of the damage.

[60] The trial judge found the respondent insured to be candid and credible and his evidence was not disturbed on cross-examination. Nor was his evidence refuted by the evidence brought by the appellant. The court was entitled to weigh the evidence. The respondent explained the locations from which he had taken the photos and explained that they captured the damage from the 2023 hailstorm, even in photos which were taken later. He explained which photos had been taken more recently. The appellant's expert did not attest to whether the intervening hailstorms had struck the area in which the respondent lives. Neither of the insurer's witnesses had seen the property. The insurance representatives that did see the property were not called to give evidence or to submit to cross-examination. The fact that the trial judge placed less weight on the evidence of witnesses who were not engaged in the original management of Mr. Tansey's property damage claim is warranted and not subject to a finding that it should be set aside. I disagree with the submission that the trial judge did not grapple with the conflicting evidence. She specifically stated that the insurer's appraiser and adjuster did not testify, even though they had direct knowledge, and the expert had not attended the home. The respondent presented photographs which he explained to the court. The presiding justice was entitled to prefer respondent's evidence and explained why she preferred the respondent's evidence. I find no reviewable error.

[61] The factual finding regarding the siding damage is also relevant to the issue of whether it was correct the trial judge to find that the insurer was obliged by its policy to fully replace the siding on all four exterior walls. I deal with that issue below.

[62] I will also address the damages awarded. The applicable standard of review is again palpable and overriding error.

[63] At no time did the appellant appear to take issue with the insured's entitlement to a full roof replacement, and this was confirmed at the oral hearing of the appeal. Given that the respondent is entitled to full replacement of his roof and siding, the trial judge considered the evidence and had available to her the amount of the original 2023 quote and the 2025 invoice for the actual cost of the work.

[64] The actual cost of the roof was approximately \$900 more in 2025 than what was estimated in 2023. The trial judge found this difference to be minimal and awarded the respondent the greater amount. The appellant objects to the finding of the trial judge in accepting the more recent roof invoice, for what the work actually cost, instead of the 2023 estimate. At trial, the appellant submitted that the cost was higher because of the delay. The respondent submits that the delay in the repairs is due to the actions of the appellant, although there is no finding of bad faith. This matter has been in litigation since 2023 and it is not improper or unreasonable to consider an invoice for work that may have been delayed due to the uncertainty of litigation. There is an invoice documenting the cost of the roof and the actual work. It is not the case that the claim is unfounded. I do not find a reviewable error in the trial judge's finding with regard to the cost of the roof.

[65] The fact that the judge relied on a 2023 siding estimate does not make her decision inconsistent. The respondent did not replace his siding with the same vinyl siding but chose a product that is more resistant to damage. His invoice for the work actually done would not be accepted under the scope of "like kind and quality", although he is entitled to \$2500 as loss mitigation coverage. The loss mitigation coverage is properly part of the damages award.

[66] The respondent's siding quote on which the trial judge relied was for siding of similar quality to what was on the insured dwelling. The Court of Justice can exercise its discretion to consider such a quote even without the author testifying. As such, the trial judge relied on a quote for a comparable product to assess the damages to be awarded for the replacement of siding of like kind and quality. The quote included all four exterior walls, along with the soft metals which were damaged. The appellant's estimate for new siding on two sides of the dwelling was in evidence. It was less than the respondent's estimates and did not include amounts for soft metals. The respondent put his estimate forward in his proof of loss, claiming \$37,695. At trial, the appellant submitted that its estimate of \$18,311.82 for siding on two exterior walls was reasonable. If siding is to be replaced on all four walls, the estimate would double and approach the amount put forward by the respondent. In addition, the appellant's estimate does not account for soft metals. Given the trial judge's finding that there was damage on all four walls and that the respondent was entitled to have all of his siding replaced, along with the soft metals, it was reasonable to consider the amount put forward by the respondent in assessing damages. The trial judge was entitled to prefer the respondent's estimate. I find the trial judge committed no reviewable error.

B. The Coverage Decision

[67] On the basis of the policy wording in this case, the appellant argues that Justice Burt was incorrect when she found that full replacement of siding and soft metals was necessary when Allstate could not replace the damaged siding with a colour to match the undamaged sun-bleached panels. I noted from the evidence that the respondent says he had lived in the residence for 12 years and there is no information on when the siding was installed. There is accordingly no evidence to confirm the length of time during which the siding panels were subjected to the bleaching effects of the sun. The photographic evidence in the record demonstrates a significant

colour difference, even though the replacement siding is otherwise almost identical. Allstate says that full replacement of the siding puts the respondent in a better position than he was in, prior to the loss.

[68] Upon a review of the coverage in this case, it clearly covers the dwelling or building against risk of direct physical loss or damage. There will be payment for insured loss or damage up to the insured's financial interest in the property. The insurance is up to 100% of replacement cost. In the event of loss, the insurer can repair, rebuild or replace the damaged or destroyed property with property of like kind and quality within a reasonable time.

[69] Replacement cost coverage contemplates that, if the damaged property has depreciated before the damage occurred, it would nonetheless be replaced with materials of like kind and quality and with no deduction for depreciation. The issue is whether the coverage includes within its scope the full replacement of the siding on all sides of the dwelling, assuming it is not possible to match the damaged and undamaged siding.

[70] The policy in question contains what I would characterize as general or standard wording. More specifically, the policy does not explicitly insure against colour variation or guarantee visual uniformity, nor does it explicitly exclude such coverage in the circumstances arising in this action. The exclusion regarding depreciation prevents an insured from seeking coverage for depreciated property or property that has been subject to wear and tear, but where there has otherwise been no direct damage. It is not applicable to deny the insured respondent coverage in these circumstances. Further, based on the record, there appears to be no endorsement to the policy that would alter the coverage wording, to either enhance or limit it. There is nothing in the applicable policy wording that specifically addresses whether or how depreciation of the siding or roof will be considered if a particular aspect of it is damaged and requires repair or replacement. Betterment is not excluded and, as has been noted in case law, some degree of betterment is in fact contemplated in replacement cost coverage.

[71] Based on a review of the case law that has directly considered this issue and the appeal record, this appeal does not deal with a situation in which the trial court was considering a slight difference in siding colour that might correct itself in time. This was not recently installed siding, such as was the case in *Whelan*. The photos and evidence demonstrated to the trial judge that the same or similar siding was available, but the colour of the siding on the home had changed significantly over time. Both would continue to be exposed to the elements and further colour changes could be contemplated, but there was no evidence to assist the court to positively determine if or when the old and new siding would ever become the same colour. If the appellant intended to advance an argument that the respondent should accept new siding on only two sides of his house, given the case law, they should have brought such evidence forward at trial, along with appropriate legal argument, but did not.

[72] The policy also contemplates that the insured may upgrade the entire roof and/or siding and the insurer would pay an additional \$2500 in loss mitigation coverage, to ensure that the new material would be hail and wind resistant. This is in fact what the insured did. The use of upgraded materials is not an installation which could take place on a piecemeal basis. This aspect of the policy wording provides further context within which to interpret the policy.

[73] As noted in the earlier summary of the standard of review, the interpretation of an insurance policy may be reviewed on a standard of correctness. The trial judge did not, however, provide a detailed analysis of the policy wording in her reasons. The insurer had already decided or agreed it would be most effective to replace the siding on the north and west-facing walls where it had determined the damage was located, rather than attempting to repurpose or repair existing siding. The trial judge also made a finding of fact that the siding on all exterior walls of the home had been damaged, contrary to the insurer's submissions about the extent of the damage. The insurer's proposed course of action would create a significant colour discrepancy on the exterior walls of the insured's home, and it could be viewed from the road. This would be the case if the insurer replaced only two walls of siding, or if it also engaged in some spot repairs of selected damaged siding on the south and east exterior walls.

[74] The finding regarding the policy coverage is connected to a factual finding that the proposed replacement with mismatched siding colours would create a significant colour discrepancy, which would not be acceptable to a reasonable homeowner. This is a statement of expectations, such as is contemplated in *Emond*. The court then concluded that this did not constitute repair and replacement with like kind and quality as required by the policy. "Kind" was found to include colour, and the court relied on *Acciona* as authority for a finding that a change in colour amounted to damage.

[75] While I do not necessarily agree with how the trial judge arrived at her decision, I agree with the outcome. It is further supported by the case law which I found independently, and which more directly addressed the issue. It was not the fault of the trial judge as it appears she was relying on what she had in front of her at the time.

[76] I pause here to mention that I was advised at the oral hearing that counsel was aware of the decisions cited in the supplemental materials I requested, but did not bring them forward as they did not consider them to be binding authorities. I also note that did not stop the appellants' counsel from putting Ontario decisions before the court that were helpful to their position. A more comprehensive array of cases would have been of use to both the trial judge and to this court on appeal, and it should not be incumbent on the court to have to check counsel's work and research. More to the point, Mr. Tansey is self-representing, although I understand he has experience with insurance and holds a foreign law degree. Nonetheless, there is an onus on counsel to be more forthcoming with regard to providing relevant case law as part of the obligation to assist the court and to be candid, and to be fair to opposing parties, whether represented or not. The Court of Justice and this Court have heavy caseloads, and when counsel fails to put relevant case law in front of the court to assist it in its decision-making, the ends of justice are not served.

[77] The case law discussed above, which was more on point than what the court was provided, clearly contemplates that an insured with coverage for direct damage should not be left with an asset of diminished value due to a lack of uniformity in the colour of shingles or siding on the entirety of the dwelling. Principles of indemnity aim to restore an insured to the condition he was in at the date of loss. Full replacement of a roof or siding has not been seen as unjust enrichment or an unwarranted enhancement by the courts that have considered this issue. The physical damage may be restricted to certain shingles or panels of siding, but the courts have interpreted the actual damage as being one to the building envelope, whether that be a roof or siding on an exterior wall. If there is a significant colour discrepancy, the case law has favoured complete replacement of either the roof or the exterior wall covering. In this case, the insurer ultimately proposed to replace

the siding on the two exterior walls where it had determined the damage was located. This was not a case where it would have been efficient to conduct spot-repairs on those walls by replacing various panels of siding. Notwithstanding that the insurer had identified the same or similar siding, the trial judge found that the significant difference in siding colour on two sides of the dwelling necessitated replacing all four walls of siding. There was no evidence that the difference would be temporary. This finding was also made in the context of her decision that all four sides of the home had been damaged, which has not been set aside on appeal.

[78] The insuring agreement defines the coverage and the exclusions are not engaged. There is also no endorsement to consider. The basic language in these types of policies has been interpreted by other courts to extend to full replacement of roofing or siding materials in similar circumstances. The outcome also recognizes the reasonable expectations of the homeowner, as identified by the trial judge, the principle of *contra proferentem*, and the relative bargaining power of each party to the insurance contract. It was open to the insurer to develop more specific language and terms which would have more clearly indicated to an insured that there would be limitations on the insured's ability to be restored to his original position if his siding or roofing had demonstrated substantial deterioration prior to sustaining hail damage.

[79] Before moving on, I will also comment on the application of the "Parts" provision to this litigation.

[80] The appellant further states that the siding replacement and repair falls under the Additional Conditions-Parts provisions of the policy. The insurer submitted that if the court requires full replacement of undamaged siding panels, it would render the "Parts" provision in the policy meaningless. No one has provided me with case law to support a finding that siding or shingles are "Parts". The appellant appears not to have persuaded Justice Burt that individual shingles and panels of siding are "Parts" for the purpose of interpreting the coverage under the policy. I am also unpersuaded, as the argument is not logical nor is it consistent with the policy wording or the expectations of either the insurer or insured. I note, in particular, that "Parts" are also referenced in the Personal Property Coverage in Coverage C of the policy. The language used to refer to "Parts" in the personal property coverage and in the Additional Conditions is identical. The concept does not appear to be related to the policy coverage for damage to the dwelling.

[81] The only case I could find on my own that dealt with coverage for parts or components was not from Alberta, and dealt with personal property rather than a building or dwelling (see *Intact insurance company c. 9004-9693 Québec inc.*, 2021 QCCA 1901 (CanLII)).

[82] I find that the appellant has not established that the application of the Additional Condition regarding "Parts" is applicable in the circumstances. After reviewing the policy, I further find that the reference to "Parts" is also contained in the coverage for personal property and not for the dwelling. I do not find that the "Parts" provision is applicable to the partial replacement of siding under the policy.

[83] This finding does not, however, prevent an insurer from completing a repair to a dwelling by using replacement siding panels or from only completing partial replacement of siding in the correct and appropriate circumstances.

[84] Further, I find that the appellant has not established that the trial judge's decision was in error in her interpretation of the policy. The outcome was in line with the decisions of other courts, which have found that full replacement of both damaged and undamaged siding or roof materials is necessary where there is a significant discrepancy in the colour of the new replacement materials which is unlikely to resolve over time, even after considering the effects of weathering on exterior finishes.

VIII. Summary and Conclusions

[85] After considering the parties' arguments and submissions, I am dismissing the appeal.

[86] Rather than requesting additional costs submissions, I will address costs here. In the normal course, Mr. Tansey might not be entitled to costs in King's Bench as he is self-represented. In this case, due to the need to file two briefs and the need to address the appellant's failure to provide relevant case law in the first instance, I grant Mr. Tansey costs in the amount of \$1,350, in respect of a contested motion for which written materials were required.

[87] The parties may contact me through my judicial assistant if they require assistance to settle the terms of the order arising from these reasons.

Heard at Calgary, Alberta on February 6, 2026.

Dated at the City of Calgary, Alberta this 21st day of July, 2026.

N.M. Carruthers

J.C.K.B.A.

Appearances:

Kai W. Thompson, Bryan & Company LLP
for the Appellant

Kyle Tansey
Self-Represented Litigant