

COURT OF APPEAL FOR ONTARIO

CITATION: The Dominion of Canada General Insurance Company (Travelers
Canada), 2026 ONCA 553

DATE: 20260730

DOCKET: COA-25-CV-1088

Thorburn, Madsen and Rahman JJ.A.

BETWEEN

West York Sales and Leasing Inc.

Applicant (Respondent)

and

The Dominion of Canada General Insurance Company
d.b.a. Travelers Canada

Respondent (Appellant)

Christopher I.R. Morrison and Kathleen Lefebvre, for the appellant

Josiah T. MacQuarrie and Kuvanya Pillay, for the respondent

Heard: June 9, 2026

On appeal from the judgment of Justice Judy A. Fowler Byrne of the Superior Court of Justice, dated June 27, 2025, with reasons reported at 2025 ONSC 3845, and from the costs order, dated October 16, 2025.

Thorburn J.A.:

I. OVERVIEW

[1] This is an insurance coverage dispute. The insurer is The Dominion of Canada General Insurance Company that did business as Travelers Canada (“Dominion”). The insured is West York Sales and Leasing Inc. (“West York”). The policy is an automobile fleet policy (the “Policy”).

[2] One of West York’s vehicles, a 2017 Honda Civic (“the Vehicle”), was involved in an automobile accident on August 25, 2020. At the time of the accident, West York had leased the Vehicle to 8182485 Canada Inc., o/a Platinum Car and Truck Rental (“Platinum”).

[3] Dominion appeals the application judge’s decision requiring it to defend the action and indemnify West York.

[4] The Ontario Automobile Policy (“OAP1”) is the standard Ontario auto insurance policy issued under provincial regulation pursuant to the *Insurance Act*, R.S.O. 1990, c I.8. Other terms of the Policy are set out in the Certificate of Insurance which includes the Ontario Policy Change Form Monthly Reporting Basis Fleet endorsement pursuant to the Policy (“OPCF 21A”).

[5] The purpose of OPCF 21A is to allow the easy addition and removal of vehicles as they enter or leave an insured’s fleet during the Policy term. Premiums

are paid according to the number of vehicles in the fleet in a given month. It is the responsibility of the insured lessor to verify the accuracy of the monthly reports.

[6] There are three ways in which a vehicle can be insured under OPCF 21A.

- i. First, the Policy covers all vehicles owned or leased for more than 30 days, at the beginning of the Policy term, provided they are listed on the schedule of vehicles given to the insurer when the Policy term begins (“the Schedule”).
- ii. Second, the Policy covers all new vehicles added to the fleet after the Policy term begins. The insured provides a monthly report to the insurer on the 15th day of each month. The report includes the number of vehicles that were part of the fleet the prior month. The monthly premium for the prior month is then calculated by multiplying the number of vehicles on the fleet that month by the premium per vehicle.
- iii. The third category is vehicles owned or leased before the Policy term which the insured did not include in the Schedule when the Policy term began. OPCF 21A (c) provides that those vehicles, unlike the vehicles in the first and second categories, are not insured until “a request for coverage” is made of the insurer.

[7] The central question on this appeal is how and when coverage begins for vehicles in this third category. The answer to this question entails a review of

(i) whether a request for coverage was made, (ii) when the request was made, and (iii) whether coverage is retroactive or takes effect upon request.

[8] During its investigation, Dominion discovered that the Vehicle had been leased by West York prior to the effective date of the Policy. The first time the Vehicle appeared on the monthly fleet report was when it was listed on the report of August 2020. The report was submitted on September 29, 2020, 14 days after the deadline for adding vehicles newly acquired in August.

[9] Dominion claims that the Policy clearly distinguishes between vehicles owned or leased before the beginning of the Policy term that were not included in the original Schedule, and those owned or leased after the term began. The distinction is even more meaningful as the exception is set out in all capital letters in OPCF 21A (c).

[10] Dominion claims that a formal request for coverage was required, pointing to OPCF 21A (c) which provides that there is no coverage for “any automobile owned or leased by the insured prior to the effective date of the policy which is not included on the schedule ... until a request for coverage has been filed”. Moreover, there is no retroactive coverage for vehicles owned or leased before the Policy term that were not listed in the Schedule when the Policy term began.

[11] In the alternative, to the extent that the monthly report constituted a valid request for coverage under OPCF 21A (c), Dominion submits that the application

judge erred in awarding West York relief from forfeiture as that remedy was not sought by West York and coverage was not triggered. In the further alternative, Dominion claims that West York should not be entitled to coverage as unbeknownst to Dominion, West York entered into a settlement agreement with its broker who provided evidence in support of West York. West York did not disclose the settlement and Dominion only discovered it while conducting cross-examinations on this application.

[12] West York submits that vehicles in the third category are covered at the beginning of the Policy term as OPCF 21A (a) provides that, “The Policy ... [covers] ... all automobiles ... owned by and licensed in the name of the insured”. West York therefore claims the application judge was correct in holding that the words limiting coverage in OPCF 21A (c) are “not relevant” and have no meaning. Second, if a request for coverage was necessary, relief from forfeiture was properly ordered as the two-week delay in filing the monthly report resulted in no significant prejudice to Dominion. Third, the application judge made no error in denying coverage based on West York’s failure to advise of the settlement in a related action as it was not pleaded, and in any event, did not result in any substantial prejudice to Dominion.

[13] Before addressing the central issue of whether the application judge erred in holding that West York had coverage for the Vehicle and that Dominion had a

duty to defend, I will outline the relevant Policy provisions, the evidence, which is largely undisputed, and the application judge's decision.

II. THE INSURANCE POLICY

Ontario Automobile Policy

[14] OAP1 sets out the rights and obligations of the insured and insurance company related to coverage following an automobile collision. All companies registered to sell automobile insurance in Ontario must use this standard form policy: *David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Co.* (2005), 76 O.R. (3d) 161 (C.A.), at paras. 25-27, leave to appeal refused, [2005] S.C.C.A. No. 395.

[15] Section 1.1 provides that coverage is set out in the "Certificate of Automobile Insurance". Section 1.3 defines the certificate as:

a written document summarizing your insurance coverage [that] lists the coverages purchased [and] premiums charged . . . and shows . . . the described automobile or automobiles.

The Certificate of Insurance

[16] The Certificate of Insurance provides that the Policy period is September 15, 2019 to September 15, 2020, and includes the conditions in OPCF 21A (and other modifications to standard OAP1 coverage). The Policy was arranged through Platinum's insurance broker, Baird MacGregor Insurance Brokers LP ("Baird") and

Baird was responsible for compiling the monthly fleet list, calculating the premium amount owing for the given month, and sending the premium on to Dominion.

[17] The Certificate of Insurance provides that monthly reports must be provided such that the premium payable for the prior month can be calculated.

OPCF 21A

i. The purpose of OPCF 21A

[18] OPCF 21A provides coverage to the driver, rental company and lessor of a fleet of automobiles. It allows the insured to change, add, or reduce the number of vehicles from month to month.

[19] The Schedule provided at the commencement of the Policy period is information used to establish the baseline premium for the one-year term of the Policy. Rather than re-issuing a certificate of insurance to accommodate the changeover of rental vehicles, a monthly fleet report is filed with the insurer that lists the insured vehicles on the fleet the preceding month. The monthly report is given to the insurer by the 15th of the next month and is used to adjust the premium owed as appropriate: *Northbridge General Insurance Corp. v. 943240 Alberta Ltd.*, 2013 ABQB 760, 581 A.R. 248, at paras. 20, 28.

[20] In this case, for the month in question, the premium payable per vehicle was \$290 per month. There were 26 vehicles listed on the monthly report such that the monthly premium payable was \$7,540.

ii. The terms of OPCF 21A

[21] OPCF 21A provides as follows:

It is agreed that:

(a) The Policy shall provide insurance with respect to all automobiles licensed or required to be licensed in Ontario which are:

(i) owned by and licensed in the name of the insured,

(ii) leased from [all lessors] for a period in excess of 30 days on which the insured as lessee is required to provide insurance under a written lease agreement.

...

(c) The schedule of automobiles filed with the insurer includes all automobiles, as set out in (a) above, at the effective date of the Policy or renewal.

NO COVERAGE IS PROVIDED BY THIS CHANGE FORM ON ANY AUTOMOBILE OWNED OR LEASED BY THE INSURED PRIOR TO THE EFFECTIVE DATE OF THE POLICY WHICH IS NOT INCLUDED ON THE SCHEDULE OF AUTOMOBILES FILED WITH THE INSURER UNTIL A REQUEST FOR COVERAGE HAS BEEN FILED WITH THE INSURER.

...

(f) On or before the fifteen of each month during the policy period the insured shall render to the insurer a statement of the actual amount of Receipts Mileage Other (State Applicable Basis of Rating) for the preceding month.

Upon receipt of this statement (from the insured) the earned premium shall be computed monthly by applying the rates specified in paragraph (e) and is due and payable as agreed between the insurer and insured. [Emphasis added in underline.]

[22] As such, paragraph (a) provides that the Policy covers all vehicles owned or leased for more than 30 days.

[23] The first sentence of paragraph (c) provides that the Schedule of automobiles provided to the insurer at Policy inception includes all vehicles owned or leased for more than 30 days “at the effective date of the Policy”.

[24] However, the second sentence of paragraph (c) specifically excludes from coverage any vehicles owned or leased at the commencement of the Policy term, that the insured did *not* list on the Schedule at Policy inception. Those vehicles are not covered until the insurer receives “a request for coverage”.

[25] Unlike OPCF 21A (a), paragraph (c) is in all capital letters to emphasize that it limits coverage otherwise provided in (a).

[26] OPCF 21A (f) provides that by the 15th of the month following the addition of a vehicle onto the fleet, the insured must provide the information necessary to assess the premium payable on insured vehicles for the preceding month. OPCF 21A (f) does not address the issue of coverage.

iii. The purpose of OPCF 21A (c)

[27] There seems to be no published regulatory history explaining why paragraph (c) was included in OPCF 21A. Neither the former Financial Services Commission of Ontario (“FSCO”) nor its successor, the Financial Services Regulatory Authority of Ontario (“FSRA”), has published explanatory notes discussing the drafting of clause (c). Based on similar wording in other fleet insurance policies in Canada and beyond, clause (c) appears to have originated from standard commercial fleet underwriting rather than from a specific legislative amendment in a given province.

[28] While it is not clear why vehicles owned or leased that are not on the Schedule at Policy inception are treated differently, they *are* treated differently under the Policy.

III. THE FACTS

[29] West York owned the Vehicle and leased it and other vehicles to Platinum from February 1, 2017, to January 21, 2021.

[30] Dominion issued the fleet insurance Policy to Platinum. The Policy term was September 15, 2019 to September 15, 2020. The lease agreement between West York and Platinum required that Platinum add West York to its Policy as an additional insured. West York was provided with a Certificate of Insurance by the broker and Dominion in August 2019.

[31] Platinum did not include the Vehicle in the monthly basis fleet report for September 2019 when the Policy term began. West York claims this was because the vehicle suffered engine failure and had been taken out of service.

[32] On August 25, 2020, the Vehicle was involved in an accident.

[33] Although s. 1.4.4 of the OAP1 requires an insured involved in an accident causing injury or damage to report the accident to their insurer within seven days or as soon as possible, Platinum did not tell either Dominion or West York about the accident.

[34] On September 29, 2020, a month after the accident, Platinum listed the Vehicle in its monthly fleet inventory report. The report includes the Vehicle's model year, 2017, and the date it entered the fleet, which was August 15, 2020. There was no notification that the Vehicle was owned or leased by Platinum before the commencement of the Policy term.

[35] The deadline for filing the August 2020 report was September 15, 2020.

[36] Dominion did not dispute the August 2020 monthly fleet inventory report filed on September 29, 2020, on the basis that it had been filed late, nor did Dominion return the \$7,540 premium paid for that month.

[37] Platinum first notified West York that the Vehicle was involved in an accident, on July 10, 2023, after Platinum and West York were named defendants

in a Statement of Claim seeking damages resulting from the accident. This was almost three years after the accident.

[38] Shortly thereafter, West York notified Dominion and sought insurance coverage to defend the claim.

[39] On October 17, 2023, Dominion sent a letter to Platinum denying the claim on the basis that, “From the documents provided to us, we have concluded that the 2017 Honda Civic ... was not added to the Policy until after the loss of August 25, 2020.”

[40] Platinum accepted that there was no coverage for their claim. West York did not.

[41] West York therefore commenced an application seeking coverage from Dominion for the Vehicle. West York also commenced separate proceedings against Baird, its insurance broker. Unbeknownst to Dominion, West York settled its action against Baird. During cross-examination of a Baird representative in this proceeding, Dominion learned that “there was a deal” by which the insurance broker agreed to provide supporting affidavit evidence in exchange for discontinuance of the application against the insurance broker. The precise details of this agreement were never disclosed. Dominion therefore sought a stay of the proceeding, but the application judge declined to rule on the issue.

IV. THE PARTIES' POSITIONS ON THE APPLICATION

[42] On the application, Dominion took the position that the Vehicle was not covered by the Policy because it was not listed on the initial monthly report of September 15, 2019, when the Policy came into effect. In the alternative, Dominion claimed that coverage should be denied because the August 2020 fleet report was filed 14 days late, and because West York failed to immediately report the accident to Dominion. This alternative reason was not listed in Dominion's letter denying coverage to Platinum.

[43] Dominion argued that Platinum was leasing the vehicle uninsured and only put the Vehicle on the August 2020 monthly report filed on September 29, 2020, after it was involved in an accident and Platinum realized it needed coverage for the Vehicle. This, they claim, is exactly what OPCF 21A (c) was meant to prevent.

[44] West York conceded that the Vehicle was not on the Schedule when the Policy term began. West York however, took the position that all vehicles in the fleet were covered by the Policy whether they were owned or leased before or after the Policy term began and whether or not they were listed on the Schedule. They disputed Dominion's claim that vehicles owned before the Policy term and not included in the Schedule, are not covered until a request of the insurer is made and that no retroactive coverage is available before a request is sent.

[45] West York claimed the Vehicle was listed in the September 29, 2020, monthly list of fleet vehicles to be covered for the month of August 2020, Dominion voiced no objection to the list, and the premium was paid as it was for all other vehicles with coverage as of the prior month.

V. THE APPLICATION JUDGE’S DECISION

[46] The application judge held, first, that all West York’s vehicles, regardless of when they were leased, were “automatically part of the schedule of automobiles” covered by the Policy. She went on to hold that the words limiting coverage in OPCF 21A (c) were “not relevant” since a vehicle leased by Platinum from West York was a vehicle “leased by Platinum from all lessors”.

[47] Second, she held that relief from forfeiture (a remedy not sought by West York) should be granted as the vehicle could be added by monthly reporting even if it was a pre-Policy leased vehicle, and that filing the report two weeks after the deadline had no significant impact:

As for Platinum’s failure to report the accident, it is clear that it did not do so. As for West York, it has not been established by [Dominion] that West York had any knowledge of the accident. Therefore, they could not have breached those statutory conditions related to reporting.

Even if West York was bound by the reporting provisions placed on Platinum, the failure to give notice to [Dominion] on a timely basis amounts to “imperfect compliance”.

[48] Third, the application judge refused to address Dominion's claim of abuse of process (stemming from the fact that unbeknownst to Dominion, West York entered into a settlement agreement with the broker), as she held that it had not been pleaded.

VI. ANALYSIS

Standard of Review

[49] The standard of review is correctness as the Policy is a standard form contract: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23, at para. 4.

[50] When the words in the Policy are clear and unambiguous, courts should give effect to the words read in the context of the Policy as a whole: *Lombard Canada Ltd. v. Zurich Insurance Co.*, 2010 ONCA 292, 101 O.R. (3d) 371, at paras. 33-34.

[51] Where there is ambiguity, coverage terms are to be interpreted broadly and exclusion clauses are to be interpreted narrowly: *Ontario v. St. Paul Fire and Marine Insurance Company*, 2023 ONCA 173, 480 D.L.R. (4th) 30, at para. 12; *Le Treport Wedding & Convention Centre Ltd. v. Co-operators General Insurance Company*, 2020 ONCA 487, 151 O.R. (3d) 663, at para. 19, leave to appeal refused, [2020] S.C.C.A. No. 333, referring to *Sam's Auto Wrecking Co. Ltd. (Wentworth Metal) v. Lombard General Insurance Company of Canada*, 2013 ONCA 186, 114 O.R. (3d) 73, at para. 37. The interpretation should be consistent

with the expectation of the parties and courts should strive to ensure that similar standard form policies are interpreted in a similar fashion: *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33, [2010] 2 S.C.R. 245, at paras. 22-24.

[52] If these principles fail to resolve the ambiguity, insurance policy provisions are generally construed against the insurer where the insurer drafted the contract. This is known as the principle of *contra proferentem*: *Consolidated-Bathurst v. Mutual Boiler*, [1980] 1 S.C.R. 888, at pp. 899-901. However, *contra proferentem* does not apply to insurance policies such as this one because it was not drafted by the insurer and reflects OAP1 and OPCF 21A: *Madill v. Chu*, [1977] 2 S.C.R. 400.

The First Issue: Policy coverage

[53] The Policy must be interpreted by reading OAP1, the Certificate of Insurance, and OPCF 21A together. OAP1 provides for coverage after a car accident and OPCF 21A modifies that coverage to address the needs of businesses that operate large or changing fleets of vehicles and to provide flexibility for vehicles in those changing fleets.

i. A request for coverage was required

[54] The first issue is whether the Policy required West York to file a request for coverage.

[55] OPCF 21A (a) applies to all vehicles owned or leased by the insured for more than 30 days. This Vehicle would be included in that category.

[56] OPCF 21A (c) provides that, “the schedule of automobiles filed with the insurer includes all automobiles, as set out in (a) above, at the effective date of the Policy or renewal” (emphasis added). The insured did not include the Vehicle in the Schedule to be insured at the effective date of the Policy.

[57] As noted above, the wording in the second sentence of paragraph (c), is set out in capital letters. It limits the coverage otherwise provided by (a). I accept the appellant’s submission that these words clearly provide that vehicles pre-owned or leased at the effective date of the Policy, which are not included in the Schedule filed with the insurer, are treated differently than vehicles listed in the Schedule and/or acquired after the Policy term.

[58] The difference is that vehicles owned or leased *before* the Policy came into effect which the insured elected not to include in the Schedule of automobiles provided to the insurer at the beginning of the Policy period, are not covered “until a request” has been made of the insurer for coverage: *Lombard*, at para. 17; *Northbridge*, at paras. 26-28, 33.

[59] The word “until” is clear. It is synonymous with the word “before”. It clearly provides that there is no coverage until the time a request is made to insure the Vehicle.

[60] For these reasons, I do not agree with West York’s submission that, “The only reasonable expectation based on the wording used in the OPCF 21A is that all vehicles contained in the fleet that satisfy the requirements of paragraph (a) of the OPCF 21A are covered by the Policy, which includes the [Vehicle].” Nor do I agree with the application judge’s conclusion that the limits in OPCF 21A (c) have no meaning.

[61] On the contrary, the inclusion of OPCF 21A (c) would seem to reflect the fact that an insurer has the right to assess risk when it agrees to provide coverage. The Schedule lists the vehicles to be covered and the fleet is assessed in accordance with the Schedule provided. The insurer may then insure future acquisitions because it has already accepted the insured's underwriting profile.

[62] In this case, that profile did not include the Vehicle because it was already owned or leased by the insured, but the insured did not disclose this to Dominion when the Policy was signed. Because the Vehicle was not included in the Schedule in accordance with OPCF 21A (c), there was no insurance coverage for such automobile until a “request” was made of the insurer.

ii. Whether a “request” for coverage was made on September 29, 2020

[63] The second issue is whether a “request for coverage” was made by including the Vehicle in the August monthly report provided on September 29, 2020.

[64] A “request” is the act of asking for something.

[65] The monthly report does not provide coverage where no coverage exists, but rather, provides the necessary information to set the premium to be paid for that month by including the vehicles under the Policy that were in fact leased that month, for which premiums must be paid.

[66] The monthly report did not include an express request for coverage, nor did it indicate that the Vehicle was not included in the Schedule and was therefore not a vehicle already covered under the Policy. Rather, it set out the make and model number of the vehicles, and when they were put onto the fleet the preceding month such that the monthly earned premium could be calculated. A monthly premium was calculated and paid by Platinum to Dominion.

[67] Appreciating that the purpose of the monthly fleet report is to calculate the applicable premium, not to determine coverage, a “request” to provide coverage may involve more than filing the monthly report under OPCF 21A (f) by including it with the list of many other vehicles already covered by the Policy.

[68] However, the Policy does not state what constitutes a “request” for coverage. As set out above, where there is ambiguity, coverage clauses are interpreted broadly, and exclusion clauses narrowly.

[69] In this case, while it is not clear that the act of including the Vehicle in the list for August 2020 was enough to constitute a “request for coverage” within the

meaning of OPCF 21A (c), there is no clear definition of what constitutes a “request for coverage” such that the words are to be interpreted broadly.

[70] Assuming that the list provided on September 29, 2020 constitutes a request, the next question is: when would coverage begin?

iii. When would coverage begin?

[71] OPCF 21A (c) makes no provision for retroactive coverage.

[72] Although retroactive reporting to calculate premium amounts owing for the prior month is provided for in OPCF 21A (f), this provision addresses the consequences of coverage; not which vehicles are covered under the Policy. This is done in OPCF 21A (a) and (c) respectively.

[73] Because no request for coverage was made for this Vehicle until September 29, 2020, and OPCF 21A (c) provides that there is no coverage *until* a request is made, there is no coverage before September 29, 2020 and therefore no coverage for the accident that took place nearly a month before, on August 25, 2020.

[74] To suggest otherwise, would be to render the specific provision in OPCF 21A (c) that there is no coverage “until a request is made” of the insurer as highlighted in capital letters, of no force and effect. This is both contrary to the clear wording of the Policy provision of OPCF 21A (c), and its meaning, when read in the context of the Policy as a whole.

iv. Conclusion on the coverage issue

[75] In sum, for the above reasons, I conclude that:

- i. OPCF 21A (a) provides coverage for all vehicles owned and licensed by the insured or leased for more than 30 days subject to the other terms in the Policy;
- ii. However, OPCF 21A (c) clearly provides that there is no coverage for vehicles “on any automobile owned or leased by the insured prior to the effective date of the Policy which is not included on the Schedule”, until a “request for coverage” is made. This is a clear exclusion to coverage for vehicles otherwise covered under OPCF 21A (a) “until a request for coverage is made”;
- iii. The wording in OPCF 21A (c) that was highlighted by using capital letters, must be given some meaning;
- iv. The words “request for coverage” are not defined and it is not clear what constitutes a “request”. However, coverage provisions are interpreted broadly, and exclusion clauses narrowly;
- v. As such, the filing of a communication with the insurer regarding the Vehicle’s coverage may be sufficient to constitute a request;

- vi. The first communication by the insured to the insurer regarding this Vehicle was on September 29, 2020;
- vii. Nothing in OPCF 21A allows for retroactive coverage in these circumstances. The only significance of the monthly report is to assess the premium payable for vehicles already covered under the Policy. It does not provide coverage where coverage does not otherwise exist; and
- viii. The fact that there is no coverage until the request is made, makes it clear that this is not simply a breach of a reporting obligation but that there is no coverage until a request is made.

The Second Issue: Relief from forfeiture

[76] Given my conclusion that there is no coverage for this claim, it is not necessary to address relief from forfeiture.

[77] However, if there had been coverage at the time of the accident if the monthly report had been filed by September 15, 2020, I would have afforded West York relief from forfeiture resulting from the two-week delay in filing the monthly report.

[78] Section 129 of the *Insurance Act*, provides that:

Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or

thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just.

[79] Relief from forfeiture is available where coverage has been triggered but the insured fails to comply with a term of the Policy. Where coverage has not been triggered, relief from forfeiture is not available: *Kestenberg Siegal Lipkus v. Royal Sun Alliance Insurance Company of Canada*, 2024 ONCA 607, 500 D.L.R. (4th) 548, at para. 42; *Stuart v. Hutchins* (1998), 40 O.R. (3d) 321 (C.A.), at pp. 327-28; *Kozel v. The Personal Insurance Company*, 2014 ONCA 130, 119 O.R. (3d) 55, at para. 40.

[80] The factors to be considered in the exercise of such discretion are the conduct of the applicant, the gravity of the breaches, and the disparity between the value of the property forfeited and the damage caused by the breach: *Shiloh Spinners Ltd. v. Harding*, [1973] A.C. 691 (H.L.); *Snell's Equity* (29th ed. 1990), at pp. 541-42.

[81] Although OAP1 s. 1.4 requires the insured to “let us know of any change that might increase the risk of an incident or affect our willingness to insure you at current rates”, the accident occurred before the September 15th deadline, and West York did not know the vehicle had been involved in an accident because Platinum did not disclose this to either West York or Dominion until 2023.

[82] As soon as West York learned about the accident, it advised Dominion. This distinguishes West York from Platinum and is grounds for allowing coverage for West York while denying coverage for Platinum who breached the terms of the OAP1.

[83] There was no bad faith or prejudice resulting from the two-week delay. The minor delay in providing the monthly report and West York's early notice to Dominion when it found out about the accident would therefore warrant the exercise of discretion to allow coverage.

The Third Issue: Whether West York's failure to disclose that it had entered a partial settlement with its broker should disentitle it from coverage

[84] Finally, if coverage were otherwise provided, although Dominion was not told that West York had entered into a partial settlement agreement with its broker, I would see no reason to deny West York coverage on this basis.

[85] The failure to disclose an agreement that effectively converts an adversarial relationship into a co-operative one amounts to a change in the "litigation landscape" must be disclosed: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 49.14(7); *1086289 Ontario Inc. (Urban Electrical Contractors) v. Welland (City)*, 2026 ONCA 352, at paras. 46-50.

[86] There was no change in the litigation landscape in this case, and no evidence of unfairness, prejudice or oppression occasioned to Dominion by the

decision not to disclose the settlement with Baird to Dominion: *Welland*, at para. 15. The insurance broker's evidence did not serve to assist West York in the litigation.

[87] Baird's position regarding coverage under OPCF 21A (c) was inconsistent with West York's coverage argument and supportive of Dominion's.

[88] The only evidence that could have been relied on by the application judge from the broker's testimony was that, "the whole monthly reporting is premised on the basis that at the time of the effective date of the Policy ... you cannot add a vehicle through the monthly reporting if you owned it on September 15th, 2019, and it was not scheduled". There was therefore no prejudice.

[89] Moreover, West York was not a party to the underlying action and had in fact, actively refused to participate in that action. As such, Dominion had no legal right to be informed of the partial settlement in the third party claim within the underlying action.

VII. CONCLUSION

[90] For the above reasons, I find that the wording in OPCF 21A is clear that Dominion is not required to provide coverage to West York with respect to the Vehicle. As such, there is no duty to defend. I would therefore allow the appeal.

[91] On the agreement of the parties, I would award partial indemnity costs of this appeal to the appellant, Dominion, in the amount of \$15,000 on this appeal, and \$20,000 in respect of the decision below. The costs are therefore \$35,000 in favour of Dominion, all inclusive.

Released: July 30, 2026 "J.A.T."

"Thorburn J.A."

"I agree. L. Madsen J.A."

"I agree. M. Rahman J.A."