

CITATION: Chorostecki v. Meyer et al. v. Definity Insurance/Economical Insurance,
2026 ONSC 4416
COURT FILE NO.: CV-21-194-00A1 (London)
DATE: 20260729

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
	)	
RICHARD CHOROSTECKI	)	Louis J. Delsignore, for the Plaintiff
	)	
Plaintiff	)	
– and –	)	
	)	
	)	
CAITLIN MEYER, MEGAN PHILLIPS	)	Gordon Harris, for the Defendant, Megan
and ALLSTATE INSURANCE	)	Phillips
	)	
Defendants	)	
-and-	)	
	)	
	)	
DEFINITY INSURANCE/ECONOMICAL	)	Ari Krajden, for the Defendant, Allstate
INSURANCE	)	Insurance
	)	
	)	
Third Party	)	
	)	
	)	
	)	
	)	
	)	HEARD: July 20, 2026

SUMMARY JUDGMENT

KALAJDZIC J.:

- [1] Definity Insurance seeks summary judgment dismissing Allstate Insurance’s third party claim as against it. The motion turns on questions of statutory and contractual interpretation. Both parties agree that the matter is amenable to summary judgment as there are no credibility or other issues requiring a trial.
- [2] This motion raises a question of first instance: does the standard excluded driver endorsement form prescribed by the Financial Services Regulatory Authority of Ontario (“FSRA”) apply to a class of vehicles known as “other automobiles”? Definity submits that it must, for it to be consistent with the *Insurance Act*, R.S.O. 1990, c. I.8, and the legislative

policy that led to the creation of the excluded driver designation. Allstate submits that it does not, unless the insurer explicitly adds the words “other automobiles” to the form.

- [3] I agree with Definity. A plain reading of s. 240 of the *Insurance Act* confirms that an insurer is not liable for any loss that occurs while the excluded driver is driving an automobile insured under the contract. “Other automobiles” are insured under the standard owner’s policy. The excluded driver endorsement form must be interpreted in such a manner that it gives effect to the legislative mandate. An insurer is not liable, therefore, for any loss that occurs while the excluded driver is driving “other automobiles”.
- [4] For the reasons that follow, summary judgment is granted and the third-party claim is dismissed.

I. Background

- [5] Definity issued a standard form Owner’s Policy of Automobile Insurance (“OPA 1”) to Mr. Dominique Meyer and Ms. Caitlin Meyer for a one-year term starting October 1, 2014 (the “Policy”). As originally issued, the Policy included liability coverage with a \$1 million dollar limit.
- [6] The Policy was renewed annually in 2015 and 2016. On September 19, 2017, Ms. Meyer requested that the excluded driver endorsement naming her as an excluded driver, known as the Ontario Policy Change Form 28A (the “OPCF 28A”), be attached to the Policy. The OPCF 28A applied to “all vehicles listed on the policy”. She and Mr. Meyer signed the OPCF 28A and it took effect on October 1, 2017.
- [7] On October 10, 2017, the Policy was amended to indicate that the only insured vehicle was a Toyota Rav 4. This vehicle remained the only insured vehicle for subsequent Policy renewals.
- [8] Effective October 1, 2018, the Policy was renewed for a fifth one-year term. Ms. Meyer continued to be listed as an excluded driver.
- [9] On April 17, 2019, Mr. Meyer contacted his insurance agent and requested that Ms. Meyer be removed from the Policy because he and Ms. Meyer were no longer living together. Upon confirming that the Toyota Rav 4 was registered in Mr. Meyer’s name only, the agent processed the deletion of Ms. Meyer from the Policy.
- [10] Definity now concedes that the termination letter sent to Ms. Meyer on April 23, 2019, did not comply with the requirements of the statutory conditions set out in Ontario Regulation 777/93, and that her removal from the Policy, therefore, was not valid. She thus remained on the Policy as an excluded driver.
- [11] On September 19, 2019, Ms. Meyer was involved in a motor vehicle accident while driving a car owned by her co-defendant, Megan Phillips. Ms. Meyer allegedly struck the vehicle driven by the plaintiff, Richard Chorostecki, insured by Allstate.

- [12] Mr. Chorostecki commenced this civil action in February 2021. Ms. Meyer was originally thought to be an uninsured driver. Allstate subsequently learned of the Policy. Allstate defended the claim and denied that Ms. Meyer was uninsured at the time of the accident. Allstate then issued a third-party claim against Definity for a declaration that Definity is liable for the plaintiff's claim pursuant to the Policy.

II. Issue

- [13] The sole issue to be determined is whether the OPCF 28A excluded driver endorsement applies to the vehicle Ms. Meyer was driving at the time of the accident.

III. Law and Analysis

a. Regulatory Framework

- [14] Automobile insurance is a contract, but one that is governed by a distinct body of law. Insurance policies use standard forms drafted by FSRA; insurers may deviate from the forms only with permission from the regulator: *Insurance Act*, s. 227(1).
- [15] Like all Ontario owners' auto policies, the Policy is comprised of (1) the certificate of automobile insurance, which names insured individuals and lists specific insured vehicles and coverages purchased; (2) the standard form automotive policy wording or OAP 1; and (3) any exclusion or endorsement forms which extend or limit the scope of coverage otherwise provided under the base policy.
- [16] Section 1.3 of OAP 1 provides that the following types of vehicles fall within the coverage provided by the Policy, all of which are collectively defined as "the automobile":
- a. A "described automobile", which is the automobile specifically listed on the certificate of insurance;
 - b. Newly acquired automobiles;
 - c. Some temporary substitute automobiles; and
 - d. Certain "other" automobiles.
- [17] Section 1.3 of OAP 1 explicitly distinguishes between "described automobiles" and the umbrella term, "the automobile".
- [18] Liability coverage for "other automobiles" is described in s. 2.2.3 of OAP 1 as follows:
- Automobiles, other than a described automobile, are also covered when driven by you, or driven by your spouse who lives with you.
- [19] However, coverage for "other automobiles" is limited by certain special conditions. Special condition #5 under s. 2.2.3 provides that the other automobile cannot be one that the insured

or anyone living with them owns or regularly uses, unless the insured is listed as an excluded driver under the policy for that automobile. In other words, for this specific subcategory of “other automobiles” (a vehicle owned by the insured or someone with whom they are living), the covered status afforded to the “other automobile” class is available only when the person driving was named in the policy as an excluded driver. In this scenario, the insurer had the opportunity to underwrite the risk for an identified individual (i.e., the excluded driver).

- [20] Pursuant to s. 249 of the *Insurance Act*, a named insured may stipulate by endorsement that any person named in the endorsement is an excluded driver under the contract. Other named insureds can be designated excluded drivers. Once a person is listed as an excluded driver, they are only insured for some accident benefits, not liability coverage.
- [21] Section 225 of the *Insurance Act* provides that “the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver.”
- [22] Section 240 of the *Insurance Act* further provides that an insurer “is not liable to any person under the contract or under this *Act* or the regulations for any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract.”
- [23] When an individual requests that a person be listed as an excluded driver, the insurer will furnish an OPCF 28A form. This form lists three classes of vehicles that the insured is forbidden to drive:
 - a. The described automobiles listed on the endorsement;
 - b. Any newly acquired automobiles, as defined under s. 2.2.1 of the OAP 1; and
 - c. Temporary substitute automobiles, as defined under s. 2.2.2 of the OAP 1.
- [24] The OPCF 28A form contains a free text box in which the insurer may list the described automobiles under the policy. Rather than list each individual automobile with the VIN and description, an insurer may instead insert “all vehicles listed on the policy”: *Hunter v. Economical Insurance Group* (2004), 75 O.R. (3d) 124 (S.C.). The rest of the form uses standard language prescribed by FRSA.
- [25] The OPCF 28A form also contains a promise by the named insureds that the excluded driver will not drive the listed vehicles, newly acquired automobiles or temporary substitute automobiles, and the named insured will not permit the excluded driver to drive a vehicle in these classes.
- [26] Finally, OPCF 28A provides that “all other terms and conditions of your policy remain the same.”
- [27] When a person is designated as an excluded driver, s. 1.8.2 of the OAP 1 is immediately activated. Under s. 1.8.2, except for certain accident benefits, there is no coverage “if the

automobile [...] is driven by a person named as an excluded driver of the automobile policy.” Section 1.3 defines “the automobile” as including “other automobiles”.

b. Principles of Interpretation

- [28] An insurance policy is a contract and the ordinary rules of contract interpretation apply to determine its meaning. The court must give effect to the intention of the parties by looking at the words they used: *Schneider v. Maahs Estate* (2001), 56 O.R. (3d) 321 (C.A.), at para. 13.
- [29] Because of the mandatory provisions of the governing insurance legislation and the standard forms used, searching for the intention of the parties has been described as “somewhat fictional”: *Schneider*, at para. 13. Insurance policies are statutory contracts; the court must look at the words used in the policies, and in the statutes and regulations: *Simison v. Catlyn* (2004), 73 O.R. (3d) 266 (C.A.), at para. 14. When interpreting legislation, courts must take into account the meaning of the legislation, in its total context.
- [30] All automobile insurance policies must be consistent with the *Insurance Act*. Where a policy and the *Insurance Act* conflict, the *Act* prevails: *Ortiz v. Dominion of Canada General Insurance Co.* (2001), 52 O.R. (3d) 130 (C.A.), at para. 10.
- [31] As a general rule, clauses in an insurance policy providing coverage are interpreted liberally or broadly in favour of the insured, while clauses excluding coverage are interpreted strictly against the insurer: *Schneider*, at para. 22.
- [32] Where there is ambiguity in an insurance contract, generally the interpretation most favourable to the insured is to be preferred: *Wigle v. Allstate Insurance Co. of Canada* (1984), 49 O.R. (2d) 101 (C.A.). However, for this special rule of interpretation to apply, the ambiguity must be “real”, that is, the provision must be “reasonably capable of more than one meaning” having regard to the overall context and intent of the statute: *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, at para. 29.

c. Analysis

- [33] First, I find that there are no material facts in dispute requiring a trial. Mr. Meyer and Ms. Meyer signed the OPCF 28A and Ms. Meyer continued to be an excluded driver under the Policy at the relevant time. The only issue is how the OPCF 28A should be interpreted. The question of law raised is appropriate for determination on a summary judgment basis.
- [34] Second, I find that there is some ambiguity in the language of OPCF 28A, OAP 1 and the *Insurance Act*.
- [35] On the one hand, OPCF 28A excludes coverage when the excluded driver drives the automobiles described in para. 2 of the form. Paragraph 2 includes the automobiles specifically described in the free text box (or the generic language of “all vehicles listed in the policy”), temporary substitute automobiles, and newly acquired vehicles. The “other automobile” class is not expressly listed.

- [36] Similarly, s. 1.3 of OAP 1 defines “excluded driver” as “someone specifically not covered by this policy when driving the described, temporary substitute or newly acquired automobile(s)”.
- [37] On the other hand, “other automobiles” are included in the definition of “the automobile” in s. 1.3 of OAP 1. A standard automobile insurance policy covers “other automobiles”. Section 240 of the *Insurance Act* stipulates that an insurer has no liability for damage that occurs while the excluded driver is operating an automobile insured under the contract. Since “other automobiles” are insured under the standard contract, the insurer has no liability when the excluded driver is operating “other automobiles”.
- [38] Moreover, s. 225 of the *Insurance Act* provides that “the insured under a contract shall be deemed not to include any person who sustains loss or damage while *any automobile insured under the contract* is being used or operated by an excluded driver” [emphasis added].
- [39] How then, to reconcile the apparent conflict between the OPCF 28A language – which does not specify “other automobiles” – and the definition of “automobile” under s. 1.3 of OAP 1, which does? How should the Court interpret “excluded driver” when the definition of the term in s. 1.3 of OAP 1 does not expressly include “other automobiles”, but s. 225 of the *Insurance Act* excludes coverage when “any automobile insured under the contract” is driven by an excluded driver?
- [40] It assists to understand the policy problem that the excluded driver carveout was meant to resolve.
- [41] Prior to 1990, if there was a substandard driver in a household, premiums would reflect the risk associated with that driver, or the insurer would decline the request for insurance altogether. In response, the Legislature introduced the excluded driver scheme. “The courts have recognized that an insurer's ability to exclude certain drivers from coverage is beneficial as it allows a good risk to maintain coverage while protecting the insurer from liability for a poor risk driver or owner”: *Gore Mutual Insurance Co. v. 1443249 Ontario Ltd.* (2004) 70 O.R. (3d) 404 (S.C.), at para. 13.
- [42] As a matter of common sense, the goal of protecting the insurer against a poor risk driver is undermined if the excluded driver remains covered when driving all “other automobiles”.
- [43] Such a result also flies in the face of s. 225 of the *Insurance Act*, which does not distinguish between classes of automobiles when outlining when the loss of insured status occurs.
- [44] Allstate submits that the OPCF 28A form must be construed narrowly, and that if the insurer or Superintendent wanted to limit liability coverage for “other automobiles”, they could have explicitly included that class of vehicles on the form.
- [45] There are three responses to this argument. First, as a practical matter, the named insured cannot promise not to allow the excluded driver to drive any other vehicle in the same way that they can promise not to allow the excluded driver to drive listed (described)

automobiles, newly acquired ones, or temporary substitutes. “Other automobiles” include an indeterminate number of unidentifiable vehicles owned by others; a promise to prevent the excluded driver from driving all other vehicles would be impossible to fulfill.

- [46] Second, the OPCF 28A form is but one part of the insurance contract. The terms of OAP 1 are also part of the contract, and OPCF 28A explicitly states that all other terms of the contract apply.
- [47] Third, there is no public policy interest in making excluded drivers promise not to drive all other vehicles. Unlike described, newly acquired and temporary substitute automobiles, which are owned or temporarily used by the named insured or others in their household, “other automobiles” are owned by any number of third parties. These individuals are better placed to determine if a person should drive their vehicle, and such vehicles are presumed to be insured by virtue of the *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25.
- [48] Where an ambiguity can be resolved to ensure there is no gap in insurance coverage, that interpretation is to be preferred. In *Jubenville v. Jubenville*, 2013 ONCA 302, the Court, faced with two reasonable interpretations of a policy, chose the interpretation that ensured the plaintiff child was entitled to uninsured motorist coverage. Doing so was consistent with public policy and achieved a just result.
- [49] Here, however, there is no such gap, and excluding coverage for Ms. Meyer does not lead to an unjust result. The risk posed by the excluded driver to those they might harm, as is alleged to have occurred in the accident involving Ms. Meyer and Mr. Chorospecki, is addressed by uninsured driver coverage.
- [50] Moreover, Definity’s interpretation advances the public policy goal of making insurance affordable by eliminating liability coverage for higher risk drivers, while preserving their accident benefits coverage.
- [51] Allstate also argues that when read narrowly, as exclusions must be, OPCF 28A does not refer to “other automobiles” and the excluded driver, therefore, cannot reasonably expect that they will not be protected by liability insurance when driving this class of vehicles.
- [52] The OPCF 28A form, however, explicitly states that all other terms of the Policy remain the same. Incorporation of terms by reference to OAP 1 is a reasonable method of drafting a contract. Statutes are drafted and interpreted in a similar way. In *Ortiz*, for example, the Court of Appeal for Ontario found that s. 265 (uninsured automobile coverage) incorporated a territorial limit despite the limitation not being expressly stated in the provision. It did so because the provision contained an explicit incorporation by reference of the general limitations of the motor vehicle liability policy, limitations which include territorial limits.
- [53] Finally, Allstate submits that Definity could have simply added the words “other automobiles” in the free text box. The purpose of the free text box, however, is to list described vehicles or the generic “all listed vehicles”, not an entirely different class of vehicles. Moreover, adding these words to the free text box introduces ambiguity because

under the main policy, “other automobiles” do not include vehicles that any person in the household owns or regularly uses. Special condition 5 of s. 2.2.3 of OAP 1, however, carves out those “other automobiles” that are owned by a member of the excluded driver’s household *if driven by an excluded driver* under the policy for that automobile. Thus, some “other automobiles” maintain their covered status when driven by excluded drivers, while others do not. Simply adding “other automobiles” to the free text field would be inconsistent with special condition 5 and would not assist the excluded driver to understand which other vehicles they are promising not to drive. Finally, and in any event, the coverage restrictions in s. 2.2.3 of OAP 1 presume that this class of vehicle falls under the scope of the excluded driver exclusion.

- [54] Having regard to the overall context and intent of the excluded driver provision, I conclude that the only reasonable interpretation of the Policy is that “other automobiles” fall within the scope of OPCF 28A.

IV. Disposition

- [55] I find that “other automobiles”, as they are defined in s. 1.8.2 of OAP 1, are incorporated by reference in the OPCF 28A excluded driver form. Pursuant to ss. 225 and 240 of the *Insurance Act*, there is no liability coverage when an excluded driver drives “other automobiles”. Ms. Meyer was an excluded driver on the Policy at the time of the alleged accident on September 29, 2019, and as a result, there was no liability coverage for any loss which occurred while she was operating Ms. Phillips’ vehicle.
- [56] Consequently, Definity’s motion for summary judgment is granted, and the third party claim is dismissed.

V. Costs

- [57] Definity is presumptively entitled to costs of this motion. If the parties cannot agree on costs, Definity shall file a Bill of Costs, and submissions of no longer than three pages in length, by August 14, 2026. Allstate shall file its Bill of Costs and submissions of the same length by August 28, 2026.

Jasminka Kalajdzic
Justice

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Kalajdzic J.

Released: July 29, 2026