

Court of King's Bench of Alberta

Citation: Security National Insurance Company v Ismail, 2026 ABKB 599

Date: 20260827
Docket: 2501 05786
Registry: Calgary

Between:

Security National Insurance Company

Plaintiff/Appellant

- and -

Salm Ismail

Defendant/Respondent

**Reasons for Decision
of the
Honourable Justice N. Whitting**

Appeal from the Trial Decision by
The Honourable Assistant Chief Justice D.B. Higa
Filed on the 12th day of March, 2025
Dated the 10th day of February, 2025
(Docket: P2390103466)

I. Introduction

[1] This is an appeal from the decision of the Honourable Assistant Chief Justice D.B. Higa of the Alberta Court of Justice dated March 12, 2025. In that decision, the learned trial judge awarded the Respondent, Salm Ismail, judgment in the amount of \$4,656.75 plus interest against his insurer, the Appellant, Security National Insurance Company. This amount represents

damages caused to the Respondent's 2004 Honda CRV motor vehicle in a motor vehicle accident.

[2] The statutory and contractual provisions at issue in this appeal operate as parts of the direct compensation for property damage regime contained primarily in s. 585.1 of the *Insurance Act*, RSA 2000 c I-3, which came into effect on January 1, 2022, by operation of s. 9 of the *Insurance (Enhancing Driver Affordability And Care) Amendment Act*, 2020, SA 2020, c 36. This regime has been the subject of very few Alberta cases to date.

[3] Having considered the parties' submissions respecting the application of this relatively new legislation to the facts of the present dispute, I find that this appeal must be dismissed, and the trial judge's decision affirmed.

II. Factual Background

[4] The Appellant and the Respondent were parties to an Alberta standard owner's automobile insurance policy with the Appellant as the insurer and the Respondent as the insured. The vehicle insured under the policy was the Respondent's Honda CRV. The form of policy was the Standard Policy Form or "SPF" No. 1 approved by Alberta's Superintendent of Insurance, effective January 1, 2022. Its terms and conditions included the statutory conditions prescribed by s. 556 of the *Insurance Act*.

[5] On August 27, 2023, the Honda CRV was involved in an accident in Calgary while being operated by the Respondent. The Respondent was not at fault in the accident. The Honda CRV was damaged to the extent of being rendered inoperable.

[6] The Appellant testified that he was advised by a police officer that the driver responsible for the accident was insured under a valid Alberta insurance policy.¹

[7] The Respondent reported the accident to the Appellant no later than August 29, 2023, and sought coverage for the losses respecting his damaged vehicle including repairs, a replacement rental car, and certain other expenses such as parking tickets. There followed a course of communication between the Respondent and two of the Appellant's adjusters by e-mail and voice call respecting his claim.

[8] At some point after he had notified the Appellant of his claim, the Respondent had certain repairs undertaken to the vehicle. These repairs had not been authorized by the Appellant, and the Respondent had no receipts evidencing payment for them.

[9] By November 14, 2023, the Respondent had become frustrated with what he perceived to be a lack of responsiveness to his insurance claim and filed a Civil Claim against the Appellant in the Alberta Court of Justice. In that claim, he sought some \$23,936 in damages, plus interest and costs.

[10] In its Amended Dispute Note, the Appellant defended the Respondent's claim on numerous grounds, including that the Respondent's failure to furnish the Appellant with a completed proof of loss barred him from bringing any claim. The Respondent also pleaded that the Alberta Court of Justice had no jurisdiction to hear the claim since the Respondent was

¹ Although there appears to be no direct proof that the driver responsible for the accident was insured by a licensed Alberta insurer for the purposes of s. 585.1(1)(c) of the *Insurance Act*, this point appears to be undisputed.

required to submit the dispute to the dispute resolution process contained in s. 519 of the *Insurance Act*.

[11] The trial proceeded before A.C.J. Higa on February 10, 2025. Given the defences raised by the Appellant, an important issue to be addressed was whether the Appellant had discharged its obligation under s. 523(1) of the *Insurance Act* to provide the Respondent with the forms needed to prepare a proper proof of loss. This issue required scrutiny of the correspondence and other communications between the parties.

[12] The evidence respecting those communications consisted of email correspondence as well as a document which comprised the Appellant's "File Notes". Nothing in those materials indicates that the proof of loss forms were ever sent by the Appellant to the Respondent as required by s. 523(1) of the *Insurance Act*. So, there is no direct evidence in the record that the Appellant ever discharged its obligation to "furnish" the Respondent with copies of "the forms on which to make the proof of loss" as required by s. 523(1).

[13] However, during the Appellant's cross-examination of the Respondent, the Appellant attempted to introduce a certain letter. Although the letter was excluded by the trial judge, the Appellant's witness, Ms. Pamela Cole, would later explain that the letter was a standard system generated letter that is sent out in every claim in Alberta enclosing a proof of loss form.

[14] Another important factual issue in the trial was whether the Respondent had provided the Appellant with a completed proof of loss as required by s. 524 of the *Insurance Act* and the statutory conditions of the policy, notably SC 3(1)(b) and 4(1)(c). Although there appears to be no direct evidence in the record as to whether this was done, it was fairly acknowledged by the Respondent's counsel during closing arguments that the Respondent did not provide a completed proof of loss to the Appellant.²

[15] The trial judge provided Reasons for Judgment dated March 12, 2025. In allowing the Respondent's claim in a reduced amount, he found that the Appellant was not entitled to rely upon the Respondent's apparent failure to submit a formal proof of loss since the Appellant had failed to furnish the Respondent with the necessary forms as required by s. 523(1) of the *Insurance Act*. Similarly, the trial judge found that the Respondent had not been required by s. 585.1(6) to follow the dispute resolution process in s. 517 since that process can only be initiated by the submission of a proof of loss, and again, the Appellant had failed to furnish the Respondent with the forms necessary to complete a proof of loss. The trial judge also disallowed the Respondent's claim for the cost of repairs and parking tickets and capped the Respondent's damages at the pleaded value of the property loss being \$4,435 plus GST or \$4,656.75.

III. Grounds of Appeal

[16] Although expressed in somewhat different terms, the following grounds of appeal may be discerned from the Appellant's submissions:

- (a) Did the trial judge err by reversing the burden of proof respecting the insurer's obligation to furnish an insured with the necessary forms pursuant to s. 523 of the *Insurance Act*?

² Transcript of Proceedings, February 10, 2025, at 85:14: "It's true that no proof of loss was furnished."

- (b) Did the trial judge err and act unfairly by excluding evidence respecting the Appellant’s “normal processes”?
- (c) Did the trial judge err or act unfairly by drawing an adverse inference against the Appellant?
- (d) Did the trial judge err by considering whether the Appellant had met its obligation to furnish the Respondent with the necessary forms pursuant to s. 523 of the *Insurance Act*?
- (e) Did the trial judge err by failing to dismiss the Respondent’s claim on the basis of breaches of SC 3(1)(b), 4(1)(b) and pursuant to SC 6(2)?
- (f) Did the trial judge err by failing to dismiss the Respondent’s claim on the basis of a breach of SC 4(3) and pursuant to SC 6(2)?
- (g) Did the trial judge err and act without jurisdiction by refusing to dismiss the Respondent’s claim pursuant to s. 585.1(6) of the *Insurance Act*?

IV. Analysis

A. The Direct Compensation Provisions of the *Insurance Act*

[17] As noted above, the statutory and contractual provisions at issue in this appeal are prescribed by the *Insurance Act* of Alberta, and by a standard form of automobile insurance policy approved by the Superintendent of Insurance pursuant to that statute. The conditions of the policy at issue are prescribed by s. 556, and the direct compensation regime applicable to the Respondent’s claim for damages to his vehicle is contained in s. 585.1.

[18] The interlocking nature of the *Insurance Act* and policies of insurance has been emphasized in several Alberta cases. In *Amour v Security National Insurance Company*, 2025 ABKB 726, Bokenfohr J. wrote:

[19] Automobile insurance contracts are largely drafted by statute or with approval from the Superintendent of Insurance appointed under the *Insurance Act*. The *Insurance Act* provides all insurance contracts must be consistent with the Act: *Insurance Act*, s. 515(1). All policies must also be in a form approved of by the Superintendent: *Insurance Act*, s. 551(1). Section 556 sets out a series of statutory conditions which must be part of every insurance contract without variation, omission, or addition.

[20] Insurance contracts, therefore, are a special category of contract that must be interpreted with an eye to both the statutory nature of the contract and the unequal bargaining power of the parties.

[19] Bokenfohr J. went on in *Amour* to emphasize that, like all legislation, the *Insurance Act* must be read “(1) in its entire context, (2) in its grammatical and ordinary sense, and (3) harmoniously with the scheme of the Act, object of the Act and the intention of the legislature”. This approach is of course derived from such cases as *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 and was most recently addressed by the Supreme Court of Canada in *R v Nguyen*, 2026 SCC 10 at paras. 79-82.

[20] The legislative intention underlying the direct compensation scheme created by s. 585.1 of the *Insurance Act* was addressed by Argento J. in **Hupper v Howatt**, 2024 ABCJ 141:

[50] First, section 585.1 demonstrates a clear intention to simplify and streamline vehicle damage claims under motor vehicle liability policies in Alberta. Insureds now have a direct right of recovery from their insurers for vehicle damage claims. Insurers making such payments cannot seek indemnification or subrogation against at-fault drivers, except as permitted under the regulations. This obviously limits litigation arising from such incidents.

[51] This legislative intention is further supported by the heading of the new section: “Direct compensation for property damage”. Headings may be used as intrinsic aids in statutory construction (**R v Davis**, 1999 CanLII 638 (SCC) at para. 51).

[52] Second, the words used in section 585.1(7)(a), read in their ordinary and grammatical sense, and harmoniously with the overall scheme of section 585.1, demonstrate a clear intention to bar all damage claims against third parties. The section contains an absolute prohibition in stating that an insured “has no right of action ... for damages to the insured’s automobile”.

[21] Alberta’s s. 585.1 is modelled after similar legislation in other Canadian jurisdictions, notably the direct compensation regime contained in s. 263 of the *Insurance Act*, RSO 1990, c I.8. Although there are some important differences between Alberta’s s. 585.1 and Ontario’s s. 263, the following commentary respecting the latter are generally applicable to the former.

[22] In **Clarendon National Insurance v Candow**, 2007 ONCA 680 at para. 7, Juriansz J.A. wrote:

Section 263 of the *Insurance Act* replaced the tort system that resolved automobile damage claims prior to its enactment. In the new statutory scheme, insureds can no longer sue the tortfeasor driver whose negligence has caused damage to their cars. Rather, their own liability insurer pays for the damage, to the extent that they were not at fault, under the third party liability section of their motor vehicle liability policies. Insureds can recover the at-fault portion of their damage by purchasing collision coverage. Insurers have no right of subrogation for payments to their own insureds, but, on the other hand, do not have to pay the subrogated claims previously brought by other insurers in the tort system. The result is that the statutory regime eliminates the transactions costs that were inherent in the tort system.

[23] Similarly, in **McCourt Cartage Ltd. v Fleming Estate** (1997), 35 OR (3d) 795 (Ont Gen Div) at para. 3, Sharpe J. (as he then was) wrote:

Before the enactment of s. 263, the common law tort regime applied to property damage claims. The result was that where an insured had purchased collision damage cover, and where the accident was caused at least in part by the fault of another driver, two insurers became involved. The insured would claim against his own insurer under the collision coverage, and that insurer would assert a subrogated claim against the insurer of the other driver to the extent of the other driver’s fault. The intended effect of s. 263 was to remove the insured’s right to

sue for property damage and to confer the right to claim such losses not caused by the fault of the insured against one's own insurer. In the words of Somers J. in **583809 Ontario Ltd. v Kay**, [1995] O.J. No. 1626, the section was intended

to bring to an end claims which were really made by one insurance company against another in the names of their respective insureds strictly for the property damage that had occurred in an accident.

See also **Bassie v Warren J. Brown Bituminous Paving Co.**, [1993] I.L.R. 2357, adopting Allan O'Donnell, *Automobile Insurance in Ontario* (1991), at p. 51:

... under the new system with the exceptions outlined below [none of which apply here], subrogation has been abolished. Thus, we have a "knock for knock" system whereby each insurer absorbs most of its policyholders' property damage claims without attempting to recover same from the insurers of tortfeasors causing such claims.

B. Did the trial judge err by reversing the burden of proof respecting the insurer's obligation to furnish an insured with the necessary forms pursuant to s. 523 of the *Insurance Act*?

[24] The Appellant submits that the trial judge applied the wrong burden of proof to the insurer's obligation to furnish the insured with proof of loss forms pursuant to s. 523(1) of the *Insurance Act*. That provision reads:

Insurer to furnish forms

523(1) An insurer, immediately on receipt of a request, and in any event not later than 60 days after receipt of notice of loss, must furnish to the insured or the person to whom the insurance money is payable forms on which to make the proof of loss required under the contract.

(2) An insurer that neglects or refuses to comply with subsection (1) is guilty of an offence and, in addition, section 524 is not available to the insurer as a defence to an action brought, after the neglect or refusal, for the recovery of money payable under the contract.

[25] The placement of a burden of proof is a question of law reviewable on appeal for correctness.

[26] The Appellant submits that the burden lay upon the Respondent to prove that he was not furnished with the forms, whereas the burden lay upon the Appellant to prove that the Respondent did not provide a proof of loss. On this basis, the Appellant submits that the trial judge erred in finding that the Respondent was not provided with the necessary forms.

[27] In support of this submission, the Appellant relies upon the general rules respecting burdens of proof in the context of insurance claims.³ Those rules are reflected in such cases as

³ The Appellant mistakenly cites **F.H. v McDougall**, 2008 SCC 53 as authority for these rules.

Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co., 2016 SCC 37 at para. 52,⁴ which states that the insured has the onus of first establishing that the damage or loss claimed falls within the initial grant of coverage, that the onus then shifts to the insurer to establish that one of the exclusions to coverage applies, and that the onus then shifts back to the insured to prove that an exception to the exclusion applies. As further support, the Appellant cites **Babyn v Alberta (Director of Saferoads)**, 2025 ABKB 284 at paras. 21-27 which addresses the onus of proof respecting service of a Notice of Administrative Penalty or “NAP” in the context of Alberta’s SafeRoads regime.

[28] I do not find the Appellant’s authorities to be applicable or otherwise helpful to the resolution of this issue. The general rules reflected in **Ledcor** and related cases are only the “generally advisable” rules respecting the interpretation of insurance policies based upon the way that such policies are usually structured. Those authorities do not address the interpretation of statutory provisions like s. 523 of the *Insurance Act* and provide no analogous guidance. The **Babyn** case also deals with a dissimilar issue.

[29] In my view, the burden of proof respecting s. 523 of the *Insurance Act* is best determined on the basis of the general rule that “[t]he burden of proof should fall on the party who is in the best position to obtain the facts”: **McInerney v MacDonald**, [1992] 2 SCR 138 at para. 30. The party who is in the best position to obtain the facts respecting the provision of forms by the insurer to the insured is the insurer. The insurer would presumably be aware of such details as the date upon which the forms were sent and the method by which they were sent. The insurer would also be motivated to retain copies of that correspondence given that a failure to furnish the forms constitutes an offence. In contrast, the insured could only offer a bare denial that the forms were received.

[30] Placing the onus of proof upon the insurer to show that it furnished the insured with the proof of loss forms is consistent with the general rule that the burden of proof respecting the service of documents lies upon the serving party: **Al-Ghamdi v Her Majesty the Queen**, 2017 ABQB 169 at para. 114; **Vanden Brink v Russell**, 2012 ABQB 523 (Master) at para. 19 (rev’d on other grounds: [2013] AJ No 478 (QB); reasons at [2013] AJ No 693 (QB) at para.s. 19-22); **McLarty v Ontario (Director, Family Responsibility Office)** (2001), 197 DLR (4th) 684 (Ont CA) at para. 20; **Ivan’s Film’s Inc. v Kostelac** (1989), 29 CPC (2d) 20 (Ont SC (Master)) at para. 8.

[31] For these reasons, I find that the trial judge did not err by reversing the burden of proof respecting the insurer’s obligation to furnish the insured with the necessary forms pursuant to s. 523(1) of the *Insurance Act*. The burden of proving performance of this obligation lies upon the insurer.⁵

[32] Further, and in any event, I do not read the trial judge’s reasons respecting s. 523 of the *Insurance Act* as turning upon any strict application of the burden of proof. The trial judge did not find it necessary to identify which party bore the onus of proof in relation to this issue, and this was not a case where there was no evidence on this point or where the evidence was

⁴ In support of its position, the Appellant mistakenly cites **F.H. v McDougall**, 2008 SCC 53 which has nothing to say on this subject. I am assuming that the Appellant intended to cite the principles reflected in such cases as **Ledcor** and **Progressive Homes Ltd. v Lombard General Insurance Co. of Canada**, 2010 SCC 33.

⁵ Of course, this is not to suggest that the burden of proof to prove the provision of the necessary forms would lie upon the insurer in the context of a prosecution for the offence created by s. 523(2).

equivocal. The Respondent testified that he received no mail correspondence from the Appellant, and the Appellant called no admissible evidence in response.

C. Did the trial judge err and act unfairly by excluding evidence respecting the Appellant’s “normal processes”?

[33] In its next ground of appeal, the Appellant submits that the trial judge erred and acted unfairly by excluding the testimony of the Appellant’s witness Ms. Pamela Cole on the basis of his own objection and without according the Appellant a reasonable opportunity to respond to that objection. The Appellant’s complaint is that Ms. Cole was prohibited from testifying about the Appellant’s “normal processes, despite that being a key issue in the Trial”. Although less than clear, I take this submission to mean that Ms. Cole ought to have been permitted to testify that it was part of the Appellant’s normal process to send out a copy of its proof of loss form to the insured upon opening a claim. If Ms. Cole was in a position to testify about any other normal process or practice that could have affected the outcome of the trial, this has not been specified by the Appellant.

[34] Insofar as Ms. Cole’s testimony respecting the excluded letter is concerned, the objection to that evidence was not raised by the trial judge on his own motion. The dispute respecting that letter first arose during the Appellant’s cross-examination of the Respondent. At that time, the Appellant’s counsel advised the trial judge that he was already aware that the Respondent’s counsel would have an objection. The Respondent’s counsel then advised that the letter had only been provided to him the previous afternoon, contrary to a Procedural Order from Justice Burt. In the context of ruling on that objection, the trial judge asked the Respondent if he had received the letter and the Respondent advised that he had not seen the letter before that moment. Under these circumstances, the trial judge ruled the letter to be inadmissible.

[35] When Ms. Cole was subsequently called to the stand as a witness for the Appellant, the trial judge interjected and said:

I’m not sure I’m too interested in [the Appellant’s normal processes], Mr. Lee. I’m interested in the facts of this case. I’m interested in what people who are involved firsthand have information to provide to me. I’m not sure I want to hear or need to hear about what a normal process would be, especially in connection with someone who’s got no firsthand personal knowledge with the facts at issue.

[36] In the subsequent exchange with the Appellant’s counsel, the trial judge indicated that he was interested in hearing all about what had occurred with respect to the Respondent’s specific claim and the terms of the applicable policy, but that he was not interested in hearing from a witness with no first-hand knowledge of that claim.

[37] The Appellant now submits that corporate representatives like Ms. Cole are generally able to testify about the contents of corporate records which reflect information in the possession of a corporation. Among other cases on this point, the Appellant cites ***County of Vulcan v Genesis Reciprocal Insurance Exchange***, 2020 ABQB 93, notably para. 110, where Graesser J. wrote: “It is not necessary to have the direct evidence of the senders or recipients of these business records to make them admissible.”

[38] In response to this ground of appeal, the Respondent submits that while a business record may generally be admissible without direct evidence from the person who sent it, the specific purpose for which the Appellant sought to introduce the letter was not its informational content,

but to prove the very fact that it was sent to the Respondent. Ms. Cole had no personal knowledge of that event.

[39] I am willing to assume for the purposes of the present appeal that Ms. Cole's knowledge and testimony respecting the Appellant's general practices could have rendered the letter admissible under the business records exception to the hearsay rule. The problem for the Appellant though, is that the letter was excluded for two separate and independent reasons. As the trial judge later explained in his written decision:

[30] Security National attempted to submit a letter to show Mr. Ismail received a proof of loss form and instructions to facilitate processing of his claim. However, that letter was disclosed only on the eve of trial. Significantly, the letter [was] not provided to Mr. Ismail in accordance with an Order of the Court stating that document disclosure was to be completed by August 2, 2024.

[31] Furthermore, as Ms. Hsu did not testify, any commentary relating to the letter would be hearsay. Accordingly, the Court declined to enter the letter into evidence.

[40] The Appellant has not submitted that the trial judge erred by excluding the evidence due to its late disclosure to the Respondent.

[41] Of course, the trial judge was not required to exclude the letter on the basis of its late disclosure. But the point for present purposes is that it was well within his discretion to do so. As Justice Graesser explained in **McCallum v Edmonton Frame and Suspension (2002) Ltd.**, 2016 ABQB 271 at paras. 63-69, all trial judges are given some latitude as to the manner in which they run their courtrooms, and trial judges in the Alberta Court of Justice are afforded an even greater latitude given s. 36 of what is now the *Court of Justice Act*.

[42] I conclude that it was well within the trial judge's discretion to exclude the letter that the Appellant sought to introduce through Ms. Cole. That letter was not disclosed until the afternoon before the trial, being some 6 months beyond a deadline imposed by a Procedural Order of the Court. Orders of this nature are essential to the fair and efficient determination of issues to be determined by the courts, and their enforcement is a discretionary matter. The Appellant has not suggested or shown that the trial judge committed palpable and overriding error by excluding Ms. Cole's testimony respecting the letter on the basis of its late disclosure.

[43] With respect to the Appellant's complaint that the trial judge excluded Ms. Cole's letter *sua sponte* and without according the Appellant a fair opportunity to make submissions, this argument is not supported by the record. The objection to the admissibility of the letter was first raised by the Respondent's counsel, and the Appellant's counsel was accorded an opportunity to speak to the objection both during the Respondent's cross-examination, and at the time of Ms. Cole's testimony.

[44] With respect to any evidence of the Appellant's "normal processes" beyond the sending of the letter, the Appellant has not identified any such evidence or demonstrated that it could have affected the outcome of the trial.

[45] For these reasons, this ground of appeal is dismissed.

D. Did the trial judge err or act unfairly by drawing an adverse inference against the Appellant?

[46] In finding that the Appellant did not comply with its obligation under s. 523(1) of the *Insurance Act* to furnish the proof of loss forms to the Respondent, the trial judge drew an adverse inference from the Appellant's failure to call the adjuster primarily responsible for the file. In doing so, he wrote:

[28] There was no explanation provided for the failure of Security National to have Ms. Hsu testify. As the only claims adjuster dealing with Mr. Ismail's claim, she has material evidence to provide. Ms. Hsu is the only person who can provide evidence to address matters on behalf of Security National. As Ms. Hsu remains in the employment of Security National, she is not equally available to both parties.

[29] Accordingly, I draw an adverse inference from the failure of Security National to call Jessica Hsu as a witness at trial.

[47] The Appellant submits that the trial judge erred in drawing the above adverse inference since he did not first accord the Appellant an opportunity to respond to the findings and assumptions underlying this inference. In support of this position, the Appellant cites *Malton v Attia*, 2016 ABCA 130 at paras. 52-53.

[48] Although questions of procedural fairness are not subject to any standard of review, the drawing of an adverse inference is discretionary and so is subject to review on the standard of palpable and overriding error.

[49] It has been held in several cases that an adverse inference ought not to be drawn against a party for failing to call a witness without first according that party a fair opportunity to explain why the witness was not called: *R v Maxie*, 2014 SKCA 103 at para. 40; *Odden v British Columbia (Superintendent of Motor Vehicles)*, 2016 BCSC 2394 at para. 57. In my view, however, the trial judge gave the Appellant advance notice that an adverse inference was under consideration and gave the Respondent a fair opportunity to explain why a knowledgeable witness was not called.

[50] When the Appellant first called Ms. Cole to testify, the trial judge expressed concerns about why the Appellant had called a witness "who's got no firsthand personal knowledge with the facts at issue". He then asked the Appellant's counsel whether Ms. Hsu was still employed by the Appellant and following a brief equivocation, counsel advised: "I believe she is, Sir." The trial judge then asked: "So can I have an adverse inference from that?" Counsel's response to this inquiry offered no explanation as to why Ms. Hsu was not called and instead focused upon the relevant evidence that Ms. Cole could give.⁶

[51] In my view, the Appellant was given sufficient notice that an adverse inference was under consideration by the trial judge and a fair opportunity to explain why such an inference should not be drawn. Under these circumstances, it was within the trial judge's discretion to draw the adverse inference that he did.

⁶ Transcript of Proceedings, February 10, 2025, at 65:34 – 67:17.

E. Did the trial judge err by considering whether the Appellant had proven that it met its obligation to furnish the Respondent with the necessary forms pursuant to s. 523 of the *Insurance Act*?

[52] In its next ground of appeal, the Appellant submits that the trial judge erred by unduly focusing upon any failure by the Respondent to furnish the proof of loss forms as required by s. 523(1) of the *Insurance Act*. In the Appellant's view, the Respondent's admitted failure to provide a completed proof of loss was inevitably fatal to his ability to advance any claim for loss or damage to his Honda CRV regardless of whether he had been furnished with the necessary forms. In support of this argument, the Appellant relies upon s. 524 of the *Insurance Act*:

When action may be brought

524 No action lies for the recovery of money payable under a contract until the expiration of 60 days, or of any shorter period fixed by the contract, after proof, in accordance with the provisions of the contract,

- (a) of the loss, or
- (b) of the happening of the event on which the insurance money is to become payable.

[53] The Appellant's submissions on this issue focus on waiver and estoppel, which are not subjects raised either explicitly or inferentially in this case. As the Respondent points out, this issue actually turns upon s. 523(2) of the *Insurance Act* which is here again reproduced for ease of reference:

Insurer to furnish forms

523(1) An insurer, immediately on receipt of a request, and in any event not later than 60 days after receipt of notice of loss, must furnish to the insured or the person to whom the insurance money is payable forms on which to make the proof of loss required under the contract.

(2) An insurer that neglects or refuses to comply with subsection (1) is guilty of an offence and, in addition, section 524 is not available to the insurer as a defence to an action brought, after the neglect or refusal, for the recovery of money payable under the contract.

[Emphasis added]

[54] The interpretation of ss. 523 and 524 raises a question of law reviewable for correctness.

[55] In support of its argument that the trial judge ought not to have considered the Appellant's failure to furnish the forms, the Appellant relies upon ***Singh v Security National Insurance Company***, 2025 ABCJ 174, in which Justice Burt dismissed a claim under Section C of Alberta's standard SPF No. 1 policy on the basis that the plaintiff insured had failed to submit a completed proof of loss as required by both s. 524 of the *Insurance Act* and SC 6(2) of the policy. In doing so, Justice Burt did not focus upon any failure by the insurer to furnish the insured with the forms required by s. 523(1). The Appellant submits that this constitutes the correct approach which ought to have been followed by the trial judge in the present case.

[56] The obvious distinction between ***Singh*** and the present case is that the insurer in ***Singh*** had furnished the insured with a blank proof of loss form as required by s. 523(1) of the

Insurance Act (see para. 21). As might be expected under these circumstances, Justice Burt's analysis did not focus upon the effect of any failure by the insurer to satisfy that requirement. The case does not support the proposition that any failure by the insurer to discharge its obligations s. 523(1) should be ignored or overlooked.

[57] Given the trial judge's finding that the Appellant failed to furnish the Respondent with the forms as required by s. 523(1) of the *Insurance Act*, s. 523(2) expressly negated the Appellant's ability to invoke s. 524 as a defence to the Action. Hence, the trial judge did not err by focusing upon the Appellant's failure to furnish the forms to the Respondent as required by s. 523(1), or by declining to dismiss the Respondent's claim pursuant to s. 524.

F. Did the trial judge err by failing to dismiss the Respondent's claim on the basis of breaches of SC 3(1)(b), 4(1)(b) and pursuant to SC 6(2)?

[58] In its next ground of appeal, the Appellant submits that even if it was unable to rely upon the Respondent's failure to submit a proof of loss as a defence pursuant to s. 524, that same circumstance gave rise to defences pursuant to the statutory conditions of the policy prescribed by s. 556 of the *Insurance Act*, notably SC 3(1)(b), 4(1)(b) and 6(2). Like s. 524, these conditions together provide that the insured may not bring an action to recover the amount of a claim unless and until the insured has provided the insurer with a proof of loss.

[59] The statutory versions of SC 3 and 4 of Alberta's SPF No. 1 automobile insurance policies read:

REQUIREMENTS WHERE LOSS OR DAMAGE TO PERSONS OR PROPERTY

3(1) The insured must

- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident,
- (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under the contract, and

[...]

REQUIREMENTS WHERE LOSS OR DAMAGE TO AUTOMOBILE

4(1) When loss of or damage to the automobile occurs, the insured must, if the loss or damage is covered by the contract,

- (a) promptly give notice of the loss or damage in writing to the insurer with the fullest information obtainable at the time,
- (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and
- (c) deliver to the insurer within 90 days after the date of the loss or damage a statutory declaration stating, to the best of the insured's

knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others in the automobile, the encumbrances on the automobile, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

[60] As noted above, the parties agree that the Respondent complied with the notice requirements of SC 3(1)(a) and 4(1)(a), and that he did not comply with the proof of loss requirements of SC 3(1)(b) and 4(1)(b).

[61] At common law, the notice provisions of an insurance policy are generally recognized to be “innominate terms”, meaning that a failure by the insured to comply with them does not necessarily relieve the insurer of its obligation to pay out on a claim: **Alfred McAlpine PLC v BAI (Run-Off) Ltd.**, [2000] 1 Lloyd’s Rep 437, EWCA Civ J0211-1 at paras. 32-34. In the present context, however, that rule is displaced by both s. 524 of the *Insurance Act* and by SC 6(2) of Alberta’s standard automobile insurance policy which states:

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6(2) The insured may not bring an action to recover the amount of a claim under the contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as provided for under Statutory Conditions 3 and 4 or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

[62] The substance of the Appellant’s argument is that s. 523(2) of the *Insurance Act* on the one hand and statutory conditions SC 3(1)(b), 4(1)(b), and 6(2) on the other give rise to separate and independent defences such that the negation of the former has no effect upon the availability of the latter. Putting the same argument another way, the Appellant submits that in the specific context of automobile insurance, SC condition 6(2) displaces the generally applicable s. 523(2). The Appellant again seeks to draw support for this argument from the **Singh** case, where Justice Burt dismissed the insured’s claim pursuant to both s. 524 and SC 6(2).

[63] The interpretation of standard form contracts, such as Alberta’s highly regulated insurance policies, and the interpretation of the related provisions of the *Insurance Act* raises questions of law reviewable for correctness.

[64] In considering this ground of appeal, I have taken into account the following points.

[65] Firstly, s. 523(2) of the *Insurance Act* states that where an insurer fails to furnish the insured with the necessary forms, “section 524 is not available to the insurer as a defence”. That provision does not expressly state that SC 6(2) is not available to the insurer as a defence.

[66] Secondly, I appreciate that s. 523 appears in Subpart 1 of Part 5 of the *Act* which applies to insurance contracts generally. In contrast, s. 556 and SC 6(2) appear in Subpart 2 of the *Act* which deals with the more specific subject of automobile insurance. This means that an acceptance of the Appellant’s arguments would not necessarily deprive s. 523(2) of all legal effect. That provision might still operate effectively when dealing with other types of insurance contracts such as insurance respecting fraternal societies (Subpart 3), hail insurance (Subpart 4), life insurance (Subpart 5), and accident and sickness insurance (Subpart 6).

[67] In my view, however, SC 6(2) cannot be read and applied in isolation from s. 523. Nothing in the statute suggests that an insurer's non-compliance with s. 523(1) will negate the insurer's right to complain about the insured's failure to provide a proof of loss in the context of other types of insurance but excused in the context of automobile insurance.

[68] As noted above, "insurance contracts... are a special category of contract that must be interpreted with an eye to both the statutory nature of the contract and the unequal bargaining power of the parties": *Amour* at para. 20. This means that the statutory conditions set out in both the policy and s. 556 must be read together with the other provisions of the statute -- especially closely related provisions like s. 523.

[69] The legislative purpose underlying s. 523 is obvious. Given that there is no one proof of loss form prescribed by the *Act* or its regulations, it is important that the insurer furnish the insured with the forms it deems necessary for completion of a proof of loss. An insured who has no access to the insurer's forms can hardly be expected to complete and submit them. So, an insurer which has failed to furnish the insured with the necessary forms must be precluded from defending a claim under the policy on the basis that the insured has failed to provide a proof of loss. To further underscore the importance of the insurer's obligation to furnish the necessary forms, the Legislature has provided in s. 523(2) that an insurer's failure to furnish the forms constitutes an offence.⁷

[70] Given the importance of the legislative objective underlying s. 523 of the *Insurance Act*, there is no reason to believe that the Legislature intended to negate its applicability or effectiveness to contracts of automobile insurance. That is, there is no reason to believe that a non-compliant insurer is strictly prohibited from raising a defence under s. 524 but permitted to raise substantially the same defence under SC 6(2). Reading SC 6(2) together with s. 523, the applicability of the former necessarily presumes that the insurer has complied with the latter.

[71] For these reasons, I find that the trial judge did not err in failing to give effect to the Appellant's defence based on SC 3(1)(b), 4(1)(b) and 6(2) of the policy. Since the Appellant failed to prove that it furnished the Respondent with the necessary forms, it is legally responsible for the Respondent's resulting non-compliance with SC 3(1)(b) and 4(1)(b) and the Appellant is disentitled from invoking SC 6(2) as a defence.

G. Did the trial judge err by failing to dismiss the Respondent's claim on the basis of a breach of SC 4(3) and by operation of SC 6(2)?

[72] In its next ground of appeal, the Appellant submits that the trial judge erred by failing to give effect to the Appellant's defence which arose from the combined operation of SC 4(3) and 6(2) of the SPF No. 1 policy. Those statutory conditions state that the Respondent is not to undertake any repairs unless authorized by the insurer, and that any breach of this obligation bars his right of recovery:

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[...]

⁷ Of course, the trial judge did not find, and I do not find, that the Appellant committed an offence contrary to s. 523(2). Rather, the trial judge held that the provision of forms was not proven in accordance with the Court's procedural and evidentiary rules.

(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, may be undertaken and no physical evidence of the loss or damage may be removed

(a) without the written consent of the insurer, or

(b) until the insurer has had a reasonable opportunity to make the inspection for which provision is made in Statutory Condition 5.

[...]

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6(2) The insured may not bring an action to recover the amount of a claim under the contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as provided for under Statutory Conditions 3 and 4 or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

[73] The trial judge did not specifically consider dismissing the Respondent's claim on the basis of a breach of SC 4(3) and pursuant to SC 6(2), since, as explained in greater detail below, the Appellant did not plead or otherwise argue that the claim ought to be dismissed on this basis.

[74] It was admitted at trial and in the pleadings that the Respondent paid for certain repairs to his vehicle and that they had not been authorized by the Appellant. The Respondent did not have any receipts for those repairs. The Appellant pleaded at para. 15 of its Amended Dispute Note that the Respondent breached the policy by "undertaking unnecessary repairs without the consent of the [Appellant]" but did not expressly plead that this breach barred the Respondent's claim in its entirety by operation of SC 6(2). Instead, during closing arguments, the Appellant argued that the Respondent's repair costs should be deducted from any damages award since those repairs had not been approved. Given both the absence of receipts and the absence of any approval, the trial judge disallowed the Respondent's claim for repair costs and quantified his damages at a reduced amount. The Appellant now submits that this was insufficient, and that the claim should have been barred in its entirety given the language of SC 4(3) and 6(2).

[75] One potential response to this ground of appeal arises from s. 585.1(3) of the *Insurance Act*:

585.1 (3) Where this section applies, an insured may recover for the damages to the insured's automobile and its contents and for loss of use of the insured's automobile and its contents from the insured's insurer under the coverage described in section 559(1) as though the insured were a third party.

[Emphasis added]

[76] The Courts of Ontario have interpreted a substantially identical provision of the direct compensation provisions of the *Insurance Act*, RSO 1990 c I.8⁸ as meaning that an insurer may not deny coverage to its insured on the basis of any breach by the insured of the policy's statutory conditions. The reasoning reflected in these cases is that the statute states that the

⁸ 263 (2) If this section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection 239 (1) as though the insured were a third party. R.S.O. 1990, c. I.8, s. 263 (2).

insured may recover “as though the insured were a third party”, and a third party would not be privy to or bound by the conditions of the policy between the insured and the insurer.

[77] In ***Aube v Royal Insurance Co. of Canada***, [1998] OJ No 4715, 8 CCLI (4th) 84 (Ont Gen Div), the insured had breached a statutory condition of the policy by allowing his unlicensed spouse to drive his vehicle. His spouse was then involved in an accident which was the fault of the other driver. In allowing the insured’s claim for damages to the vehicle, Southey, Doyle and Desotti JJ. wrote:

10 The point is a difficult one, but, with respect, I am unable to agree with the decision of the learned motions court judge. The claim by the insured was under s. 263(2) of the *Insurance Act*, which provides that the insured is entitled to recover as though he were a third party. I take that to mean that the insured can recover from his insurer as though he were not a party to the contract of insurance. A claimant who was not a party to the contract of insurance would not be affected by statutory conditions in the insurance policy.

11 The right given to the plaintiff by s. 263(2) of the *Insurance Act* to recover from his insurer notwithstanding his breach of a statutory condition offsets the loss under s. 263(5) of the *Insurance Act* of his right to sue the owner or driver of the Soulliere vehicle, which was entirely responsible for the accident.

[78] The above reasoning in ***Aube*** was adopted by the Ontario Court of Appeal in ***Siena-Foods Ltd. (Trustee of) v Old Republic Insurance Co. of Canada***, 2012 ONCA 583. In that case, the insured had arguably breached the terms of the insurance policy by misrepresenting the nature of the cargo it had been carrying at the time of the collision. In upholding the insured’s right to recover damages from its insurer despite any such breach, Sharpe, Laskin, and Epstein JJ.A. wrote:

32 First, s. 263(2) of the *Insurance Act* specifies that under the regime governing direct compensation for property damage, the insured — here Siena-Foods by virtue of Ryder’s automobile policy, which extends coverage to lessees — is treated as a third party. Siena-Foods can therefore recover from Old Republic even though it was not in any sense a party to the insurance contract. Thus, even if the misrepresentation found by the motion judge amounted to a breach of Ryder’s insurance policy, Siena-Foods’ right to recover under s. 263(2) of the Act and s. 6.1 of the Automobile Policy would be unaffected: see ***Aube v Royal Insurance Co. of Canada***, [1998] O.J. No. 4715, 8 C.C.L.I. (4th) 84 (Ont. Gen. Div.), at para.s. 10-11.

[79] Applying the logic of ***Aube*** and ***Siena-Foods*** to the present case, it could be argued that since the Respondent was entitled to sue the Appellant under s. 585.1(3) “as though [he] were a third party”, his right to recover damages from the Appellant is unaffected by any breaches of the policy’s conditions by him, such as the condition that he not undertake unauthorized repairs. This outcome would arguably make sense given that the Respondent’s right to direct compensation from his own insurer stands in substitution for his right to recover from the other driver’s insurer,

and given that the other driver's insurer would not be permitted to deny coverage on the basis of any breach of the policy by its own insured: *Insurance Act*, s. 579(4).⁹

[80] In the present case, however, neither side has addressed the applicable Ontario authorities and the Respondent in particular does not submit that s. 585.1(3) negates the Appellant's right to invoke breaches of the policy in defence of the action. Given this consideration, I find it more appropriate to dispose of this ground of appeal on an alternative basis.

[81] As noted above, the Respondent did not expressly plead in its Amended Dispute Note that any breach of SC 4(3) gave rise to a bar to the action by operation of SC 6(2). This argument was also absent from the Appellant's oral arguments. Instead, the Appellant argued that the trial judge should disallow the cost of repairs as an element of the Respondent's claim since the repairs were not authorized by the Appellant. These arguments were accepted by the trial judge at paras. 61-63 of his reasons and the Respondent's claim for repair costs was disallowed. Given that the Appellant did not plead that the Respondent's claim ought to have been dismissed in its entirety due to a breach of SC 4(3), it cannot be said that the trial judge erred by failing to accept such an argument.

[82] In conclusion, the trial judge did not err by resolving this dispute on the basis of the pleadings presented to him, or by failing to raise new defences on his own motion.

[83] In reaching this conclusion, I do not suggest that the Appellant formally waived its rights respecting the statutory conditions, or that it is estopped from invoking those rights, being subject matters addressed at some length in the Respondent's written submissions. Rather, I find that the Appellant's defence based upon the combined operation of SC 4(3) and 6(2) was not pleaded and so is unavailable: *Citadel General Assurance Co. v Johns-Manville Canada Inc.*, [1983] 1 SCR 513 at p. 527; *Paniccia Estate v Toal*, 2012 ABCA 397 at para. 32.

H. Did the trial judge err and act without jurisdiction by refusing to dismiss the Respondent's claim pursuant to s. 585.1(6) of the *Insurance Act*?

[84] Dealing with first things last, I will next address the Appellant's submission that the Alberta Court of Justice had no jurisdiction to determine the amount of the Respondent's losses

⁹ **579(1)** Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, even if that person is not a party to the contract, may, on recovering a judgment in respect of the claim against the insured in any province or territory, have the insurance money payable under the contract applied in or toward satisfaction of the judgment and of any other judgments or claims against the insured covered by the contract and may, on the person's own behalf and on behalf of all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

[...]

(4) The right of a person who is entitled under subsection (1) to have insurance money applied in or toward the person's judgment or claim is not prejudiced by

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest in or of the proceeds of the contract, made by the insured after the event giving rise to the person's claim under the contract,
- (b) any act or default of the insured before or after that event in contravention of this Subpart or of the terms of the contract, or
- (c) any contravention of the *Criminal Code* (Canada) or a statute of any province or territory or jurisdiction of the United States of America by the owner or driver of the automobile,

and nothing mentioned in clause (a), (b) or (c) is available to the insurer as a defence in an action brought under subsection (1).

since that issue had to be submitted to the dispute resolution process contained in s. 519 of the *Insurance Act*. This submission is grounded in s. 585.1(6) of the *Insurance Act* which reads:

585.1 (6) If a dispute arises because the insured is not satisfied with the amount of a proposed settlement, the dispute must be determined using the dispute resolution process set out in section 519.

[85] The dispute resolution process set out in s. 519 and referred to in s. 585.1(6) may only be commenced after a proof of loss has been delivered to the insurer:

519 (4) Either the insured or the insurer may demand in writing the other's participation in a dispute resolution process after proof of loss has been delivered to the insurer.

[86] Although not referred to by the Appellant, its argument finds further support in SC 4(9) and (10) of the policy:

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(9) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount of the loss or damage, those questions must be determined by a dispute resolution process as provided under the *Insurance Act* before there can be recovery under the contract, whether the right to recover under the contract is disputed or not, and independently of all other questions.

(10) There is no right to a dispute resolution process until

- (a) a specific demand for it is made in writing, and
- (b) the proof of loss has been delivered.

[87] Before the trial judge, the Appellant submitted that the Respondent's failure to deliver a proof of loss deprived the Appellant of its ability to invoke the dispute resolution process pursuant to s. 519(4). The Respondent replied that the Respondent could not be expected to complete a proof of loss given that he had never been provided with the necessary forms.

[88] The Respondent relies further upon s. 585.1(3) which, in his view, reflects a legislative intention to preserve the insured's right of action in court, at least in certain circumstances:

585.1(3) Where this section applies, an insured may recover for the damages to the insured's automobile and its contents and for loss of use of the insured's automobile and its contents from the insured's insurer under the coverage described in section 559(1) as though the insured were a third party.

[89] In dismissing the Appellant's jurisdictional objection, the trial judge held that the Appellant's failure to furnish the Respondent with the necessary forms effectively excused the Respondent from the general obligation to submit disputes of this nature to the s. 519 resolution process. In his words:

42 Security National relies on the fact that Mr. Ismail failed to provide the proof of loss, which would trigger the dispute resolution process. But as stated,

Security National failed to provide the proof of loss form which was their statutory obligation.

43 It is rhetorical to ask how Mr. Ismail could participate in a dispute resolution process when no party requested it and Security National did not comply with its obligation to provide the document which would start the dispute resolution process.

44 Mr. Ismail was left with no alternative but to commence this action.

[90] There is no question that s. 585.1(6) of the *Insurance Act* and SC 4(9) and (10) of s. 556 reflect an important policy decision on the part of the Legislature to divert the great majority of claims for loss or damage to automobiles and their contents to the dispute resolution process in s. 519. But I agree with the trial judge that when those provisions are read harmoniously together with ss 519(4) and 523, an insurer who has failed to furnish the insured with the necessary forms is deemed to be responsible for the resulting absence of any completed proof of loss and may not insist upon the s. 519 process.

[91] The parties' respective rights to have a dispute submitted to the s. 519 process are not absolute. As stated in SC 4(10), "[t]here is no right to a dispute resolution process until" a specific demand is made in writing, and until a proof of loss is delivered. Neither of these events occurred in the present case, and the Appellant's failure to comply with s. 523(1) is the legal cause of their non-occurrence.

[92] Further, s. 585.1(6)'s requirement to follow the s. 519 resolution process only arises where "a dispute arises because the insured is not satisfied with the amount of a proposed settlement". Again, this language presumes that the dispute between the insurer and the insured has progressed to the point of a settlement proposal by the insurer, which again presumes that a proof of loss has been delivered, which again presumes that the blank forms have been furnished by the insurer. The evidence in the present case indicates that the Appellant's last correspondence before being sued was to the effect that any damages or repairs still needed to be reviewed and approved by an appraiser. Although some without prejudice discussions might potentially have occurred off the record, I see no evidence or acknowledgment that any "proposed settlement" for the purposes of s. 585.1(6) was ever provided by the insurer.

[93] In this case, the Appellant failed to prove that it furnished the Respondent with the forms necessary to prepare a proof of loss as required by s. 523(1). Consequently, the Respondent cannot be expected to have delivered a completed proof of loss, and neither side was able to "demand in writing the other's participation in a dispute resolution process" pursuant to s. 519(4). Further, there is no evidence that the Appellant provided the Respondent with a "proposed settlement" for the purposes of s. 585.1(6). Under these circumstances, SC 4(10) of s. 556 states that "[t]here is no right to a dispute resolution process", and the Alberta Court of Justice retained its jurisdiction under s. 9.6(1)(a)(B) of the *Court of Justice Act*, RSA 2000 c C-30.5 to hear and determine the entirety of this dispute.

I. Relief from Forfeiture

[94] Although unnecessary to the disposition of this appeal, I find it potentially useful to offer the following comments on the subject of relief from forfeiture, which was an important aspect of the trial judge's decision in this matter. In doing so, I emphasize that neither party has

appealed this aspect of the decision, and there is presently no request before me to grant the Respondent relief from the consequences of his failure to submit a proof of loss.

[95] Section 520 of the *Insurance Act* provides that “the Court” may grant relief from forfeiture where there has been imperfect compliance as to the obligation to provide a proof of loss among other matters:

Relief from forfeiture

520 If the Court considers it inequitable that there has been a forfeiture or avoidance of insurance, in whole or in part, on the ground that there has been imperfect compliance with

(a) a statutory condition, or

(b) a condition or term of a contract

as to the proof of loss to be given by the insured or the claimant or another matter or thing done or omitted to be done by the insured or the claimant with respect to the loss, the Court may relieve against the forfeiture or avoidance on any terms it considers just.

[96] Relief from forfeiture under provisions like s. 520 has been granted in several cases to relieve against the consequences of an insured’s failure to provide an insurer with a proper proof of loss (*P & M Management Consultants Ltd. v Sovereign General Insurance Co.* (1996), 110 Man R (2d) 312 (MB CA); *Qualiglass Holdings Inc. v Zurich Indemnity Co. of Canada*, 2004 ABQB 577 at paras. 61-95), and in particular where the absence of a proof of loss was attributable to the insurer’s failure to furnish the necessary forms (*O’Byrne v Farmers’ Mutual Insurance Company (Lindsay)*, 2014 ONCA 543 at paras. 26-27).

[97] In declining to grant relief from forfeiture to the Respondent in the present case, the trial judge correctly noted that s. 520 of the *Insurance Act* confers no relief from forfeiture jurisdiction on the Alberta Court of Justice since the definition of “Court” in s. 1(l) identifies only the Court of King’s Bench. Further, as a statutory Court, the Court of Justice has no inherent jurisdiction to grant relief from forfeiture. As just noted, the Respondent has not cross-appealed this aspect of the trial judge’s decision.

[98] In its written submissions, the Appellant argues that this Court’s jurisdiction in the context of the present appeal is subject to the same limitations as those applicable to the trial judge. In the Appellant’s submission, “[t]his Court must determine whether, within the limits of the jurisdiction of the Court of Justice, the decision was proper... The Plaintiff is only able to claim within the entitlements of the jurisdiction of the Court below.” In support of this proposition, the Appellant cites *Koopmans v Joseph*, 2014 ABQB 395 at paras. 117-119 and *Palmer v Van Keulen*, 2005 ABQB 239 at paras. 9-13. With respect, however, those cases merely confirm that appeals to this Court from the Alberta Court of Justice are generally to be conducted on the record, although this Court may order that the appeal be heard as a trial *de novo* (*Court of Justice Act*, s. 51). This means that where there is no order that the trial be heard *de novo*, the parties may not lead new evidence without leave. It does not necessarily mean that this Court’s jurisdiction is limited to that of the court appealed from.

[99] The parties acknowledge that nothing in s. 520 of the *Insurance Act* limits its applicability to trials as opposed to appeals. The same may be said of this Court's general jurisdiction to grant relief from forfeiture under s. 10 of the *Judicature Act*, RSA 2000, c. J-2:

10 Subject to appeal as in other cases, the Court has power to relieve against all penalties and forfeitures and, in granting relief, to impose any terms as to costs, expenses, damages, compensation and all other matters that the Court sees fit.

[100] Many statutes expressly confine the jurisdiction of an appellate court to that of the court appealed from. For example, s. 45 of the *Supreme Court Act*, RSC 1985 c. S-26 states that on an appeal the Court may give the judgment "that the court whose decision is appealed against should have given or awarded." Similarly, Rule 14.75(1)(c) of the *Alberta Rules of Court*, Alta Reg 124/2010 states that the Court of Appeal may "give any judgment or order that ought to have been made by the court appealed from". Other statutes confer a more expansive jurisdiction upon appellate courts. For example, s. 21(5)(b) of the *Divorce Act*, RSC 1985 c 3 (2nd Supp), provides that the appellate court may "render the judgment or make the order that ought to have been rendered or made, including such order or such further or other order as it deems just". In *Pelech v Pelech*, [1987] 1 SCR 801 at paras. 27-33, Wilson J. held that this language (in what was then s. 17(2)(b) of the *Divorce Act*) "would seem to signal a deliberate departure from the principles that are considered in some other jurisdictions to circumscribe appellate powers."

[101] The Legislature of Alberta did not state in the *Court of Justice Act* that this Court's appellate jurisdiction is limited to granting the judgment or order that the Alberta Court of Justice ought to have granted. Instead, it provides in s. 53(1)(b) that this Court should give "its" judgment. The Appellant appears to acknowledge that this language includes jurisdiction to grant relief from forfeiture in the context of a *de novo* appeal and no more restrictive provision applies to appeals on the record. A conferral of authority upon this Court to give its own judgment unhindered by the jurisdictional restrictions of the Alberta Court of Justice also makes sense given that this Court's judgment is final, and given that the matter may not be remitted back for a new trial:

Hearing of appeal

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.

[Emphasis added]

[102] Does s. 53 of the *Court of Justice Act* abrogate this Court's inherent and statutory jurisdiction to grant relief from forfeiture in the context of appeals from the Alberta Court of Justice? In my view, this issue must be approached in light of the longstanding principle stated

by Tindal C.J. in ***Albon v Pyke*** (1842), 4 Man & G 421 at p. 424: “The general rule undoubtedly is that the jurisdiction of the superior courts is not taken away, except by express words or necessary implication”. And as Lord Campbell stated in ***Balfour v Malcolm*** (1842), 8 Cl & F 485 at p. 500: “There can be no doubt that the principle is, that the jurisdiction of the Supreme Courts can only be taken away by positive and clear enactments in an Act of Parliament.” See also: ***Ordon Estate v Grail***, [1998] 3 SCR 437 at para. 46; ***Canada (Attorney General) v TeleZone Inc.***, 2010 SCC 62 at paras. 42-43.

[103] I of course recognize that this is not an appeal *de novo*. But I see nothing in s. 53 of the *Court of Justice Act* or the applicable case law that abrogates this Court’s equitable jurisdiction to grant relief from forfeiture in the context of the present appeal. Had it been necessary to the disposition of this appeal, I would have invited further submissions from the parties as to whether relief from forfeiture ought to be granted to the Respondent for his failure to submit a proof of loss given, among other circumstances, the Appellant’s failure to prove that it furnished the Respondent with the necessary forms.

V. Conclusions and Order Granted

[104] For these reasons, this appeal is dismissed.

Heard on the 27th day of March, 2026.

Dated at the City of Calgary, Alberta this 27th day of August, 2026.

N. Whitling
J.C.K.B.A.

Appearances:

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