

CITATION: Ward v. Intact Insurance Company, 2026 ONSC 5425
COURT FILE NO.: CV-23-00091-000
DATE: 2026-09-24

1. The Plaintiffs' entitlement to an immediate judgment for the difference between the actual cost value (ACV) and the replacement cost (RC) for both buildings;

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2. The Plaintiffs' entitlement to punitive damages;
 3. The Plaintiffs' entitlement to mental distress damages.

[3] I will deal with each issue in turn. Relying on the recent direction of the Court of Appeal in *Brown v. Meaney*, 2026 ONCA 445, I will briefly summarize the relevant trial evidence related to the particular issue. I will then summarize the applicable law on the issue. I will set out the position of the parties on the particular issue. I will then outline my reasons for decision on each issue.

[4] There was also a mid trial evidence question for which I promised further written reasons. Those reasons will be set out at the end of this judgment.

Issue 1. Are the Plaintiffs entitled to an immediate judgment for the difference between the actual cost value (ACV) and the replacement cost (RC) for both buildings?

The evidence

[5] Mr. Ward testified that he had used family members to complete the demolition of the Wood Frame building. Reconstruction of the Wood Frame Building started in 2026. Mr. Ward said that he has done clearing of trees and some site preparation in the area of the Quonset Hut. Mr. Ward admitted that as at the date he testified at trial, there was still work to be done to complete the demolition of the Quonset Hut. Mr. Ward explained that he cannot complete the demolition without using heavy equipment. He does not own such equipment. He testified that he needed money from Intact to hire contractors with access to such equipment. He indicated he had been to many financial institutions in Thunder Bay, none of whom were prepared to lend him any money.

[6] Mr. Ward testified it is his intention to replace the Quonset Hut once he has funds from Intact.

[7] Mr. Ward acknowledged he still has approximately \$8,000.00 of the funds advanced by Intact in December 2024 in respect of the ACV of both the Quonset Hut and the Wood Frame Building.

[8] At present the shell of the Wood Frame Building is up. The concrete floor is poured. The roof is on. Mr. Ward intends to put a metal roof on the building. He intends to clad the building with metal siding. As of trial, the electrical, interior finishing, windows and heating had yet to be installed in the newly constructed building. Mr. Ward intends to apply Tyvek house wrap in the near future to protect the shell of the building this winter.

[9] Sarah Khan testified for Intact. She is an Intact employee with the title “Claims Specialist, Property”. She works out of Intact’s offices in Ajax Ontario. She became involved in the plaintiff’s claim as of April 2023. She testified Intact has preferred contractors whom they designate as “RELY” to perform replacement or repair work for buildings which they have insured. Ms. Khan testified that it was Intact’s policy to pay replacement cost on a total loss building when the expenses are incurred to actually do the replacement work. Intact requires invoices or at least estimates if independent contractors are retained by the policy holder or the policy holder is using their own labour to do the replacement work.

The Law

[10] In *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 SCR 23, Wagner J. (as he then was) set out a number of principles for the interpretation of insurance contracts;

-The primary interpretive principle is that where the language of the policy is unambiguous, effect should be given to that clear language, reading the contract as a whole (at para. 49)

-If the policy's language is ambiguous, general rules of contract construction must be employed to resolve that ambiguity. These rules include that the interpretation should be consistent with the reasonable expectations of the parties, as long as that interpretation is supported by the language of the policy; it should not give rise to results that are unrealistic or that the parties would not have contemplated in the commercial atmosphere in which the insurance policy was contracted, and it should be consistent with the interpretations of similar insurance policies. (at para. 50)

-only if the ambiguity still remains after the above principles are applied can the contra proferentem rule be employed to construe the policy against the insurer (at para. 51)

-insurance contracts are to be interpreted consistent with the reasonable expectations of the parties and commercial reality (at para. 63)

-Parties reasonable expectations with respect to the meaning of a contractual provision can often be gleaned from the circumstances surrounding the contracts formation (at para. 65).

[11] In *Pardhan v. American Home Insurance Co.*, [1997] 31 O.R. (3d) 641 (C.A.), the Ontario Court of Appeal held that under an insurance policy providing indemnity for replacement costs of equipment, such indemnity was only required to be paid by the insurer upon actual replacement of the equipment.

[12] In *J.I.L.M. Enterprises & Investments Limited v Intact Insurance*, 2017 ONSC 357 ("the *Dorion Inn* case"), Newton J. was dealing with a claim, not unlike the one before this court, that involved a total loss of a building in the Northwest Region, a dispute over payment of replacement costs for the building, allegations of bad faith and a claim for punitive damages. In my view, the

case speaks helpfully to all issues in this matter. I will deal with the particular applicable statements of law applicable to each issue in turn.

[13] For the purposes of the issue of the plaintiffs' entitlement to a judgment now for payment of the full replacement costs, at paragraph 80 of the *Dorion Inn* case, Newton J. found that the plaintiff was entitled to be indemnified for the replacement cost of the building, subject to the policy limits, upon undertaking and completing replacement. This could be done by way of progress payments once construction commenced. However, the insured was not obligated to pay any amounts beyond the ACV paid until such work was underway.

[14] Following the release of the *Dorion Inn* decision Newton J. issued a brief addendum, *J.I.L.M. Enterprises & Investments Limited v Intact*, 2017 ONSC 4547 ("the *Dorion Inn Addendum*") where he clarified his judgment concerning progress payments by stating;

The replacement cost owing is payable upon satisfactory proof that the ACV funds have been expended for rebuilding/replacement

Positions of the parties

[15] There was no issue that the plaintiffs have commenced reconstruction of the Wood Frame Building. There was also no issue that the replacement building is of the same occupancy and of materials of similar quality to the Wood Frame Building.

[16] The plaintiffs' have two arguments as to why they are entitled to judgment now on the full amount of RC for both buildings. The first argument relies on principles of contractual interpretation. The second relies on authorities which the plaintiffs submit stand for the proposition that bad faith actions on the part of an insurer, relieves an insured from strict compliance with any

of their obligations under the policy to replace the insured property in any particular manner or order.

[17] The parties agreed that the relevant sections of the policy appeared at page 10 of 20 of the contract under the heading “Basis of Claims Settlement”. The particular clauses were as follows”

If you repair or replace the damages or destroyed building(s), on the same site, with a building of the same occupancy, constructed with materials of similar quality, within a reasonable time after the damage, we will pay the cost of repairs or replacement (whichever is less) without deduction for depreciation ...

If you decide not to repair or replace the damaged or destroyed building, we will pay the actual cash value of the damage at the date of occurrence.

[18] The Plaintiffs submit that, when the language of the policy is read as a whole, an ambiguity arises from the interaction of these clauses. The first paragraph indicates that nothing more than ACV is owing until replacement is complete. However, the second paragraph indicates that a payment only for ACV is limited to circumstances where the insured has "decided" not to replace. Those are two separate issues. The Plaintiffs submit an insured can decide to replace property without having completed all replacement work yet. It cannot be said that the clear intention of the policy is to only make RC payable once construction is completed.

[19] The Plaintiffs rely on the principles of contractual interpretation set out in the Supreme Court of Canada in *Ledcor*. They argue that ambiguity should be resolved in favour of the plaintiffs resulting in an order now. That order would be that Intact pay the difference between the ACV and the RC for both buildings. The amount is \$237,000.00.

[20] The second line of argument asserts that Intact has breached its duty of good faith to the Plaintiffs. As such, this breach relieves the Plaintiffs of having to comply with any further obligations to submit invoices or estimates for replacement work and entitles the Plaintiffs to be now fully indemnified for the RC. The Plaintiffs rely on the decision of *Donald A. Foley Ltd. v. Canadian Indemnity Co.*, 137 D.L.R. (3d) 274 (Ont. H.C.), where Grange J., at para. 17, found an express repudiation of an insurance contract by an insurer. Grange J. found the following:

I consider this the type of repudiation that renders unnecessary the fulfilment of a condition precedent before the adjudication of the claim. See Jureidini v. National British and Irish Millers Insurance Company, Limited, [1915] A.C. 499, particularly at p. 505 where Viscount Haldane asserted:

"... when there is a repudiation which goes to the substance of the whole contract I do not see how the person setting up that repudiation can be entitled to insist on a subordinate term of the contract still being enforced."

In any event, the order I intend to make will maintain for the insurance company the protection that "replacement" is intended to accomplish.

[21] The Plaintiffs argue that the conduct of Intact in this case was so egregious to attract an award of punitive damages and as such, the repudiation of the contract entitles the Plaintiffs to be able to demand full payment of the RC of the two buildings now.

[22] Intact argues that no monies are payable at present in respect of the RC for either building. The evidence is clear that the demolition of the Quonset Hut has yet to be completed. Demolition is a condition precedent of a rebuild.

[23] With respect to the Wood Frame Building, the evidence is clear Mr. Ward has funds remaining from his payout in December 2024. At a minimum he is required to expend these funds and then submit invoices for other labour and materials expended before Intact is required under

the terms of the policy to make the payments. Intact relies on the *Dorion Inn* case and the *Dorion Inn Addendum* made by Newton J.

Reasons for Issue 1

[24] I am persuaded by the submissions of Intact that the Plaintiffs' claim for judgment now for any monies in respect of the RC of either the Wood Frame Building or the Quonset Hut should be dismissed. I say so for the following reasons.

[25] In my view the language of the policy is unambiguous. It deals with two distinct circumstances. One circumstance is where the insured decides to rebuild and the other circumstance where they do not. I agree with the Plaintiffs' submission "You can decide to replace property without having completed all replacement work yet". However, decisions usually require action to demonstrate to others that such decisions have in fact been made. A "decision" is a question of fact. Some decisions are easier to take back than others. A decision to jump off a high bridge into a river is hard to deny or reverse once you take the second step off the ledge into the air. I use this example to demonstrate how action is necessary to prove the act of the decision.

[26] In my view, the language in the second paragraph of the policy at issue relying on the word "decision" does not create an ambiguity reading the contract as a whole. A contract is ambiguous

if it reasonably susceptible of more than one meaning: see *Hi-Tech Group Inc. v. Sears Canada Inc.*, [2001], 52 O.R. (3d) 97, at para. 18. I find the language in the policy at issue is not susceptible to more than one meaning. It is an either/or proposition. I cannot see such ambiguity in the language of this contract. It is plain, easily understood language recognizing an insured has bargained to be able to make a choice and has coverage for two scenarios, rebuild or not.

[27] In the case of interpreting an insurance contract, a commercially reasonable approach to interpreting such contracts concerning a “do one thing as opposed to another” provision in the agreement requires that “thing” to be evidenced by clear and identifiable actions. In this case, the Plaintiffs have clearly decided to replace the Wood Frame Building. The steps Mr. Ward has taken to actually rebuild the building evidence his decision. Intact has honoured the contract by paying out the ACV for the Wood Frame Building and is now awaiting further proof of rebuilding work beyond the funds paid on the ACV. His decision to rebuild does not entitle him to immediate payment of the full amount of the RC. I find Intact is taking a commercially reasonable approach to honouring the contract by committing to pay progress payments upon being furnished proper proof that the work has been done.

[28] I find the evidence of Mr. Ward at this trial indicates he has decided to replace the Quonset Hut. That is not the end of the matter for that building as I will discuss below. However, these decisions do not entitle the Plaintiffs to immediate payout for reasons I will discuss shortly. However, having picked a particular route, rebuilding, for the Wood Frame Building for sure, the Plaintiffs cannot say that another, now inapplicable, portion of the contract (the “decide not to

repair or replace clause”) can act to create an additional superior right on their part, namely the ability to direct full payment without the replacement being actually completed.

[29] I find the language of the Intact insurance contract with the Plaintiffs is unambiguous when it comes to the applicable clause concerning payment of ACV and RC.

[30] I also do not accept the second aspect of the Plaintiffs’ argument. I will discuss my findings concerning the allegations of the conduct of Intact in the matter under the section “Punitive Damages”. Ultimately, I am going to find that the Plaintiffs are not entitled to punitive damages for reasons discussed below. Regardless of what I do find about Intact’s conduct, in my view it did not amount to a repudiation of the contract such that reasoning as was demonstrated by Grange J. in *Donald A. Foley* would be applicable in this matter. Intact acknowledged the Plaintiffs’ claim. Intact made interim payments for contents, for demolition and payment of the ACV. The timeliness of these payments is an issue. However, in my view, Intact’s conduct was not that of a party repudiating its obligations under an insurance contract.

[31] I am persuaded by the argument of Intact and relying on the commercially reasonable approach taken by Newton J. in the *Dorion Inn* case, and the *Dorion Inn Addendum*, that Intact will be liable to pay progress payments for the rebuild on the Wood Frame Building once the Plaintiffs do two things. First, prove they have exhausted the ACV payments by demonstrating the funds were used in the replacement of the Wood Frame Building. Second, by providing receipts or reasonable estimates of the next steps in the construction process.

[32] In this case, I find on the evidence those steps have not been taken.

[33] I find from the agreed facts and the oral evidence at trial that the Plaintiffs have commenced work to replace the Wood Frame Building. I also find based on Mr. Ward's testimony that he has yet to exhaust the funds he received from the initial payment of the ACV for the Wood Frame Building. Further I find he has not submitted any invoices or estimates for the ongoing work to continue the replacement of the Wood Frame Building. I find this is a condition precedent for his receiving draw payments against the ultimate value that has been set for the replacement cost of the Wood Frame Building by the appraisal process under section 128 of the *Insurance Act*, R.S.O. 1990, c. I.8. I find he is entitled to receive such progress payments, once he has exhausted the funds received for the ACV payout and upon providing Intact with invoices demonstrating funds have been expended that were used to continue the replacement process. In my view, while commencing this claim was reasonable to protect his rights to enforce such payments, his actions to the date of trial do not entitle him to a judgment now for any further monies to which he will be ultimately entitled should he continue to do the replacement work on the Wood Frame Building.

[34] With regard to the Quonset Hut, relying on Mr. Ward's testimony, I find that demolition of that building has not been completed. I find Intact is relieved of any obligation to pay any further monies in respect of such demolition as the result of the settlement made with the Plaintiffs for demolition costs by virtue of a payment of \$74,000.00 on September 22, 2022.

[35] I find based on Mr. Ward's evidence that he intends to rebuild the Quonset Hut. However, I find that despite that intention, replacement work has not commenced because demolition of the old structure was not complete as at the date of trial. I find under the policy at issue, a building has to be demolished before it can be rebuilt.

[36] The Plaintiffs claim for judgment for indemnity or payment of any funds in respect of replacement costs for the Quonset Hut is dismissed. For reasons previously stated, the Plaintiffs claim for judgment for indemnity or payment of any funds in respect of replacement costs for the Wood Frame Building is dismissed.

Issue 2. Are the Plaintiffs' entitled to an award of punitive damages?

The Evidence

[37] The agreed statement of facts encapsulates the major events in the timeline of the processing of the claim at issue. The Plaintiff, Kelly Gallant, is Mr. Ward's common law spouse. She testified that Mr. Ward dealt exclusively with Intact in processing the claim. Mr. Ward's trial evidence described his interactions with the initial adjuster assigned to the file, Sandra Freeman, and various contractors sent by Intact to assess the state of the property. Mr. Ward's testimony went on at considerable length to describe his discomfort and concerns that the claim was not being processed with due dispatch. He gave great detail about his attempts to reach a live person to discuss his claim during the summer and fall of 2022. This evidence is more relevant to the claim for mental distress damages which I will discuss later, but it does have some bearing on the manner in which Intact processed the claim.

[38] Intact confirmed coverage on May 13, 2022. About a week later Intact received its first estimate from a RELY contractor, First General Services with respect to the Quonset Hut. First General produced an estimate for the Wood Frame Building on July 22, 2022. Intact did not produce these estimates to the Plaintiffs until January 29, 2026, about three and a half years later.

[39] Intact had obtained another quote from a steel fabricator in Thunder Bay, Coastal Steel in September 2022. This was discovered by Mr. Ward by accident in the fall of 2022.

[40] On or around June 24, 2022, Intact received its first estimate from OnSide Restoration with respect to the Wood Frame Building. OnSide is another RELY contractor. This estimate was first disclosed to the Plaintiffs during the course of the *Insurance Act* appraisal, which culminated in November 2024.

[41] Early on, Mr. Ward had indicated to Ms. Freeman in May 2022 of his preference to have First General do the demolition and reconstruction work.

[42] On July 18, 2022, Intact issued an advance to the Plaintiffs of \$13,000.00 representing a \$10,000 advance on the contents claim and a payment of a specific claim for a lost watercraft of \$3,000.00.

[43] The summer of 2022 was quite rainy in the Thunder Bay area. During this time, Mr. Ward repeatedly asked Intact to either provide him with Seacans to store his contents. He wanted to do it this way because most of his contents were bigger items like vintage snowmobiles, which following the collapse were sitting outside exposed to the elements. Alternatively, Mr. Ward requested that Intact pay to move the contents to off site indoor storage. Intact never acted on these requests. Mr. Ward moved a great deal of contents into his house, and he purchased outdoor car type cover units to try and protect the machinery. Apparently, the results were mixed. Photos tendered at trial show various rooms in the Plaintiffs home filled with stuff that came from the destroyed buildings.

[44] Mr. Ward testified he had hoped to have at least one of the buildings rebuilt by the end of summer 2022.

[45] On September 22, 2022, Intact settled with the Plaintiffs for demolition of both buildings and debris removal for a payment of \$74,000.00. This was made up of \$70,000.00 for demolition costs and \$4,000.00 for contents manipulation. Mr. Ward testified that this amount was very generous in his opinion. Subsequently he learned that Intact was in possession of estimates for demolition that were higher and were in the range of over \$100,000.00. These quotes were not disclosed to Mr. Ward before he settled the demolition claim.

[46] On December 21, 2022, the Plaintiffs through counsel, provided Intact with a Proof of Loss for the replacement costs of the buildings and their contents. The claim in this matter was issued February 27, 2023.

[47] Sandra Freeman went on medical leave in February 2023. I heard hearsay evidence as to the circumstances that led to her taking the leave.

[48] On August 21, 2023, Intact provided the Plaintiffs with approved Contents Assessment Reports, setting out the amounts that Intact had assessed for the value of the contents of both buildings. On August 25, 2023, the Plaintiffs invoked an appraisal process under s. 128 of the *Insurance Act* to settle the ACV and the RC for two buildings which collapsed under heavy snow in April 2022. The process concluded on November 28, 2024, with the umpire issuing an appraisal award for the following amounts;

- a. For the ACV for the Quonset Hut: \$78,000

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- b. For the ACV for the Wood Frame Building: \$180,000
 - c. For the RC for the Quonset Hut: \$195,000
 - d. For the RC for the Wood Frame Building: \$300,000.

[49] Other than indicating a motion was required to appoint the umpire for the appraisal process, there was no evidence given at trial explaining the delay from August 2023 to November 2024.

[50] On December 12, 2024, Intact paid the Plaintiffs the ACV for both buildings as determined by the umpire.

[51] The Plaintiffs commenced rebuilding the Wood Frame Building in the spring of 2026.

The Law

[52] Both parties submitted the *Dorion Inn* case as an excellent summary of the legal principles applicable to the issue of the scope of the duty of good faith by an insurer to an insured in settling a destroyed building claim.

[53] At para. 62, Newton J. set out the following:

The relevant principles pertaining to the duty of good faith are fairly consistent in case law and can be summarized as follows:

- a) There is an implied obligation in every insurance contract that the insurer will deal with claims from its insured in good faith and this requires an insurer to act promptly and fairly when investigating, assessing and attempting to resolve claims made by its insured;*
- b) The first part of the duty speaks to the timeliness in which a claim is processed by the insurer and requires the insurer to pay a claim in a timely manner when there is no reasonable basis to contest coverage or to withhold payment;*

c) *The second part of the duty requires the insurer to act fairly both in the manner in which the insurer investigates and assesses the claim and to the decision whether or not to pay the claim which includes the following considerations:*

i. *An insurer must assess the merits of the claim in a balanced and reasonable manner;*

ii. *An insurer must not deny coverage or delay payment in order to take advantage of the insured's economic vulnerability or to gain leverage in negotiating a settlement; and*

iii. *A decision to refuse payment should be based on a reasonable interpretation of its obligations under the policy;*

d) *The following guidelines have emerged from the case law with respect to the duty of good faith:*

i. *An insurer must perform a balanced and reasonable investigation and assessment of the first party claim;*

ii. *It must be prompt in handling and assessing the loss;*

iii. *The insurer must assess the merits of the claim in a balanced and reasonable manner;*

iv. *It must give as much consideration to the interests of the insured as it does to its own interest and is not to do anything to injure the insured's rights to benefits under the policy; and*

v. *It must exercise reasonable care in settling a claim.*

[54] Parties to a contract have a duty to act honestly and in good faith when performing contractual obligations: see *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494, at para. 33. In *Bhasin*, the court recognizes, at para. 34, that this duty is in line with what parties to a contract would reasonably expect upon entering into a contract.

[55] Specifically in the context of insurance contracts, the Supreme Court of Canada has affirmed that an insurer owes a duty of good faith to an insured party, with an expectation that the

insurer will deal with the insured party's claim fairly, in both the investigative and assessment stages: see *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2 SCR 3.

[56] A leading case in respect of punitive damages in the context of an insurance claim is the decision of the Supreme Court of Canada in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 SCR 595, at para 94 states:

94 (1) Punitive damages are very much the exception rather than the rule, (2) imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. (3) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant, (4) having regard to any other fines or penalties suffered by the defendant for the misconduct in question. (5) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation. (6) Their purpose is not to compensate the plaintiff, but (7) to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened. (8) Punitive damages are awarded only where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and (9) they are given in an amount that is no greater than necessary to rationally accomplish their purpose. (10) While normally the state would be the recipient of any fine or penalty for misconduct, the plaintiff will keep punitive damages as a "windfall" in addition to compensatory damages. (11) Judges and juries in our system have usually found that moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[57] The assessment of issues of good faith on the part of the insurer is context driven: see *Ferme Gerald Laplante & Fils Ltée v. Grenville Patron Mutual Fire Insurance Co.* [2002] 61 O.R. (3d) 481 (C.A.), at para. 78.

Positions of the Parties

[58] The Plaintiffs submit Intact mishandled this claim so badly as to amount to a breach of its duty of good faith under the policy at issue. The breach of that duty further entitles the Plaintiffs to an award of punitive damages necessary to ensure that Intact changes its ways. The Plaintiffs point to language in the policy which makes it clear Intact was selling “peace of mind” to Mr. Ward and Ms. Gallant. Among other things, the policy promises to the insured “A right to know how insurers calculate price based on relevant facts”. Intact was not transparent with the Plaintiffs in dealing with the claim. It held back information. It failed to deal with reasonable requests. Intact never supplied a storage solution for the large number of contents affected by the collapse of the two buildings. The Plaintiffs also submit an adverse inference should be drawn from the failure to call the main adjuster Ms. Freeman as a witness.

[59] As a result of this conduct the Plaintiffs seek an award of punitive damages of \$180,000.00.

[60] Intact submits there was no breach of any of its duties in this matter. It is admitted the request for Seacans “slipped through the cracks” but this conduct does not equate to a breach of the duty of good faith and certainly does not offend the Court’s sense of decency. The delay in the payment of the ACV resulted from the fact the ultimate number was in dispute and Intact legitimately could wait for the s. 128 *Insurance Act* appraisal process to play out. The Court should prefer the evidence of Ms. Khan that Intact was having difficulty obtaining proper reasonable quotes for the demolition of both buildings. The catastrophic circumstances in Thunder Bay in the spring of 2022 had a knock-on effect which delayed the normal process which otherwise would have seen the building claims be resolved more quickly. Estimates are not forwarded to insureds until they are approved internally. In this case it appears that the demolition quotes were never

approved and while “cashing out” an insured on a demolition claim is rare, it was an option for Intact in this case.

[61] Intact submits evidence of the company acting in accordance with its duties were demonstrated by the timely way that contractors were dispatched to the Plaintiffs property to assess the damage and prepare reconstruction quotes as well as the interim payments that were made in September 2022.

[62] Intact argues that there is no evidence before the Court that Intact committed an independent or separate actionable wrong causing damage to the Plaintiffs. No conduct in this case was harsh, vindictive, reprehensible or malicious such that it would serve to offend the Court’s sense of decency. Intact submits the claim for punitive damages should be dismissed.

Reasons for Issue 2.

[63] I find on the evidence before the Court at this trial proves on the balance of probabilities that Intact breached its duty of good faith with regard to its handling of the Plaintiffs’ claims for loss of the Wood Frame Building and the Quonset Hut. However, I also find that their conduct in so breaching, was not a marked departure from ordinary standards of decency; it was not malicious, oppressive or high-handed. The conduct was of a nature that entitles the Plaintiffs only to an award of moderate compensatory damages for the following reasons.

[64] There was no dispute that there is an implied obligation in every insurance contract that the insurer will deal with claims from its insured in good faith. Intact acknowledged that part of

its duty of good faith requires that it act promptly and fairly when investigating, assessing and attempting to resolve claims.

[65] I am persuaded by the arguments of the Plaintiffs that the facts of this case and the delays in moving the matter forward by Intact represented a breach of the duty of good faith on the part of Intact. While I have found there was no breach of the contractual obligation to pay various parts of the claim, I find on the evidence there was a breach of a distinct and separate obligation to deal with the Plaintiffs in good faith. However, I also agree with the submissions of Intact that whatever it did in processing this claim, the actions did not constitute conduct that could be said to be harsh, vindictive, reprehensible or malicious such that it would serve to offend the Court's sense of decency.

[66] I agree with the submissions of Intact that the evidence of Mr. Ward was rife with hyperbole. He spoke about never ever being able to speak to the adjusters and yet the records tendered at trial indicate Ms. Freeman spoke with him at least nine times from April 2022 to September 2022. Initially Mr. Ward testified that when Intact approved the claim in May of 2022 they were "the best company in the world". He testified he thought the offer to pay \$74,000.00 for demolition was very generous. In hindsight and with the benefit of later knowing what the estimates Intact had for demolition, Mr. Ward tempered his enthusiasm for this initial position. In September 2022, he testified it was clear in his mind that Intact was not going to do anything for him. Clearly, he was upset with his buildings collapsing under snow load. This was no doubt a highly unusual event, but the spring of 2022 was a highly unusual period of heavy snow that is perhaps difficult to comprehend for those who live in the more temperate places in this Province.

Nevertheless, I accept the evidence of Ms. Khan that this was a catastrophic event, and I view the actions of Intact through that lens.

[67] By September 2022, Intact had both of their RELY contractors visit the site and provide preliminary estimates on demolition. Intact had also approached other local contractors, Coastal Steel and Finn Way to provide reconstruction estimates for both buildings. The catastrophic event had slowed Intact down but they were coping. Nevertheless, it was not adequately explained in the evidence why these quotes were never provided to the Plaintiffs until 2026.

[68] Intact was working with MBC to complete a scope of work for the Wood Frame Building in the Fall of 2022. Why this did not lead to construction commencing in the Spring of 2023 was not explained. I understand and accept why Intact could not have been in a position to arrange to have contractors demolish the two buildings by October or early November 2022. Winter comes earlier in Thunder Bay than in other parts of the province. This has a practical impact on construction schedules for outdoor projects. Nevertheless, it does not explain why this claim did not proceed to construction or at least payment of the ACV for both buildings until after the s. 128 *Insurance Act* process was completed two years later.

[69] Once Intact accepted the claim for the two buildings that had collapsed, I draw an inference that it knew it was going to have to pay the ACV for both at some point sooner rather than later consistent with its duty to process claims in a reasonably timely manner. It was never formally explained in the evidence why this payment had to be left until the end of the s. 128 *Insurance Act* process. This is an evidentiary burden that Intact bore once the breach was asserted by the

Plaintiffs through the evidence of Mr. Ward of the delays and frustration in dealing with Intact about which he testified.

[70] On the evidence at this trial, I find that Intact was in a position to make an ACV payment by May 2023, based the quotes it had and the knowledge it had obtained from investigation of the claim, and which were provided to the insured in September 2023. The quotes given to the Plaintiffs on September 15, 2023, were in respect of the Wood Frame Building. In my view this indicates that Intact could have made an initial ACV payment to the Plaintiffs at least for this building by September 2023. No such payment was made until a year and 3 months later. In my view, this failure to pay the ACV for the Wood Frame Building in a reasonably timely way was a breach of the duty of good faith by Intact.

[71] I also find that Intact’s failure to assist the insured with interim storage of the contents of the buildings represented a breach of the duty of good faith. “Falling through the cracks” isn’t a good enough excuse when dealing with a sophisticated insurance company that has promised peace of mind. The contents were substantial. Intact knew that given the nature of some of the contents, vintage snowmobiles for example, that such items are susceptible to deterioration when they outside for extended periods of time. Also, the volume of personal items Mr. Ward had recovered from the Wood Frame Building were amply demonstrated in the photographs of these items being “stored” in his home. This would lead any reasonable person to understand some temporary form of reliable storage was required until the buildings were replaced. While there was a settlement for temporary storage costs in August 2023, this issue should have been addressed very early on in the claim, by July 2022 at the latest.

[72] I also find that Intact's conduct in regard to the demolition negotiations in September 2022 represented an occasion of breach of the duty of good faith on the part of Intact. In my view, the failure to provide the insured with the quotes that Intact had for demolition at the time it was negotiating to have Mr. Ward do the work himself, was a breach of the express promise to the Plaintiffs of "a right to know how insurers calculate price based on relevant facts". The quotes Intact had were clearly relevant. Despite Mr. Ward thinking at the time the offer was generous, hindsight tells us that it wasn't enough to have the demolition of the Quonset Hut completed.

[73] I accept Ms. Khan's evidence that it was unusual to have a non-commercial insured perform demolition work for a collapsed building. In my view, this unique aspect of how the claim was evolving, or really not evolving, by the Fall of 2022, heightened the need for disclosure by Intact. Mr. Ward was frustrated at that point in the delays in getting anything done. While I was not convinced that his frustration was anything out of the ordinary that anyone in his situation would be experiencing, he was negotiating a unique approach to resolution of one aspect of his claim without the benefit of relevant information that Intact had. Intact owed him a duty to act in good faith and was required to disclose all relevant information.

[74] In my view, this breach of duty calls for an award of compensatory damages. I assess these damages relying in part on as percentage type methodology employed by Newton J. in the *Dorion Inn* case with respect to his assessment of punitive damages for the plaintiffs in that matter. I see assessing damages as a percentage of monies that should have been paid for the various parts of the claim for which there was a breach as a meaningful way to express the severity of the breach at issue. I assess 5% of the ACV paid for the Wood Frame Building, plus 5% of the amount that

was paid for demolition to the Plaintiffs plus \$5,000 for breach of the duty to provide an adequate storage solution as appropriate compensatory damages in this matter.

[75] For reasons just stated, the Plaintiffs will be entitled to a payment of \$17,700.00 for compensatory damages in this matter for breach of the duty of good faith by Intact (5% of 180,000 = \$9,000.00 + 5% of \$74,000.00 = \$3,700.00 + \$5000.00 = \$17,700.00). The claim for punitive damages is dismissed.

Issue 3. Is Mr. Ward entitled to mental distress damages?

The trial evidence

[76] Mr. Ward's evidence comprised the majority of the relevant evidence that the Court received on this issue. Ms. Gallant's evidence was important in one significant respect. She testified Mr. Ward always had a "short temper". Mr. Ward testified the interactions he had with Intact caused him to lose weight, to endure sleepless nights and to lose his appetite. He was and is experiencing some long-term health issues, such as problems with this heart but he testified he is not blaming Intact for those specific issues.

[77] The Plaintiffs did not provide any independent evidence in support of Mr. Ward's claim for mental distress.

The Law

[78] In *Fidler*, the Supreme Court of Canada dealt with the issue of claims for mental distress in circumstances of insurance contracts. *Fidler* established a number of important principles:

-damages for mental distress can exist in "peace of mind" contracts (para. 43);

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- damages for mental distress for breach of contract may, in appropriate cases, be awarded as an application of common law principles of contract interpretation relating to considerations of the reasonable expectations of the parties in contract formation (para. 44);
 - not all mental distress associated with a breach of contract is compensable (para. 45);
 - a plaintiff must prove the loss; in order to do so the court must be satisfied;
 - that the object of the contract was to secure a psychological benefit and that the degree of mental suffering caused by the breach was within the reasonable expectations of the parties;
 - that the degree of mental suffering caused by the breach was of a degree sufficient to warrant compensation;
 - answers to these questions are case specific. (para. 47);

[79] In *Saadati v. Moorhead*, 2017 SCC 28, [2017] 1 SCR 543, the Supreme Court of Canada confirmed that mental distress need not be proven through a recognized psychiatric diagnosis in a tort claim. However, a plaintiff must show a serious and prolonged disturbance that rises above ordinary emotional upset. There is no legally cognizable right to happiness: see *Saadati*, at para. 37.

Position of the Parties

[80] The Plaintiffs submit that Mr. Ward has suffered compensable mental suffering because of Intact's mishandling of this claim. This should result in an award of \$35,000.00.

[81] Intact submits that Mr. Ward's upset, frustration and agitation fall short of compensable mental distress.

Reasons on Issue 3

[82] As indicated above I have found that Intact did not breach the contract in this matter with respect to payment of the claims that arose from the loss. There is no question, the contract at issue was one where peace of mind was contemplated by the parties. I have found Intact committed an independent actionable tort of breach of the duty of good faith. I find on the evidence that Mr. Ward's allegations fall short of a compensable claim for mental distress damages. I found his evidence not credible in respect of this issue. He seeks to portray himself as a relatively unsophisticated party. I assess his credibility on that point in light of his past experience. In my view, it suggests Mr. Ward was not an unsophisticated party lacking knowledge of commercial matters such as how insurance companies might deal with larger sophisticated claims.

[83] Mr Ward ran a major commercial hotel in Thunder Bay. He practiced law. These are not activities that leave a person unaware of commercial realities and how insurers interact with insured persons. Complicated losses sometimes take time to process. What was at stake was not insignificant. It was clearly important to Mr. Ward. However, his frustrations in dealing with the claim did not prevent him from retaining counsel, from negotiating settlement of several aspects of his claim and ultimately beginning the process of beginning to rebuild one of the two destroyed buildings. Whatever upset he experienced, in my view, did not reach a threshold of serious and prolonged distress that rose above the ordinary annoyances, anxieties and fears that a person living in this society would routinely experience. I find that Intact did not breach the contract in failing to provide Mr. Ward "peace of mind". In my view, his expectations of what constituted "peace of mind" were inflated. Any damages in this matter arise from a tort claim for breach of duty rather than a breach of promise arising from the contract.

[84] In my view the Plaintiffs' claim for mental distress damages had an air of "throw everything up against the wall and see what sticks". It was not persuasive on this point.

[85] For these reasons Mr. Ward's claim for mental distress damages is dismissed.

The Interim evidentiary ruling

[86] During Mr. Ward's testimony, the Plaintiffs sought to enter two documents into evidence. One was an excerpt of a written submission made by Frank Castaldo, acting as an appraiser in the s. 128 *Insurance Act* proceeding. The second was an email, from Dylan Cox (counsel to the Plaintiffs at this trial) acting in a capacity as an appraiser in the same s. 128 *Insurance Act* proceeding requesting production of documents from Intact Insurance.

[87] The Plaintiffs argued these documents were relevant to the issue of an allegation of bad faith on the part of the defendant Intact, in the handling of the claims at issue and therefore were properly admissible.

[88] Intact submitted these documents were inadmissible.

[89] Following oral submissions, I ruled the documents were inadmissible and that further written reasons would follow. Here are those reasons.

[90] I was persuaded by the arguments of Intact that this evidence was inadmissible. I say so for two main reasons.

[91] First, the decision of the Divisional Court in *Dominion of Canada General Insurance Company v. Nelson*, 2023 ONSC 386 which at paragraph 52 holds that an appraiser appointed by

a party pursuant to a section 128 *Insurance Act* proceeding is acting as a statutory decision maker and not as an employee of the party who appointed them as an appraiser. As such, a requisite element of control that is a requirement for vicarious liability for what is done in the appraisal process is missing from a connection of these documents to relevance in this trial. Whatever Mr. Castaldo did, both in making submissions and in responding to Mr. Cox's request for productions, was done in his capacity as statutory decision-maker and not as an employee of Intact. This evidence is therefore not relevant to this trial because it is not evidence of the actions of the insurer, the named defendant in this matter.

[92] Second, I find that despite the fact that the section 128 *Insurance Act* proceeding was not a matter to which the *Statutory Powers and Procedure Act* R.S.O. 1990 c. S22 applies, it is nonetheless an occasion where all three persons involved, the two appraisers and the umpire were exercising a statutory power of decision. This is an important process unique to the *Insurance Act*. In that regard, I find that the process of how and why the appraisers and the umpire reached their collective decision is subject to the common law protection of deliberative secrecy. This doctrine provides that decision makers cannot be compelled to testify about their deliberations or how or why a particular decision was reached.

[93] Recently Matheson J. in *Derenzis v. Gore Mutual Insurance Co*, [2025] O.J. No. 2009, (Divisional Ct) helpfully summarized the law of deliberative secrecy as follows;

[35] Deliberative secrecy protects the decision-making process. It is a core component of judicial independence: Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval, 2016 SCC 8, [2016] 1 S.C.R. 29, at para. 57.

[36] Although the principle of deliberative secrecy does not apply as strongly to administrative tribunals as to courts, the Supreme Court of Canada has confirmed that deliberative secrecy is the general rule for administrative tribunals: *Summitt Energy Management Inc. v. Ontario Energy Board*, 2012 ONSC 2753 (Div. Ct.), at para. 80; *Grogan*, at para. 16.

[37] Under "the rule of deliberative secrecy, members of administrative tribunals generally cannot be required to testify about how or why they reach their decisions": *Summit Energy*, at para. 80.

[38] Deliberative secrecy "also favours administrative consistency by granting protection to a consultative process that involves interaction between the adjudicators who have heard the case and the members who have not, within the rules set down in [Consolidated-Bathurst]. Without such protection, there could be a chilling effect on institutional consultations, thereby depriving administrative tribunals of a critically important means of achieving consistency": *Ellis-Don Ltd. v. Ontario (Labour Relations Board)* 2001 SCC 4, [2001] 1 S.C.R. 221, at para. 53.

[39] Deliberative secrecy extends to internal communications and the administrative aspects of the decision-making process: *Summit Energy*, at para. 79; *Chestacow v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 389, at paras. 33-34. However, the of the administrative decision-making is not absolute and will yield where there is an evidentiary basis to allege that the right of natural justice has been infringed: *Tremblay v. Québec (Commission des affaires sociales)*, [1992] 1 S.C.R. 952; *Payne*, at para. 168; *Chestacow*, at para. 34.

[40] The secrecy can be lifted if a litigant can show a "clearly articulated and objectively reasonable concern that a relevant legal right may have been infringed... [I]n view of the importance of the principle of deliberative secrecy in the administrative decision-making process, examinations based on conjecture or mere speculation will not be allowed": *Payne*, at para. 172.

[94] While the *Dominion* decision makes it clear that the s. 128 *Insurance Act* process is not adjudicative, it is nevertheless an occasion of exercising a statutory power of decision based on discussion and on the sharing of expertise in valuation. It is meant to be an expeditious forum for settlement. It is still a decision-making process that is worthy of the same protections that the common law affords persons acting in an adjudicative role in the administrative law field. In my view, it serves to promote rather than discourage, open and frank discussions of the issues. Mr.

Castaldo has not been summoned by either party to testify at this trial. I saw the effects of allowing this evidence to be placed before the Court as an attempt to circumvent this form of protection which attaches to this type of evidence.

[95] In my view, the document outlining Mr. Castaldo's submissions is evidence that cannot be compelled by the operation of a common law doctrine protecting the manner in which statutory decision makers go about the process of doing their work. Further, the request made by Mr. Cox was made in his capacity as an appraiser, a statutory decision maker. It was therefore integral to the collaborative decision-making process involved in the ultimate decision concerning the ACV and the RC for the two buildings which were covered by the Intact policy at issue.

[96] Deliberative secrecy is not absolute. It can be lifted if there is some basis for a clearly articulated and objectively reasonable concern that a relevant legal right may have been infringed in respect of that adjudicative process.

[97] In this matter, there is no claim by the Plaintiffs that the s. 128 *Insurance Act* process was flawed, did not follow the rules of natural justice or gave rise to a reasonable apprehension of a lack of adjudicative independence. The issue raised is an allegation of bad faith by Intact, which, despite Mr. Castaldo's connections to that company in other matters related to the processing of the insurance claim at issue, cannot be attributed to Intact because of what Mr. Castaldo did or did not do in his capacity as a statutory decision maker in the s. 128 *Insurance Act* process.

[98] For these reasons I find the evidence was not relevant to the proceeding and was not to be admitted.

Conclusion

[99] I order that Intact pay the Plaintiffs jointly and severally the sum of \$17,700.00 as damages for breach of the duty of good faith. All other claims in this action are dismissed.

[100] The parties have made a prior agreement regarding costs. The agreement was contingent upon an offer to settle made by Intact which was not disclosed. In light of this judgment, and if it is necessary to incorporate a costs order in the final order, I invite counsel to make what I trust will be a joint submission regarding costs which can be made part of the final order. Counsel for the Plaintiffs can submit the final order to my judicial assistant XXX.

[101] I thank counsel for their collaborative, professional approach to the matter and the quality of their written submissions. They were most helpful to the Court.

Released: September 24, 2026

The Hon. Mr. Justice F.B. Fitzpatrick

CITATION: Ward v. Intact Insurance Company, 2026 ONSC 5425
COURT FILE NO.: CV-23-00091-000
DATE: 2026-09-24

2026 ONSC 5425 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

George Ward and Kelly Gallant

Plaintiffs

– and –

Intact Insurance Company

Defendant

REASONS FOR JUDGMENT

Fitzpatrick J.

Released: September 24, 2026