COURT OF APPEAL FOR ONTARIO

CITATION: 2069586 Ontario Inc. v. Sovereign General Insurance Company, 2026 ONCA 655
DATE: 20260924
DOCKET: COA-25-CV-1164

Tulloch C.J.O., Sossin J.A. and O'Marra J. (*ad hoc*)

BETWEEN

2069586 Ontario Inc., 1138319 Ontario Inc., and Carmelo Calabrese

Plaintiffs (Appellants)

and

Sovereign General Insurance Company* and Bank of Montreal

Defendants (Respondent*)

Kyle C. Armagon, for the appellants

Ramon Andal, for the respondent

Heard: March 20, 2026

On appeal from the judgment of Justice John R. McCarthy of the Superior Court of Justice, dated August 22, 2025, with reasons reported at 2025 ONSC 4468.

Tulloch C.J.O.:

I. OVERVIEW

[1] This appeal concerns the interpretation of a Mortgage Broker Errors and Omissions Liability Policy issued by the respondent, Sovereign General Insurance

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Company (“Sovereign”), to Aztec Financial Corp. (“Aztec”), a licensed mortgage brokerage.

[2] The appellants were victims of a fraud committed by Aztec and its principal, Barbara Romanow. In connection with a proposed mortgage financing, the appellants paid $459,975 to Aztec to be held in trust. The funds were misappropriated. The appellants obtained judgment against Aztec, Romanow and others but, after partial recovery, $353,520.92 of that judgment remains unpaid.

[3] The appellants sought recovery of that amount from Sovereign under Aztec’s errors and omissions insurance policy. The policy generally excludes losses resulting from dishonest or fraudulent conduct, but an endorsement provides fraud coverage in specified circumstances, including where an insured is legally liable to a third party for a “failure to advance or secure mortgage funds” as a result of a dishonest or fraudulent act.

[4] The motion judge granted summary judgment dismissing the appellants’ action against Sovereign. He concluded that the fraud endorsement did not apply because the money misappropriated by Aztec was held in trust and was, therefore, “trust funds”, not “mortgage funds”.

[5] The distinction is important, but in my respectful view, the motion judge approached it incorrectly. He treated the fact that the appellants’ money was held in trust as excluding its character as money provided in connection with obtaining

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mortgage financing. But those characterizations are not mutually exclusive. Indeed, the regulatory scheme itself requires money received by a mortgage brokerage in connection with its mortgage business to be held in trust. The fact that the appellants' money was held in trust, therefore, did not, without more, determine whether it was also "mortgage funds" within the meaning of the fraud endorsement.

[6] More fundamentally, the motion judge erred by severing the interpretation of the insurance contract from the regulatory regime pursuant to which the insurance was required. The policy was not an ordinary private insurance arrangement existing independently of regulation. Aztec was required to maintain errors and omissions insurance with extended fraud coverage as a condition of operating as a licensed mortgage brokerage in Ontario. The regulatory scheme was, therefore, part of the legal and commercial context in which the policy was issued.

[7] This does not permit a court to rewrite a policy whose terms unambiguously grant less coverage than the regulatory regime requires brokerages to carry. It does, however, require a court, where the language reasonably permits it, to favour an interpretation consistent with the governing regulatory requirements over one that places the contract in conflict with them. Parties are presumed to intend to comply with regulatory obligations.

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[8] Here, read in context, the phrase “failure to advance or secure mortgage funds” unambiguously encompasses the appellants’ loss. The money was provided to Aztec as a condition of obtaining mortgage financing and remained mortgage-related funds notwithstanding that Aztec was required to hold it in trust. Aztec failed to secure those funds from loss and, as a result of the fraud, the contemplated mortgage financing was not secured.

[9] The competing interpretation would have a striking consequence. Money received by a mortgage broker in connection with mortgage business is required by the regulatory scheme to be held in trust. Yet, Sovereign says that the very fact that the money is held in trust removes it from the fraud coverage applicable to mortgage funds. On that interpretation, the regulatory requirement designed to safeguard client money becomes the reason why the insurance intended to protect against fraud involving such transactions does not respond.

[10] I do not consider that to be a reasonable interpretation of the policy when read as a whole and in its regulatory context.

[11] To the extent any ambiguity remains, the ordinary principles governing the interpretation of contracts and, in particular, insurance contracts, including the reasonable expectations of the parties, commercial reasonableness, and *contra proferentem*, resolve that ambiguity against the insurer.

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[12] I would, therefore, allow the appeal, set aside the summary judgment granted to Sovereign, and grant summary judgment to the appellants.

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II. BACKGROUND

A. THE MORTGAGE TRANSACTION

[13] One of the appellants, Carmelo Calabrese, is a businessman in the construction and home building business. He is the principal of the two appellant companies, 2069586 Ontario Inc. and 1138319 Ontario Inc.

[14] In 2016, the appellants sought mortgage financing to fund the purchase of a student housing development property.

[15] They dealt with Aztec, a licensed mortgage brokerage, and its principal, Romanow. Aztec introduced the appellants to Community Life Projects Inc. ("Community Life") as a potential lender in connection with proposed financing of approximately $6.75 million. Romanow was also a principal of Community Life.

[16] As a condition of the proposed financing, the appellants were required to provide $350,000 USD, equivalent at the time to $459,975 CAD. That requirement was meant to demonstrate the appellants' commitment and ability to fund a major transaction.

[17] The money was paid to Aztec pursuant to an agreement under which it was to be held in trust pending the contemplated financing. The money was to be returned to the appellants without interest or deduction 19 days later. Calabrese

expected that Community Life would either commit or decline to provide mortgage financing by that payment return date.

[18] Calabrese expected Community Life to provide the financing shortly after he made the payment to Aztec. He became concerned when the financing did not proceed. He asked his lawyer to investigate. His lawyer learned that Romanow had removed most of the money from the account. That money was not returned. The remaining funds were frozen by Aztec's bank, the Bank of Montreal ("BMO").

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B. THE AZTEC ACTION

[19] The appellants commenced an action against Aztec, Romanow, Community Life and others. They alleged, among other things, breach of contract, breach of trust, conversion and fraud.

[20] Aztec and Romanow did not defend the action. They were noted in default and the appellants obtained judgment.

[21] The judgment totalled $467,975, together with costs of $9,742.18. The appellants subsequently recovered $114,196.26 by garnishing the frozen funds.

[22] The amount remaining unpaid is $353,520.92.

C. THE REGULATORY FRAMEWORK

[23] As a licensed mortgage brokerage, Aztec was subject to the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the

"*Mortgage Brokerages Act*"). That statute required Aztec to comply with provincial standards of practice. Breaching those standards is an offence: ss. 7(4), 48(2).

[24] In 2008, Ontario established those standards of practice by a regulation – *Mortgage Brokerages: Standards of Practice*, O. Reg. 188/08 (the "Regulation").

[25] The Regulation required Aztec to carry regulator-approved errors and omissions ("E&O") insurance. That insurance must offer extended coverage for loss resulting from fraud up to a minimum of $500,000 for a single occurrence. Section 42 of the Regulation provides:

> **Duty to have insurance**
>
> 42. (1) A brokerage shall maintain errors and omissions insurance in a form approved by the Chief Executive Officer with extended coverage for loss resulting from fraudulent acts or shall have some other form of assurance in a form approved by the Chief Executive Officer.
>
> (2) The insurance or other assurance must be sufficient to pay a minimum of $500,000 in respect of any one occurrence involving the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf and $1 million in respect of all occurrences during a 365-day period involving the brokerage or any such broker or agent.

[26] The regulator established minimum requirements for the mandatory E&O insurance by issuing the *Mortgage Brokerages and Administrators Errors &*

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Omissions Insurance Guidelines (the "Guidelines"). Those Guidelines are reproduced in Appendix A.

[27] The Guidelines guarantee a direct right of action for injured third parties. They mandate "additional coverage for loss resulting from fraudulent acts". That mandate, the Guidelines state, "will operate to protect the public".

[28] The Guidelines require each insurer to confirm in writing that its E&O policies meet these requirements. If the insurer does, the regulator may accept the policy as proof of the brokerage's regulatory compliance.

D. THE SOVEREIGN POLICY

[29] Because Aztec was required to carry insurance, it obtained a Mortgage Broker Errors and Omissions Liability Policy from Sovereign. The relevant policy provisions are reproduced in Appendix B.

[30] The principal E&O insuring agreement provided coverage for damages that the insured became legally obligated to pay as a consequence of a wrongful act arising out of or in connection with the rendering or failure to render professional services.

[31] The policy contained exclusions relating to, among other things, dishonest, fraudulent and criminal conduct; personal profit or advantage to which the insured was not legally entitled; and, the commingling of, loss of, inability to pay, collect or safeguard funds in the insured's care or custody.

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[32] Those exclusions, standing alone, would present an obvious difficulty for the appellants. The liability established against Aztec and Romanow arose from intentional and fraudulent conduct.

[33] The policy, however, did not stop there.

[34] The policy's endorsement for brokerages licensed in Ontario provided specific protection in respect of dishonest or fraudulent conduct.

[35] The endorsement recognized the regulatory context. It acknowledged that Aztec was a provincially licensed brokerage. It defined the professional services covered coextensively with the mortgage-related activity regulated by the *Mortgage Brokerages Act*. It barred Sovereign from cancelling the policy, declining to renew it, or reducing its limit without first giving 30 days notice to the regulator.

[36] The endorsement's "Dishonest or Fraudulent Act" provision is of particular importance. That provision applies where an insured is legally liable to a third party for a "failure to advance or secure mortgage funds" resulting from dishonest or fraudulent conduct in the business of the licensed mortgage brokerage. Its policy limit matches the Regulation's minimum threshold. It provides:

> Dishonest or fraud coverage afforded under this endorsement shall apply to claims, in excess of the deductible, for which an Insured is legally liable to a third party for failure to advance or secure mortgage funds as a result of any dishonest or fraudulent act by one or more Insureds acting directly or in collusion with others in the

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> conduct of the business of the Named Insured as a licensed mortgage broker in the Province of Ontario …
>
> …
>
> G. The limit of liability under this section shall be $500,000 per claim …

[37] The relationship between that endorsement and the general exclusions lies at the heart of this appeal. Sovereign accepts that the former creates an exception to the latter. But it submits that this exception is both narrow and inapplicable.

E. THE SOVEREIGN ACTION & THE DECISION BELOW

[38] The appellants commenced an action against Sovereign and BMO to recover the outstanding judgment balance. They moved for summary judgment against Sovereign. They relied upon the E&O policy.

[39] Sovereign maintained that the policy did not respond. It relied on the exclusions for fraud, personal profit and loss of funds in the insured's custody. More particularly, it argued that the endorsement did not assist the appellants because the money misappropriated by Aztec was not "mortgage funds".

[40] The motion judge accepted Sovereign's position.

[41] He found that fraud exclusion barred coverage unless the endorsement's exception applied. In his view, it did not.

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[42] He characterized the appellants' loss as arising from Aztec's failure to hold and return trust funds rather than from a failure to advance or secure mortgage funds.

[43] In interpreting "mortgage funds", the motion judge adopted the definition of "mortgage money" from s. 1 of the *Mortgages Act*, R.S.O. 1990, c. M.40 – namely, "money or money's worth secured by a mortgage". Because the appellants' payment was not secured by a mortgage, he concluded that it could not constitute mortgage funds for purposes of the endorsement.

[44] The appellants also relied upon the regulatory regime governing mortgage brokerage insurance, including the *Mortgage Brokerages Act*, the Regulation, and the Guidelines.

[45] The motion judge recognized that his construction of the endorsement clashed with that regulatory framework. He acknowledged that the Guidelines appear to mandate "a general and inclusive fraud endorsement" that, unlike his interpretation of the endorsement, is not restricted to the failure to secure or advance money secured by a mortgage.

[46] However, the motion judge declined to give that regulatory context interpretive significance. Among other things, he observed that the appellants had not sought a declaration that Sovereign's policy failed to comply with regulatory requirements; that there was no evidence that Sovereign had provided or

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acknowledged the undertaking on which the appellants relied; and that the regulator was not before the court.

[47] He, therefore, concluded that the policy must be interpreted according to its terms and that the fraud endorsement did not apply.

[48] He granted summary judgment dismissing the appellants' action as against Sovereign and ordered the appellants to pay Sovereign $12,500 in costs.

III. ISSUES

[49] In my view, the appeal can be resolved by addressing two issues:

1. Properly interpreted, does the endorsement cover the appellants' loss?
2. If so, should this court grant the appellants summary judgment?

IV. STANDARD OF REVIEW

[50] The policy is a standard-form insurance contract. Its interpretation has precedential significance beyond the immediate parties and is reviewable for correctness: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23.

[51] The underlying facts are largely undisputed. The essential question is the legal meaning of the policy in the statutory and regulatory context in which it was issued.

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[52] No deference is, therefore, owed to the motion judge on the central interpretive question.

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V. ANALYSIS

A. THE ENDORSEMENT GRANTS COVERAGE

1. The Governing Principles of Interpretation

[53] There are three steps to interpreting insurance contracts: (1) clear intent, (2) general interpretive rules, and (3) *contra proferentem*. See *Emond v. Trillium Mutual Insurance Co.*, 2026 SCC 3, 509 D.L.R. (4th) 583, at paras. 37-50.

[54] First, the starting point is the language chosen by the parties, read in the context of the policy as a whole and the surrounding circumstances. To protect the insured, ordinary words should generally be given the everyday meaning that the average person would expect in context. Where the language is unambiguous, effect must be given to that language. If the language is ambiguous, the analysis proceeds to step two: *Emond*, at paras. 37-44; *SIR Corp. v. Aviva Insurance Company of Canada*, 2023 ONCA 778, 490 D.L.R. (4th) 278, at paras. 40-41, leave to appeal refused, [2024] S.C.C.A. No. 16.

[55] Second, general contract interpretation rules are applied to resolve the ambiguity. Those rules include the reasonable expectations of the parties and commercial reasonableness. Thus, a construction that substantially deprives an endorsement of its intended operation is not to be preferred where another

reasonable construction gives it meaningful effect: *Emond*, at paras. 48-49; *Ledcor*, at paras. 70, 79.

[56] Third, where ambiguity remains after application of the ordinary principles of interpretation, the established insurance principle of *contra proferentem* becomes relevant. Coverage provisions are interpreted broadly, exclusions narrowly, and unresolved ambiguity is construed against the insurer: *Emond*, at para. 50; *Ledcor*, at para. 51.

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2. Step One: The Endorsement Unambiguously Grants Coverage

[57] The motion judge erred at step one by reading the endorsement in isolation from its regulatory context. Once interpreted in light of that surrounding circumstance, the endorsement unambiguously grants coverage.

a. The Regulatory Context Was a Relevant Surrounding Circumstance

[58] The step one interpretive analysis is holistic and contextual. Those principles assume particular significance here because this insurance was issued in a regulated industry and in satisfaction of a mandatory insurance requirement.

[59] That regulatory context is a relevant surrounding circumstance. Party intent to comply with the law is presumed. Contracts should thus be interpreted to meet the regulatory obligations which the parties expected them to fulfill. This “sensible and straight forward rule” respects both party intent and regulatory policy: Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed. (Toronto: LexisNexis

Canada Inc., 2020), at pp. 171-72; see also *1298417 Ontario Ltd. v. Lakeshore (Town)*, 2014 ONCA 802, 122 O.R. (3d) 401, at paras. 13-15, leave to appeal refused, [2015] S.C.C.A. No. 43; Sir Kim Lewison, *The Interpretation of Contracts*, 8th ed. (London: Sweet & Maxwell, 2024), at para. 4.41.

[60] This rule applies to insurance contracts. An early case addressed an auto insurance policy in a regulatory context where it was an offence to drive without third-party insurance. The judge held that the parties must have intended for the policy to comply with the law: *Digby v. General Accident Fire and Life Assurance Corp. Ltd.*, [1943] A.C. 121 (H.L.), at p. 141. A later case ruled that "abundantly clear" language is needed to rebut the expectation of intent-to-comply: *Laurence v. Davies*, [1972] 2 Lloyd's Rep. 231 (Crown Ct.), at p. 233.[1]

[61] The principle is particularly apposite where, as here, the contract exists because the governing regulatory regime requires it: *R&S Pilling t/a Phoenix Engineering v. UK Insurance Ltd.*, [2019] UKSC 16, [2020] A.C. 1025, at para. 24. Sovereign was not issuing an optional form of insurance to an unregulated commercial enterprise. It was insuring a licensed Ontario mortgage brokerage required by provincial law to maintain E&O insurance that included extended protection against fraud.

[1] This line of cases establishes an expected floor on coverage – not a presumptive ceiling. Insurance contracts "may go beyond what the law requires": *Digby*, at p. 141.

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[62] The regulatory requirements governing that insurance thus formed part of the legal setting in which the policy was issued. Breaching those requirements is an offence. Like in *Digby* and *Laurence*, party intent to comply with them is expected absent clear language to the contrary.

[63] There is none here. Instead, the endorsement demonstrates intent to comply. It acknowledged Aztec's status as a regulated actor, defined the professional services covered coextensively with Aztec's regulated mortgage-related activity, matched the Regulation's mandatory policy limit, and blocked Sovereign from reducing that limit without first notifying the regulator.

[64] This regulatory context is important not simply because it exists, but because of what the insurance requirement was intended to accomplish.

[65] Mortgage brokers occupy a position of significant financial trust: *713860 Ontario Ltd. v. Royal Trust Corp. of Canada* (1996), 27 O.R. (3d) 559 (Gen. Div.), at p. 575, aff'd (1999), 43 O.R. (3d) 159 (C.A.). Borrowers, lenders, and investors may transfer substantial amounts of money to a brokerage in anticipation of a transaction that has not yet closed.

[66] That creates an obvious vulnerability. The person entrusting the funds may have little practical control over them once they enter the brokerage's possession.

[67] The regulatory scheme responds to that risk through complementary protections. It regulates how mortgage brokerages receive and hold client money.

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It requires funds received in specified circumstances to be held in trust. And it requires brokerages to maintain E&O insurance with extended fraud protection that fraud victims can directly enforce. See Regulation, ss. 42, 49-55; Guidelines, ss. 10, 13.

[68] Those protections serve related purposes. The trust requirements seek to prevent misuse of client money. Mandatory fraud insurance addresses the consequences when prevention fails.

[69] The insurance requirement, therefore, serves more than the private interest of the insured brokerage. It has an important public-protection function. In fact, of all the standards of practice, it is the one that "most clearly and directly protects the public": *6874843 Canada Ltd. (Panamerican Mortgages) v. Ontario (Superintendent Financial Services)*, 2012 ONFST 23, at para. 5.

[70] That conclusion is reinforced by the Guidelines. They promise direct recovery. They guarantee "additional coverage for loss resulting from fraudulent acts". That requirement, they emphasize, "protect[s] the public".

[71] The point should not be overstated. Mandatory E&O insurance does not transform the insurer into a guarantor of every loss caused by a mortgage broker. Coverage remains governed by the language of the policy and the regulatory scheme.

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[72] But neither should the public-protection purpose be understated. Where the mandated fraud endorsement is reasonably capable of an interpretation that affords meaningful protection to the public, the regulatory purpose is a legitimate and important interpretive consideration. It favours constructions which achieve that purpose over those that substantially defeat it: *Unique Broadband Systems, Inc. (Re)*, 2014 ONCA 538, 121 O.R. (3d) 81, at paras. 87, 95-97, 104.

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b. Considering the Regulatory Context Was Mandatory

[73] Because the regulatory context is a relevant surrounding circumstance, the motion judge was required to consider it at step one: *Lakeshore*, at paras. 13-15; *SIR Corp.*, at para. 41. The procedural considerations relied upon by the motion judge and Sovereign do not justify excluding that context.

[74] First, no declaration of regulatory non-compliance was required. The appellants did not seek to have the policy invalidated or reformed. Their position was that the existing language should be interpreted, where reasonably possible, consistently with the governing regulatory requirement. This distinction between rewriting a contract to achieve regulatory compliance and interpreting its text consistent with the governing regulatory regime is fundamental. The former is generally impermissible. The latter, as I have explained, is an orthodox principle of contract interpretation which applies to insurance contracts: Lewison, at para. 4.41.

[75] Second, it was unnecessary to prove that Sovereign subjectively knew of or notified the regulator of its intent to comply with the regulatory requirements. The interpretive context is objective, and intent to comply is presumed absent evidence to the contrary: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 58; *Digby*, at p. 141. There is none here. Sovereign issued insurance to a licensed mortgage brokerage in a regulated Ontario industry. An insurer participating in a regulated market and issuing a policy designed to satisfy a mandatory provincial insurance requirement reasonably must be taken to know the requirements governing that insurance. Indeed, Sovereign's own policy referenced them. It was, therefore, an error to treat the regulatory scheme as irrelevant unless the appellants called additional evidence to prove that Sovereign subjectively acknowledged it or specifically undertook to comply with it.

[76] Third, the regulator's participation was not required. Considering the regulatory scheme as part of the legal context in which a contract operates does not make the regulator a necessary party to a private contract dispute.

[77] Fourth, the regulatory context is not a new issue on appeal. The endorsement references it, both parties pleaded it, the appellants' affidavit included it, the appellants raised it before the motion judge, and he expressly dealt with it in his reasons. It is, therefore, properly before this court.

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[78] Finally, Sovereign's assertion that it received regulatory approval to offer reduced coverage cannot assist it on the record before us. The material relied upon for that proposition was not admitted into evidence before the motion judge and is not before this court as fresh evidence.

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c. The Regulatory Context Confirms Unambiguous Coverage

[79] Accounting for the incorrectly excluded regulatory context shows that the endorsement unambiguously grants coverage.

i. "Mortgage Funds" Include Mortgage-Related "Trust Funds"

[80] This brings us to the central difficulty with the motion judge's analysis.

[81] His reasoning depended upon treating the characterization of the appellants' money as "trust funds" as effectively answering whether they could fall within the mortgage-related protection of the endorsement, which he restricted to money secured by a mortgage.

[82] In my view, that creates a false dichotomy.

[83] "Mortgage funds", in the context of this endorsement, describes the connection between the money and the regulated mortgage-related activity to which the endorsement applies. The regulatory context makes that clear. The insurance requirement is part of a broader package of rules managing brokerages' regulated mortgage-related activity: Regulation, ss. 40-48. The endorsement

reflects that context. It links “mortgage funds” to the brokerage’s “business as a licensed mortgage broker”.

[84] This interpretation of “mortgage funds” also matches the average person’s understanding: *Emond*, at para. 38. The endorsement is meant to benefit brokerage clients. Those clients would understand the funds they provide to their brokerages to obtain mortgages to be mortgage funds.

[85] The motion judge erred by instead adopting a more restrictive definition of a related term from a different statute. That narrower *Mortgages Act* definition of “mortgage money” – “money or money’s worth secured by a mortgage” – matches that statute’s focus on mortgages already made. But that “specialized” meaning does not apply here because the interpretive context is different: *Sabean v. Portage La Prairie Mutual Insurance Co.*, 2017 SCC 7, [2017] 1 S.C.R. 121, at paras. 4, 34. The meaning of “mortgage funds” in this endorsement must instead match the *Mortgage Brokerages Act*’s broader reach. That statute captures mortgage-making activity not just existing mortgages. Read in that context, the ordinary meaning of “mortgage funds” does too.

[86] That flexible definition of “mortgage funds” captures “trust funds” related to brokerages’ regulated mortgage-related activity. The two concepts are not mutually exclusive as the motion judge assumed. Instead, they overlap because they answer different questions. The former, as I explained, describes funds

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connected with regulated mortgage-related activity. The latter describes the legal manner in which money is held. A sum of money does not cease to be connected with regulated mortgage-related activity – in this case, obtaining or securing mortgage financing – merely because the brokerage is legally required to hold it in trust while the transaction is pending.

[87] The regulatory treatment of client money demonstrates why this distinction matters. Section 49 of the Regulation requires brokerages to hold funds received in the course of regulated mortgage-related activity as trust money. That obligation is structurally significant. It demonstrates that money received in connection with mortgage business may acquire the legal character of trust money while it remains in the brokerage's possession.

[88] That test is met here. The trust funds Aztec misappropriated were mortgage funds. The appellants did not approach Aztec to establish an independent trust arrangement. They approached Aztec for mortgage financing. They entrusted the $459,975 to Aztec because the mortgage transaction required it, not for investment, safekeeping unrelated to financing, or some separate commercial purpose. Had there been no proposed mortgage financing, there would have been no trust payment and no trust arrangement.

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[89] By ruling otherwise, the motion judge's analysis effectively elevated the legal form in which the money was held over the commercial and regulatory transaction that explained why it was held at all. That was an error.

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ii. Aztec's "failure to … secure mortgage funds"

[90] The endorsement applies because Aztec failed to "secure" the mortgage funds it held in trust. In ordinary speech, to secure means to "keep safe from danger, harm, or loss": *Oxford English Dictionary* (online), "secure". That ordinary meaning governs: *Emond*, at para. 38. It is satisfied here. Aztec failed to keep the mortgage funds safe from loss. Instead, it dissipated them. Thus, the loss is covered.

[91] That conclusion is dispositive. But even if it were not, coverage would still exist under the motion judge's narrower definition of "mortgage funds" as money secured by a mortgage.

[92] The reason is simple. The trust funds were provided to Aztec for the purpose of securing mortgage financing for the appellants. Because Aztec dissipated those funds, it failed to secure the contemplated mortgage financing. There is, therefore, a direct nexus between the fraud, the failure to secure mortgage financing, and the loss claimed.

[93] This conclusion respects the endorsement's wide scope. It does not say "failure to return mortgage proceeds", "loss of money secured by a mortgage", or

"misappropriation of advances under a registered mortgage". Instead, it speaks more broadly of a failure to "advance or secure mortgage funds".

[94] The word "secure" is important. Its ordinary meaning includes to "succeed in obtaining" in addition to its protective sense described earlier: *Oxford English Dictionary* (online), "secure". It necessarily encompasses the brokerage function of arranging mortgage financing in the first place. The term "advance" provides complementary protection by covering the next stage – the rollout of mortgage financing already obtained.

[95] The motion judge's contrary interpretation, by requiring the relevant money itself already to be secured by a mortgage, substantially collapses the distinction between "advance" and "secure" and narrows the latter term precisely when it should perform independent work. Both concepts must be given meaning: *Salah v. Timothy's Coffees of the World Inc.*, 2010 ONCA 673, 74 B.L.R. (4th) 161, at para. 16.

3. Step Two: General Rules of Contract Interpretation Confirm Coverage

[96] The policy unambiguously grants coverage. But if any ambiguity remained, general contract interpretation rules remove it at step two. Those rules defeat Sovereign's interpretation because it denies coverage for one of the most common forms of brokerage fraud. The correct interpretation protects brokerage clients against that fraud while preserving meaningful limits on insurer exposure.

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a. Sovereign's Interpretation Substantially Empties the Endorsement of Its Function

[97] An endorsement specifically providing fraud coverage should not, where the language reasonably permits otherwise, be construed so narrowly that the policy's general fraud and custody exclusions substantially consume the protection the endorsement was intended to provide. Such a construction would frustrate the parties' reasonable expectations and commercial reality by depriving insureds of the meaningful "coverage for which they contracted": *Ledcor*, at para. 70.

[98] Sovereign's interpretation creates that very problem. On its approach, money held by a brokerage in trust is excluded because it is trust money rather than mortgage funds; fraudulent misappropriation is excluded because it involves dishonest conduct; and the loss of money in the brokerage's custody is independently excluded because the brokerage possessed the money.

[99] Those are precisely the circumstances likely to arise when a mortgage broker fraudulently misappropriates client money while arranging mortgage financing.

[100] The regulatory scheme makes the difficulty more pronounced. It requires or contemplates that money received by a brokerage in connection with mortgage business be held in trust. Sovereign's interpretation would, therefore, use the very legal characterization imposed to protect client money as a basis for removing that money from the fraud coverage.

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[101] The trust requirement and the mandatory fraud insurance would thereby operate at cross-purposes: the former would require the brokerage to protect client money by holding it in trust, while the latter would cease to respond because the money had acquired that legal status.

[102] The practical consequence is particularly significant before a mortgage transaction closes. At that stage, clients may have entrusted substantial funds to the broker, but there may as yet be no registered mortgage and no mortgage proceeds capable of satisfying Sovereign's narrower conception of "mortgage funds".

[103] Yet, that is precisely the stage at which the broker is performing the work of attempting to secure the mortgage financing and at which client funds may be especially vulnerable to misappropriation.

[104] If the endorsement applies only after the relevant funds have themselves become secured mortgage proceeds, the word "secure" is deprived of much of its independent significance. The endorsement would afford little protection during the very stage of the transaction at which fraud involving entrusted client funds may occur.

[105] That result is difficult to reconcile with the language and function of an endorsement expressly providing coverage for a failure to "advance or secure mortgage funds".

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[106] It is also inconsistent with the principle that an insurance provision should not, absent clear language, be interpreted in a manner that removes coverage for losses characteristic of the risk against which the insurance was obtained: *Ledcor*, at para. 70.

[107] There is no such clear language here.

[108] The interpretation advanced by the appellants, by contrast, gives meaningful effect to both the fraud endorsement and the policy's exclusions. The exclusions continue to operate generally, while the endorsement responds in the specified circumstances where an insured's dishonest or fraudulent conduct results in a failure to advance or secure mortgage funds.

[109] Accordingly, the parties' reasonable expectations and commercial reality confirm the interpretation already reached at step one: the endorsement covers the appellants' loss.

b. This Interpretation Does Not Overextend Coverage

[110] At the same time, my interpretation preserves reasonable limits.

[111] I do not agree with Sovereign's warning that it converts the policy into general fidelity insurance for every fraudulent act committed by a mortgage broker.

[112] My conclusion is narrower. The endorsement does not apply merely because the wrongdoer happens to be a mortgage broker. Nor does every dollar passing through a brokerage become "mortgage funds".

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[113] There must be a sufficient connection between the insured's fraudulent conduct and a failure to advance or secure monies linked to the brokerage's regulated mortgage-related activity. That requirement preserves the policy's E&O focus and prevents it from morphing into fidelity insurance: *Co-operators Life Insurance Co. v. Gibbens*, 2009 SCC 59, [2009] 3 S.C.R. 605, at paras. 23-24.

[114] Whether that connection exists will depend upon the circumstances of the particular transaction.

[115] Here, the connection is direct. The appellants retained Aztec to secure mortgage financing. They were required to provide the money as a condition of that financing. Aztec was required to hold the money in trust while carrying out that mortgage-broker function. Its principal misappropriated the money, and the financing was not secured.

[116] These circumstances fall within the language of the endorsement without converting it into unlimited fraud insurance.

4. Step Three: *Contra Proferentem* Confirms Coverage

[117] It is unnecessary to rely on *contra proferentem* because the policy unambiguously grants coverage and the ordinary principles of contract interpretation confirm that conclusion.

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[118] Nevertheless, if ambiguity remains concerning whether the expression "failure to advance or secure mortgage funds" includes the circumstances before us, *contra proferentem* confirms the result.

[119] At step three, ambiguity in an insurance contract is construed against the insurer: *Ledcor*, at para. 51.

[120] That principle has particular relevance here for two reasons.

[121] First, Sovereign drafted or adopted the standard policy language and could have expressed the limitation it now advances in clear terms.

[122] Had Sovereign intended "mortgage funds" to mean only money already secured by a mortgage, or intended expressly to exclude all money held in trust even where paid as a condition of obtaining mortgage financing, it could have said so.

[123] It did not. As the party that "holds the pen", it "must live with the consequences": *Gibbens*, at para. 25.

[124] Second, the ambiguity arises in an endorsement clause issued in response to a regulatory requirement designed to afford fraud protection.

[125] An insurer should not obtain the benefit of an uncertain limitation on mandated fraud coverage where the competing reasonable interpretation both affords meaningful operation to the endorsement and conforms to the regulatory scheme: *Laurence*, at p. 233. The *contra proferentem* doctrine is particularly

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"compelling" where, as here, the insurer's proposed construction would "significantly … defeat" the point of buying coverage: *Scott v. Wawanesa Mutual Insurance Co.*, [1989] 1 S.C.R. 1445, at p. 1459, *per* La Forest J. (dissenting, but not on this point), adopted in *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 S.C.R. 1029, at pp. 1046-47.

[126] *Contra proferentem*, therefore, reinforces, rather than creates, the conclusion that the appellants' loss falls within the endorsement.

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B. SUMMARY JUDGMENT REMAINS THE APPROPRIATE PROCEDURE

[127] I agree with the motion judge that this dispute was suitable for determination by summary judgment.

[128] The relevant material facts are not genuinely disputed. The dispositive question is the interpretation of the policy.

[129] The error lies not in deciding that question summarily, but in the answer given to it.

[130] There is, therefore, no reason to remit the coverage question for trial.

[131] Just as the record permitted summary judgment in Sovereign's favour if its interpretation were correct, it permits summary judgment in favour of the appellants once the policy is properly interpreted.

[132] Sovereign's pleading also referred to alleged failures by Aztec and Romanow concerning notice, cooperation and other policy conditions. But those

matters did not form the basis upon which the motion judge dismissed the action. On the record before us, they do not provide an alternative basis for sustaining his judgment.

[133] The appeal concerns the coverage determination made on the appellants' summary judgment motion. Sovereign was required to "put its best foot forward" in response to that motion and "lead trump or risk losing": *Goudie v. Ottawa (City)*, 2003 SCC 14, [2003] 1 S.C.R. 141, at para. 32 (citations omitted). It cannot preserve a judgment founded upon an erroneous interpretation of the fraud endorsement merely by pointing to pleaded defences that it did not establish on the summary judgment record.

[134] Nor does Sovereign's reliance upon the endorsement's exclusion relating to a "creditor of any Insured" alter the result on the record and arguments before us. The appellants' claim to the insurance proceeds is advanced as injured clients of the brokerage seeking compensation for misappropriated trust funds within the protection contemplated by the fraud endorsement, not as ordinary commercial creditors seeking payment of an unrelated debt. To read the creditor language otherwise would risk defeating the contemplated third-party protection whenever the brokerage misappropriated client funds it was required to hold in trust.

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VI. CONCLUSION

[135] The policy must be read as a whole and in the legal and regulatory environment in which it was issued.

[136] The motion judge erred by treating that regulatory environment as irrelevant to contractual interpretation.

[137] He further erred by treating “trust funds” and “mortgage funds” as mutually exclusive categories. The regulatory scheme itself demonstrates why that premise is unsound. Money received in connection with mortgage business may be required to be held in trust. Its legal status as trust money does not sever its connection to the mortgage financing for which it was provided.

[138] Read in context, the phrase “failure to advance or secure mortgage funds” unambiguously encompasses the circumstances here. The appellants provided the money as a condition of securing mortgage financing through Aztec. Aztec’s principal fraudulently misappropriated it. The financing was not secured.

[139] That interpretation gives independent meaning to the word “secure”; gives meaningful effect to the fraud endorsement; reconciles the policy with the regulatory requirement under which it was issued; and avoids the anomalous result whereby the regulatory obligation to hold mortgage-related client money in trust becomes the basis for excluding that money from fraud protection.

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[140] Sovereign's narrower interpretation would substantially undermine the practical operation of the endorsement. At the stage when client funds are entrusted to a broker and are particularly susceptible to misappropriation, they would be excluded because they are held in trust and because the contemplated mortgage has not yet been secured. The protection would become strongest only after much of the risk against which it is directed has passed.

[141] Only clear language could compel such a result. This policy contains none.

[142] To the extent ambiguity remains, the ordinary principles of contract interpretation and *contra proferentem* reinforce the same conclusion.

[143] The appellants' loss, therefore, falls within the coverage afforded by the endorsement.

VII. DISPOSITION

[144] I would allow the appeal.

[145] The judgment of McCarthy J. dated July 31, 2025, granting summary judgment to Sovereign and dismissing the appellants' action against it, is set aside.

[146] In its place, summary judgment is granted in favour of the appellants declaring that Sovereign General Insurance Company is liable under the Mortgage Broker Errors and Omissions Liability Policy issued to Aztec Financial Corp. to indemnify the appellants for the outstanding portion of the judgment obtained

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against Aztec Financial Corp. and Barbara Romanow, in the amount of $353,520.92, together with applicable interest.

[147] The motion judge's order requiring the appellants to pay Sovereign $12,500 in costs is set aside.

[148] The appellants are entitled to their costs of this appeal in the agreed-upon all-inclusive amount of $12,500. As the successful party, they are also entitled to the costs of the Superior Court proceedings. If the parties are unable to agree on those costs, they may make brief written submissions in accordance with a timetable to be fixed by the court.

Released: September 24, 2026 "M.T."

"Tulloch C.J.O."
"I agree. Sossin J.A."
"I agree. A. O'Marra J. (*ad hoc*)"

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APPENDIX A: THE GUIDELINES

March 28, 2008

Mortgage Brokerages and Administrators Errors & Omissions Insurance Guidelines

The following guidelines set out the minimum requirements for mortgage brokerage and mortgage administrator Errors and Omissions (E&O) insurance policies with fraud endorsement, approved by the Superintendent for licensing purposes.

Upon receipt of the appropriate Insurer acknowledgement and undertaking that the policy will be interpreted in accordance with the terms of all the minimum requirements set out in this document, the Superintendent may accept a proposed policy as proof that a brokerage or administrator has complied with the requirement.

1. The word “insured” includes everyone engaged by the insured in connection with his or her work preformed for the insured firm in, including licensed mortgage brokers and agents who the brokerage authorizes to trade or deal mortgages on the brokerage’s behalf, contract employees and former employees.

2. The assignment clause of the policy ensures that the legal representatives of the insured are covered in the event of the insured’s bankruptcy, insolvency, competency or death automatically, without notice and at no extra charge as long as the policy is in place.

3. The policy covers an Ontario licensed mortgage brokerage and/or mortgage administrator for all acts arising from the business of trading, dealing and/or administering mortgages as defined under the Mortgage Brokerages, Lenders and Administrators Act.

4. The policy covers all claims, subject to standard exclusions, made during the term of the policy for acts occurring at any previous time, providing the insured had no prior knowledge. The policy will not impose a retroactive date exclusion.

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5. An automatic minimum 12 month extended reporting period (ERP) will be provided if the insurer cancels or refuses to renew the policy. However, if the named insured cancels or does not renew its policy and does not replace it with another policy, the extended reporting period may be reduced to 60 days.

   The acceptance by the insured of another policy with a different carrier relieves the insurer of any obligation it may have to provide an ERP.

   If the ERP is triggered, it will be provided at no extra charge to the name insured or to his legal representatives, as the case may be.

6. Where the terms of the policy conflict with any applicable statutes, the policy is amended to comply with the applicable statute.

7. The insurance coverage must be sufficient to pay a minimum of $500,000 in respect of any one occurrence involving the brokerage and $1 million in respect of all occurrences during a 365 day period involving the insured brokerage and/or administrator.

8. The insurer will provide defense for all claims covered by the policy, including groundless allegations.

9. Notice to the insurer of a claim should be made by the brokerage/administrator, or by anyone, including FSCO, should the brokerage/administrator be unable or unwilling to report a claim.

10. Injured third parties will have a direct right of action against the insurer under the policy, without affecting the insurers right to adjudicate the claim in accordance with the policy's term and conditions and the right of the insurer's right of action against the insured.

11. The insurer is the first payer on claims to injured third parties and will collect the deductible directly from the insured if a deductible applies.

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12. Incidents which might lead to a potential claim must be notified to the insurer during the policy term and will be covered under the policy in place when the incident was reported, even if the claim is made after the expiry date of the policy.

13. Regarding the “Fraud” endorsement:

    a. The policy certificate will include additional coverage for loss resulting from fraudulent acts and will operate to protect the public within the minimum limits required for the Errors and Omissions policy (i.e. up to $500,000 per claim/ $1,000,000 in the aggregate, including the insured’s obligation for deductible amounts). The insurer will have the right to subrogate against the insured.

    b. Claims under the endorsement may be made in the same manner as claims made under the policy, including notice of claim to the insurer and a direct right of action for injured third parties.

14. The policy contains an endorsement that stipulates the Superintendent must be given written notice of any cancellation prior to expiry date of such policy and the notice of cancellation will not become effective until 30 days after the receipt of such notice by the Superintendent.

    Additionally, the written confirmation received from the Insurer must contain several acknowledgements and undertakings, namely:

    - The Insurer must acknowledge that at no time will any policy issued fall short of the standards set out in the minimum requirements set out in the minimum requirements above, including and acknowledgement that the FSCO endorsement will be automatically added to every policy issued.

    - The Insurer must undertake that all interpretations of any policy term will never produce a result that is less than the minimum requirements set out in this letter and will always be deemed to result in an interpretation in accordance with at least the appropriate minimum requirements.

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- The Insurer must acknowledge that, subsequent to approval of its policy by FSCO, the Insurer will not make or cause to be made any material changes limiting, restricting or reducing the coverages in its policy in any respect without prior notice to, and the approval of FSCO.

WE HEREBY ACKNOWLEDGE RECIEPT OF THE REQUIREMENTS AND AGREE WITH ALL THE MINIMUM REQUIREMENTS AS SET OUT ABOVE.

Signature: _____ Date: _____

Position: _____

Insurer: _____

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APPENDIX B: THE POLICY

PART I – INSURING AGREEMENTS

A. Errors and Omissions

The Insurer will pay on behalf of an Insured all sums that an Insured shall become legally obligated to pay as damages because of a wrongful act that:

1. arises solely out of, or in connection with, the rendering or failure to render professional services;

2. is first committed by an Insured after the retroactive date and before the date this policy terminates; and

3. results in a claim for damages against the Insured that is first made and first reported in writing to the Insurer during the policy period or any applicable extended reporting period.

…

PART II – DEFINITIONS

…

> M. Professional services means only those services rendered by the Insured while acting within the scope of the Insured's services as a mortgage broker and customary to the practice of mortgage brokering.

…

PART III – EXCLUSIONS

This policy, including any obligation to defend or pay claims expenses, does not apply to claims directly or indirectly based upon, attributable to, arising out of, or in connection with:

…

the gaining of any personal profit or advantage to which the Insured is not legally entitled or out of any disputes involving fees, commissions or other amounts paid or owing to an Insured for services provided by an Insured;

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…

G. any:

(1) intentional, dishonest, fraudulent or criminal act or omission;
(2) intentional or knowing violation of any statute or regulation;
(3) act committed with knowledge that it was a wrongful act;

however, this exclusion shall not apply to:

(4) any Insured who was neither the author of nor an accomplice to the foregoing act(s); or
(5) claims expenses or the Insurer's duty to defend any such claim unless and until there is an adverse admission by the Insured or evidence of such conduct;

…

I. damages expected or intended from an Insured's standpoint;

…

K. the commingling of funds, the loss of money or securities in an Insured's care or custody or control, or the actual or alleged inability to pay, collect or safeguard funds;

…

Endorsement Number 2 – Insureds Licensed in the Province of Ontario

It is understood and agreed that this endorsement is applicable only to insureds licensed by FSCO and with respect to professional services provided in the Province of Ontario.

It is also understood and agreed that:

(1) Paragraph M. of Part II – DEFINITIONS is deleted and replaced with:

M. Professional services means acts arising from the business of trading, dealing, and or administering mortgages as defined under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

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…

(6) Dishonest or Fraudulent Act

Dishonest or fraud coverage afforded under this endorsement shall apply to claims, in excess of the deductible, for which an Insured is legally liable to a third party for failure to advance or secure mortgage funds as a result of any dishonest or fraudulent act by one or more Insureds acting directly or in collusion with others in the conduct of the business of the Named Insured as a licensed mortgage broker in the Province of Ontario while this coverage is in force and for which a claim is made against the Insured during the term of this policy, subject to the following provisions:

A. The amount payable under this policy by virtue of this endorsement shall in no event exceed the amount of mortgage funds which would have been advanced or secured but for the Insured's dishonest or fraudulent act;

B. In the event of the failure of the Named Insured to pay a claim upon demand of any third party, then the Insurer shall make payment, after investigating coverage, directly to such third party and shall be entitled to reimbursement from an Insured for the amount of the applicable deductible and any other amount incurred by the Insurer.

C. The coverage afforded under this policy by virtue of this endorsement shall not:

(i) benefit any person committing, making or condoning any such dishonest or fraudulent act;
(ii) benefit any creditor of any Insured hereunder;
(iii) apply to a claim which is covered by the policy to which the endorsement is attached;
(iv) apply to a claim arising out of the insolvency of an Insured or any affiliate of the Insured.

…

G. The limit of liability under this section shall be $500,000 per claim and $1,000,000 in the aggregate. This limit shall be part of and not in addition to the limit of liability as set out at Item 3. Of the Declarations.

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(7) The Insurer hereby agrees to give the Superintendent of the Financial Services Commission of Ontario written notice to: 5160 Yonge Street, 4th Floor, Toronto, Ontario, M2N 6L9, of any cancellation, non-renewal or reduction in the limit of this policy and further agrees that such cancellation, non-renewal or reduction in the limit of this policy does not become effective until thirty days after the actual receipt of such notice by the Financial Services Commission of Ontario.

…

Except as otherwise provided by this endorsement, all terms and conditions of the policy to which this endorsement is attached shall have full force and effect.

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