

BRIEFING NOTE

Endorsements and Exclusions - The SCC Confirms Its Interpretive Framework for Coverage Analysis

The Supreme Court of Canada recently released its decision in *Emond v. Trillium Mutual Insurance Co.*,¹ in which it interpreted and reconciled the interactions between a Guaranteed Replacement Cost (“GRC”) endorsement, a compliance costs exclusion and an exception to the exclusion, within a standard form homeowners’ insurance policy.

Framing the appeal as “an opportunity to clarify when the language of an insurance contract is ambiguous and when the nullification of coverage doctrine would justify a departure from language that is unambiguous” (at para. 1), the Court confirmed and applied the interpretive principles set out in *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*² The Court ultimately held that the GRC endorsement did not supersede the compliance costs exclusion, that the compliance costs exclusion applied subject to an exception providing up to \$10,000 in coverage, and that applying the exclusion did not engage the nullification doctrine.

Background

The Emonds purchased their home insurance policy (the “Policy”) from Trillium. Situated along the Ottawa River, their property was located within a conversation authority catchment, meaning any kind of rebuild would incur increased costs to comply with the legal requirements of the catchment.

In 2019, the Emonds’ home was destroyed by a flood and deemed to be a total loss. Trillium covered the loss, but refused to pay additional repair costs incurred solely to comply with catchment requirements (which more than doubled Trillium’s estimate for rebuilding costs).

The Policy

The Policy provided coverage for direct physical loss or damage subject to exclusions, one of which was for “increased costs of repair or replacement due to operation of any law regulating the zoning, demolition, repair or construction of buildings and their related services” (the “compliance costs exclusion”). Under “Additional Coverage”, the Policy contained an exception to the compliance costs exclusion, allowing for indemnity up to \$10,000.

The Policy also included a GRC endorsement which amended the Basis for Claim Payment coverage provisions, increasing the amount Trillium would

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¹ *Emond v. Trillium Mutual Insurance Co.*, 2026 SCC 3.

² *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37 [**Ledcor**].

pay for an insured loss, subject to the typical conditions of replacement on the same location with materials of similar quality, within a reasonable time. It further stated that “in all other respects, the policy provisions and limits of liability remain unchanged”.

Procedural History

The Ontario Superior Court of Justice favoured the Emonds’ interpretation of the Policy, that the GRC endorsement allowed them to recover rebuilding costs and the compliance costs exclusion did not apply. The Superior Court also ruled that if the exclusion had applied, the doctrine of nullification of coverage would be triggered and the Court would have granted coverage.

The Ontario Court of Appeal allowed Trillium’s appeal, holding that the GRC endorsement was subject to the compliance costs exclusion. As a result, the cost of replacement payable under the Policy did not include compliance costs except for the \$10,000 under the exception to the exclusion.

Decision

The SCC upheld the Ontario Court of Appeal’s decision and dismissed the Emonds’ appeal, concluding they were not entitled to recover compliance-related rebuilding costs beyond the \$10,000 provided in the exception. Reading the Policy as a whole, the SCC found its unambiguous wording supported only one reasonable meaning; the compliance costs exclusion applied to limit indemnity under the GRC endorsement. Further, interpreting the Policy in this manner did not nullify the purpose of the GRC endorsement, as the GRC endorsement still modified the coverage limit to permit recovery of replacement costs exceeding Policy limits.

In reaching their majority decision, the SCC applied the “generally advisable” order for interpreting contracts, as outlined from their previous decisions of *Ledcor*, *Progressive Homes*,³ and *Sabean*.⁴ As there was no dispute between the parties that the flood loss fell within the Policy’s grant of coverage, Trillium held the burden to show the compliance costs exclusion precluded coverage for the compliance costs.

The SCC first examined the language of the GRC endorsement and the base policy it affected, emphasizing that the limitation on coverage “must be grounded in the language of the specific insurance contract at issue” (at para. 72). The endorsement stated that “in all other respects, the policy provisions and limits of liability remain unchanged,” making clear that it amended only the Basis of Claim Payment provision and nothing else. The GRC endorsement merely expanded the amount payable under that provision beyond the purchased limits and did not alter or override any exclusions.

The SCC rejected the Emonds’ attempts to create ambiguity, noting that their arguments relied on reading isolated provisions rather than the contract as a whole. For example, the insureds claimed the heading “Guaranteed Rebuilding Cost Coverage” was a guarantee and a promise to cover full

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³ *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33.

⁴ *Sabean v. Portage La Prairie Mutual Insurance Co.*, 2017 SCC 7.

rebuilding costs and was comprehensive on that subject. The Court disagreed, explaining that the GRC endorsement heading could not override the unambiguous language contained elsewhere in the Policy. In another example, the Emonds argued that coverage for “current building techniques” necessarily included their compliance costs. The Court clarified that this phrase referred to commonly used construction methods, not current building standards, and was likely intended to limit the expanded coverage provided by the endorsement.

The SCC majority also found that the Emonds’ interpretation of the compliance costs exclusion led to unrealistic results. The Emonds submitted a temporal argument, that the compliance costs exclusion applied only to increased costs caused by laws introduced after the Policy was issued, meaning the laws in place when the Policy commenced were not excluded.

The Court rejected this, noting that the Policy clearly identified when “increased costs” were to be measured with specific reference to the time the contract was issued. It explained that “increased costs” referred to the difference between rebuilding the home as it stood, ignoring building and construction laws, and rebuilding it in compliance with those requirements. Even if “increased costs” was ambiguous, the SCC pointed out it would be unreasonable to expect that an insurer implicitly accepted liability for all pre-existing bylaws and regulations. That interpretation would effectively require insurers to monitor every insured property for compliance and calculate the risk of non-compliance on an ongoing basis, an impractical and commercially unrealistic expectation.

The Emonds were also unsuccessful in arguing that applying the compliance costs exclusion would virtually nullify the coverage provided by the GRC endorsement. The Court ruled that the exclusion only served to limit what could be recovered but the endorsement still allowed the Emonds to recover rebuilding costs higher than the Policy limits.

The SCC referred to the nullification doctrine as a “high bar”, which operated independently of the ambiguity of wording or unconscionability of the Policy. The rationale for this is due to: 1) the search for the shared intention of the parties which is the object of interpretation and 2) fundamental fairness considerations specific to the insurance context, as courts should be reluctant to “enable the insurer to pocket the premium without risk” (at para. 60).

The “Generally Advisable” Order for Interpreting Insurance Contracts

The SCC clarified that the generally advisable order for interpreting insurance contracts, as outlined in *Ledcor*, also applied to endorsements:

1. Insured has the onus of establishing that the damage or loss claimed falls within the initial grant of coverage;
2. Onus shifts to the insurer to establish that an exclusion to coverage applies. If successful, then;

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3. The insured has the onus to prove that an exception applies to the exclusion, which has the effect of bringing an excluded claim back within coverage.

The Court held that endorsements are not standalone contracts, they are part of the insurance policy and have the effect of changing, varying, or amending the underlying policy. Aspects of the endorsement are considered under the corresponding step of the test. For instance, endorsements that create exclusions would be considered under the second part of this order.

Ambiguous Wording

When reading the standard form insurance contract, the words of the contract must be given their *ordinary meaning*, as understood by the average person applying for insurance. Courts expect insurers to ensure that policy terms are clear, and so effect should be given where language is unambiguous, as this supports the “particularly important” goal of having consistency in reading standard form contracts (*Ledcor*, at para. 40).

Ambiguity arises in an insurance contract when there are multiple **reasonable but differing interpretations** of the same words when read in the context of the contract as a whole. This means words in a provision must reasonably be capable of more than one meaning.

In interpreting the words of insurance contracts, the Court also stresses the importance of interpreting text “in light of the contract as a whole”. Provisions affect one another, such as exclusions and exceptions.

Ambiguity arises in two circumstances (at para. 44):

- 1) When a provision appears unclear when read alone and still has more than one reasonable meaning when read in light of the contract as a whole; and
- 2) When a provision that appears clear when read alone can hold more than one reasonable meaning when read as a whole.

How to Resolve Ambiguity

Where there is ambiguity, the court is unable to rely on the language alone and employs rules of contractual interpretation to try to resolve the ambiguity. These rules include but are not limited to those found in *Ledcor* at para. 50. Interpretation should:

- be consistent with the reasonable expectations of the parties;
- not give rise to unrealistic results;
- not give rise to results that the parties would not have contemplated in the commercial atmosphere in which the insurance contract was formed; and
- be consistent with the interpretations of similar insurance policies.

If ambiguity remains after using contractual interpretation rules, then the *contra proferentem* rule applies, meaning the ambiguity will be read against the

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insurer who drafted the contract, as they bear responsibility for the “residual ambiguity”. Ambiguity must be resolved in a favourable manner to the insured, resulting in interpretations that result in broader coverage, narrower exclusions, and broader exceptions to exclusions.

Key Takeaways

The SCC’s decision in this case is based upon its interpretation of the Policy wording, using the rules of insurance interpretation and “generally advisable order” of interpretation as outlined in its 2016 decision of *Ledcor*. On a plain reading of the Trillium Policy, the Emonds were not entitled to indemnity from Trillium for increased construction costs necessary to comply with the requirements of the conservation authority.

In reaching this decision, the SCC provided guidance on how to fit endorsements within the structure of an insurance policy, including interaction with Policy exclusions. It also reconfirmed the doctrine of nullification of coverage, when it should apply, and how it interacts with other rules for interpreting insurance contracts and other contracts generally.

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