SUPREME COURT OF NOVA SCOTIA
Citation: *Ryan v. Wamboldt*, 2022 NSSC 339

Date: 20221128
Docket: Yar No. 501362
Registry: Halifax

Between:

Gloria Ryan

Plaintiff

v.

Gary Wamboldt

Defendants

and

Aviva Insurance Company of Canada

Summary Judgment Decision

Judge:	The Honourable Justice Christa M. Brothers
Heard:	May 4, 2022, in Halifax, Nova Scotia
Additional Written Submissions:	May 10, 11, and 13, 2022
Counsel:	Nicolle Snow, for the Plaintiff John Kulik, K.C. and Jillian Kean, for the Facility Association representing Gary Wamboldt Timothy M. Hopkins, for the Defendant, Aviva Insurance

By the Court:

Overview

[1] The defendant, Aviva Insurance Company of Canada ("Aviva"), moves for summary judgment on evidence in respect of the plaintiff's claim. The plaintiff claims damages for bodily injury arising out of an incident involving her motor vehicle. The plaintiff claims to have suffered injury when the defendant, Gary Wamboldt ("Wamboldt"), assaulted her while stealing her vehicle, commonly referred to as "carjacking".

[2] The plaintiff claims against her insurer pursuant to her Section D insurance coverage on the basis that Wamboldt was an uninsured driver when he stole her vehicle. There is no dispute that the plaintiff was insured at the time of this incident by Aviva pursuant to a Nova Scotia (Standard) Automobile Policy Form No. 1. Wamboldt has no available insurance. Aviva takes the position that these circumstances do not fall within the language of Section D coverage.

[3] The Facility Association of Nova Scotia ("Facility Association") has come to Wamboldt's defence pursuant to the *Insurance Act*, R.S.N.S. 1989, c. 231.

[4] The Facility Association and the plaintiff each take the position that summary judgment is not available, as the interpretation of the provisions of Section D of the Policy are to be read to include coverage for the plaintiff in these circumstances. Therefore, Aviva must respond to any damage claim that is proved.

Claims by Plaintiff

[5] The plaintiff's Statement of Claim describes the alleged circumstances in which the claim arises and states in part as follows:

> 6. The Plaintiff sat in the driver's seat of the Honda and placed her purse and groceries on the front passenger seat. Before the Plaintiff could close her driver door, Mr. Wamboldt approached the Honda, grabbed the Plaintiff, pulled her out of the Honda and threw her to the ground. The Plaintiff pulled herself up using the driver door of the Honda and attempted to get back into the Honda. As she did this Mr. Wamboldt grabbed the Plaintiff and threw her to the ground again. The Plaintiff further states that during the course of this altercation, Mr. Wamboldt took

> possession and control of the Honda and drove away. Mr. Wamboldt subsequently destroyed the Honda in a motor vehicle collision.
>
> 7. The Plaintiff states the aforementioned incident was the result of carelessness and negligent actions of Mr. Wamboldt, the particulars of which are as follows:
>
> a) attacked the Plaintiff while she was seated inside the Honda;
>
> b) roughly and forcibly removed the Plaintiff from the Honda;
>
> c) roughly and forcibly resisted the Plaintiff's attempt to re-enter the Honda;
>
> d) such other negligence or intentional acts as may appear.
>
> 8. As a result of the negligence of Mr. Wamboldt, the Plaintiff has suffered loss and grievous bodily harm. The Plaintiff sustained injuries including, but not limited to, abrasions to her knees and hands, injury to her neck, back and legs, anxiety, and Post-traumatic Stress Disorder, commonly referred to as "PTSD".
>
> 9. The Plaintiff was, at all times material, covered under a policy of insurance with Aviva, being policy number 34396076. The Plaintiff claims against Aviva under the aforementioned policy of insurance, and more particularly under Section D of the aforementioned policy of insurance for damages suffered as a result of the negligent and careless actions of the uninsured driver, Mr. Wamboldt.

Policy Wording and Statute

[6] Aviva issued the plaintiff an Automobile Policy which included coverage under Section D, entitled "Uninsured and Unidentified Automobile Coverage". The policy wording is mandated by the *Insurance Act*.

[7] Section D coverage is designed to protect an insured person from loss arising from injuries they sustain in an accident involving an uninsured or unidentified automobile. In *Chambo v. Musseau* (1993), 15 O.R. (3d) 305 (Ont. C.A.), Osborne J.A. described the purpose of the Ontario statutory uninsured motorist coverage regime, the equivalent of Nova Scotia's Section D coverage, in the following terms:

> 11. Uninsured motorist coverage became part of the standard form of automobile insurance policy in March 1980. It was part of a broad statutory scheme which required that all motor vehicles in Ontario be insured and which provided that all automobile insurance policies issued in Ontario had to include, among other things, uninsured motorist coverage. The coverage is statutory in the sense that its basic elements are set out in s. 231 [now s. 265] of the *Insurance Act*. The legislative intent was to internalize costs to the activity (driving a motor vehicle) which created

> them. Before March 1980 the costs resulting from the negligence of an uninsured driver were externalized, in that they were paid by the taxpayers generally, through the Motor Vehicle Accident Claims Fund. In my view, the uninsured motorist coverage legislation is remedial and should be given a broad and liberal interpretation.

[8] Section D coverage internalizes costs caused by a negligent uninsured, or underinsured driver. Like Ontario, Nova Scotia has a public fund for cases where no coverage is provided through a Policy. This fund is known as the Facility Association. The question before me on this motion is not whether the plaintiff should be compensated but only whether Aviva has established that it is relieved of any duty to the plaintiff in the circumstances of this incident.

[9] The background concerning Section D coverage in Nova Scotia is discussed in *Faulds v. O'Connor*, 2010 NSSC 55, as follows:

> [35] Section D provisions have been in place in Nova Scotia since July 1, 1996 when both the *Insurance Act, supra,* and the *Motor Vehicle Act, supra*, was amended by S.N.S. 1995-96, c. 20, and the *Uninsured Automobile and Unidentified Automobile Regulations* were made under s. 139 of the *Insurance Act,* O.I.C. 96-376, N.S. Reg. 94/96.
>
> [36] Pursuant to s. 139(2) of the *Insurance Act, supra*, all Nova Scotia automobile liability policies are required to provide coverage with respect to damages caused by an uninsured/unidentified automobile. The uninsured or unidentified motorist coverage provided by for [*sic*] in s. 2 of the Section D provisions in the Standard Automobile Policy for Nova Scotia is made mandatory by s. 139(2) of the *Insurance Act, supra,* which reads:
>
> > 139 (2) Every contract evidenced by a motor vehicle liability policy shall provide for payment by the insurer of all sums that
> >
> > (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
> >
> > (b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and
> >
> > (c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile,

> subject to the terms, conditions, provisions, exclusions and limits prescribed by regulation.

[37] Section 3(1) of the *Uninsured Automobile and Unidentified Automobile Coverage Regulations*, N.S. Reg. 94/96 mirrors s. 139(2) of the *Insurance Act*, *supra*, and reads:

> **3(1)** The insurer shall pay all sums that
>
> **(a)** a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
>
> **(b)** a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and
>
> **(c)** a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents to both the insured automobile and its contents, resulting from an accident involving an automobile.

[38] Section 4(1) of the *Uninsured Automobile and Unidentified Automobile Coverage Regulations, supra,* places limits on the coverage that an insurer is obligated to provide under s. 139(2) of the ***Act*** s. 3(1) of the *Regulations*. Section 4(1)(d) of the *Regulations* states:

> **4 (1)** The insurer is not liable under subsection 3(1) of these regulations
>
> **…**
>
> **(d)** to make any payment to a claimant who is legally entitled to recover a sum of money under the third-party liability section of any motor vehicle liability policy; . . .

[39] Section 1(4) of the *Uninsured Automobile and Unidentified Automobile Coverage Regulations*, *supra*, as follows:

> (4) "uninsured automobile" means an automobile with respect to which neither the owner nor driver of it has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or the insured's spouse or common-law partner.

[40] Section 2 of those same *Regulations* "Uninsured Automobile and Unidentified Automobile" provides as follows:

> (1) The Insurer agrees to pay all sums that

> (a) a person insured under this policy is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile.
>
> (b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under this policy resulting from an accident involving an automobile, and
>
> (c) a person insured under this policy is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents or to both the insured automobile and its contents, resulting from an accident involving an automobile.

[10] The policy wording replicates Section 139(2)(a) of the *Insurance Act* which, as noted in *Faulds*, *supra*, reads as follows:

> 139 (2) Every contract evidenced by a motor vehicle liability policy shall provide for payment by the insurer of all sums that:
>
> (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
>
> . . .

[11] Section 1(1) of the policy defines "insured automobile" as the “automobile as defined or described under this policy”. Section D defines "person insured under this policy" at section 1(2) as:

> (c) In respect of a claim for bodily injuries or death,
>
> (i) any person while driving, being carried in or upon or entering or getting on to or alighting from the insured automobile,
>
> (ii) the insured named in this policy and, if residing in the same dwelling premises as the insured named in this policy, his or her spouse or common-law partner and any dependent relative,
>
> A) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or
>
> B) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

[12] Section 1(4) of Section D of the policy defines “uninsured automobile” as follows:

> … an automobile with respect to which neither the owner nor driver of it has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or the insured's spouse or common-law partner.
>
> [Emphasis added]

[13] Section 2 of Section D of the policy provides as follows:

> (1) The insurer agrees to pay all sums that
>
> (a) a person insured under this policy is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile.
>
> (b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under this policy resulting from an accident involving an automobile, and
>
> (c) a person insured under this policy is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents or to both the insured automobile and its contents, resulting from an accident involving an automobile.

[14] Paragraph 1 of the plaintiff's Statement of Claim states that the plaintiff was “at all times material, the owner of a motor vehicle being a 2013 Honda Fit (“the Honda”), registered to Bruce Ryan.”

[15] Aviva has admitted that the automobile policy was issued to the plaintiff and was in force at the relevant time. The defendant, Wamboldt, has no automobile policy insurance of his own. All parties acknowledge that Wamboldt took the plaintiff’s car without her consent. The vehicle was therefore uninsured within the meaning of the first phrase of the definition of “uninsured automobile”, as “neither the owner nor driver of it has applicable and collectible bodily injury liability … insurance”. All parties have acknowledged this fact.

[16] While many issues are raised in this matter, the real issue of import for the court on this motion surrounds the exclusionary wording contained in the second phrase of the definition of "uninsured automobile": "but does not include an automobile owned by or registered in the name of the insured or the insured's spouse or common-law partner". Aviva maintains that the wording excludes Section D coverage in these circumstances, while the Facility Association and the plaintiff argue that the wording was never intended to exclude Section D coverage in circumstances like those in this case – i.e., the carjacking of an insured person's vehicle.

Aviva's Initial Arguments

[17] Aviva initially argued that there should be no coverage available to the plaintiff under Section D because the plaintiff's injuries were caused by an intentional act and did not arise from "an accident". These arguments can be dealt with in short order. Aviva submitted that because Wamboldt committed an intentional tort - a battery upon the plaintiff - there was no coverage available under Section D. However, at the hearing, counsel conceded that he could neither locate wording in the policy nor case law to support that position. There is no exclusion for an intentional act in the policy of insurance.

[18] Next, Aviva argued that the plaintiff was not involved in an accident and therefore Section D coverage was not triggered. This is neither a tenable nor supportable argument in law. Aviva relies upon *Martin v. 2064324 Ontario Inc*., 2013 ONCA 19. This case involved the interpretation of provisions in the Ontario *Insurance Act* concerning "statutory accident benefits" ("SAB"). In particular, whether the use or operation of an automobile "directly caused" the injuries was at issue. This is vastly different statutory wording than is found in the provisions before me. The role the vehicle plays in relation to the injuries is the focus of the wording at issue in the Ontario SAB cases. The language at issue here is quite different. Moreover, the phrase "resulting from an accident involving an automobile" has been given a broad interpretation in the case law (*Amos v. Insurance Corp. of British Columbia,* [1995] 3 S.C.R. 405.) Counsel for Aviva acknowledged this at the hearing.

[19] Aviva initially argued that this event had nothing to do with the automobile, and that it was not an accident involving an automobile. I disagree. In any event, during the hearing Aviva counsel seemed to distance themselves from this argument

and instead focused their arguments on the exclusionary wording in the definition of an “uninsured automobile”.

Evidence

[20] The plaintiff had her counsel file an affidavit attaching the RCMP file. While this is technically hearsay, no party objected, but neither did any party ostensibly rely on the affidavit. I have not needed to rely on these materials to provide this decision.

[21] No other evidence was offered in this motion.

Issues

[22] The issue is this: should the Court grant summary judgment and dismiss the plaintiff's action against the defendant Aviva?

[23] Resolving this issue requires an answer to the following question:

> Was the vehicle owned by, and registered to, the plaintiff, but driven by the defendant Wamboldt, an “uninsured automobile” as defined by the *Insurance Act* and Section D?

Law and Analysis

[24] Aviva seeks summary judgment on the evidence pursuant to Civil Procedure Rule 13.04. The test on such a motion is well known. I am guided by Civil Procedure Rule 13.04 and the analysis originating in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89. Justice Bourgeois, for the court, in *Kaehler v. SystemCare Cleaning & Restoration Ltd*., 2019 NSCA 29, summarized the five sequential questions to be asked when summary judgment is sought as follows:

> 34. In *Shannex*, Justice Fichaud set out five sequential questions to be asked when summary judgment is sought pursuant to Rule 13.04 (paras. [34] through [42]):
>
> > 1. Does the challenged pleading disclose a genuine issue of material fact, either pure or mixed with a question of law?

> 2. If the answer to above is No, then: does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?
>
> 3. If the answers to the above are No and Yes respectively, does the challenged pleading have a real chance of success?
>
> 4. If there is a real chance of success, should the judge exercise the discretion to finally determine the issue of law?
>
> 5. If the motion for summary judgment is dismissed, should the action be converted to an application, and if not, what directions should govern the conduct of the action?

[25] While Aviva initially sought summary judgment on the pleadings pursuant to Civil Procedure Rule 13.03(1), and, alternatively, summary judgment on the evidence, at the hearing counsel conceded that the high bar for summary judgment on the pleadings was not met and summary judgment on evidence was the real focus of the motion. Summary judgment on the pleadings is a high bar to meet and reserved for hopeless cases. A court can only strike a pleading if it is "plain and obvious" that the claim does not disclose a cause of action (*Nova Scotia (Attorney General) v. MacQueen*, 2007 NSCA 33, at para. 8). It is not "plain and obvious" on the face of pleadings that the plaintiff has no cause of action against Aviva. (See also *Keleher v. Nova Scotia (Attorney General)*, 2019 NSSC 375, at para. 44). I conclude this high threshold has not been met and move on to consider whether summary judgment should be granted on the evidence.

[26] Counsel agree that there are no material facts in dispute, only a question of law as it pertains to the interpretation of the *Insurance Act* and the policy. The parties have asked the court to exercise its discretion to determine this question at this stage, on this motion.

[27] With regards to the sequential questions in *Shannex*, I have summarized them as follows and have answered:

1. Does the challenged pleading disclose a "genuine issue of material fact; either pure or mixed with a question of law? *No*.
2. If the answer to #1 is no, then: Does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact? *Yes*.

3. If yes: The judge "may" grant or deny summary judgment but governing this discretion is "Does the challenged pleading have a real chance of success? *Yes*.

4. If the answer to #3 is yes, leaving only an issue of law with a real chance of success then should the Judge exercise the "discretion" to finally determine the issue of law? *Yes. I will, given the request of counsel*.

[28] I will explain my reasoning below.

Statutory and Contractual Interpretation

[29] The uncontested factual matrix of the matter is of import. All parties agree that there are no material facts in dispute and the court should answer this question of law. All defendants concede for the purpose of this motion that the events occurred as alleged in the Statement of Claim.

[30] It is agreed for the purposes of this motion that the plaintiff was injured by Wamboldt while he was in the process of stealing her car. The plaintiff was returning to her car after grocery shopping. The assault occurred while she was trying to get into the car. After assaulting the plaintiff, Wamboldt drove off in the vehicle, leaving the parking lot and the plaintiff.

[31] Although Aviva has raised a number of issues, the real issue in this motion surrounds the exclusionary wording contained in the second phrase of the definition of "uninsured automobile" in s.139 of the *Insurance Act*, and carried through to s.1(4) of Section D of the policy:

> … but does not include an automobile owned by or registered in the name of the insured or the insured's spouse or common-law partner.

[32] The question of law is whether the plaintiff's vehicle was an "uninsured automobile", as is defined by the policy, at the time of this event. I will answer this question of law at the request of the parties and because I have all the necessary information and legal briefing before me. There is no reason to refrain from resolving this novel question of law at this stage as there are no material facts in dispute. By deciding this question, either the Facility Association or Aviva will be able to withdraw as a defendant. As stated in *Atlantic Lottery v. Babstock*, 2020 SCC 19:

> 18 Secondly, and since *Microsoft* was decided, this Court has recognized in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 (S.C.C.) the need for a culture shift to promote "timely and affordable access to the civil justice system" (para. 2). Where possible, therefore, courts should resolve legal disputes promptly, rather than referring them to a full trial (paras. 24-25 and 32). This includes resolving questions of law by striking claims that have no reasonable chance of success (S. G. A. Pitel and M. B. Lerner, "Resolving Questions of Law: A Modern Approach to Rule 21" (2014), 43 Adv. Q. 344, at pp. 351-52). Indeed, the power to strike hopeless claims is "a valuable housekeeping measure essential to effective and fair litigation" (*Imperial Tobacco*, at para. 19).

Uninsured Automobile

[33] As noted earlier, Aviva says the circumstances of this case are outside the definition of "uninsured automobile" in Section D. The Facility Association argues that Aviva's interpretation of the exclusionary phrase in the definition of "uninsured automobile" runs contrary to the purpose of Section D and the intention of the legislature. Section D provides for uninsured and unidentified motorist coverage, as authorized by the *Insurance Act*. This legislation requires every insurer in the province to insure a person covered by the automobile policy against injuries arising as a result of the acts of uninsured motorists.

[34] The parties did not furnish me with any extrinsic evidence to assist the court in its interpretive exercise. No Hansard or other evidence of legislative intent was provided. Counsel located no jurisprudence from this province to guide its interpretation of this legal question. I must look to authorities from other jurisdictions to assist.

[35] The Facility Association maintains that the wording of "uninsured automobile" was never intended to exclude Section D coverage for circumstances such as these – the carjacking or theft of an insured's vehicle. In order for coverage to be triggered under Section D, there must have been involvement of an uninsured automobile. Here the plaintiff's own vehicle was involved which, the Facility Association argues, is surely an uninsured vehicle in the circumstances.

[36] This matter engages both statutory and contractual interpretation. In *Rizzo v. Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, the court held that the words of a statute are to be interpreted in their entire context and in their ordinary sense harmoniously with the scheme and objects of that *Act* and the intentions of Parliament. The proper

approach to contractual interpretation is set forth in *Ledcor Construction v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, and *Sabean v. Portage La Prairie Mutual Insurance Co*., 2017 SCC 7. If the contract is unambiguous, effect is given to the clear language. Where ambiguity lies, the principle of *contra proferentum* may be relied upon. There are principles governing the interpretation of insurance contracts whereby coverage provisions are interpreted broadly, and exclusions are interpreted narrowly.

[37] There have been several cases placed before the Court to assist in the statutory and contractual interpretation exercise. I will review these.

Caselaw Relied Upon

[38] At the hearing, counsel for Aviva provided *Skunk v. Ketash et al.,* 2018 ONCA 450, leave to appeal to SCC dismissed, [2018] SCCA No. 313. This case is directly on point and on its face leads to a harsh result for the plaintiff. While there are no Nova Scotia precedents, decisions from appellate courts of other provinces, while not binding, are persuasive. (See *City of Edmonton v. Protection Mutual Insurance* (1997), 197 A.R. 81, aff'd 1999 ABCA 6.)

[39] In *Skunk*, *supra*, the Plaintiff was injured in an accident which occurred while he was a passenger in a vehicle owned by his wife and driven by his friend, the uninsured defendant, without the consent of the plaintiff or of his wife. The plaintiff claimed injuries due to an uninsured driver and sued under the "uninsured automobile coverage" provisions of the policy and the Ontario *Insurance Act*. The insurer took the position that the plaintiff was excluded from the uninsured coverage as a spouse of the vehicle's owner. The insurer argued the vehicle in question was not an "uninsured automobile" because it was owned by the plaintiff's spouse. The Court of Appeal decided the vehicle was not an "uninsured automobile" pursuant to s. 265 of the *Insurance Act*, R.S.O. 1990, c. I.8., and denied coverage to the owner's spouse.

[40] Section 265(2) provided the following definition of "uninsured automobile", which also appeared in the Ontario Automobile Policy (OAP) and the OPCF 44R Family Protection Coverage Endorsement:

> "uninsured automobile" means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, <u>but does not include an automobile owned by or registered in the name of the insured or his or her spouse. [Emphasis added]</u>

[41] Section 5.1.2 of the applicable insurance policy included a similar exception to the "uninsured automobile" coverage.

[42] The question before the court in *Skunk* was, whether the clause stood alone and precluded coverage based on the mere fact of ownership, or whether, as the plaintiff argued, it modified the phrase, "uninsured vehicle" so that there was no uninsured coverage if the vehicle involved was one owned by the insured or their spouse but the insured or their spouse had chosen not to insure it? The following argument advanced during the first appeal in *Skunk*, *supra*, is of interest to my consideration:

> In response to Jevco's motion, Mr. Skunk argued that, reading the Endorsement purposively, an automobile owned by or registered in the name of the insured or his or her spouse would be excluded from the definition of an "uninsured automobile" only if the insured or his or her spouse had chosen not to insure the automobile. He says that a vehicle taken without consent of the owner is an "uninsured automobile".

[43] For ease of reference, s. 1(4) of Section D and s. 139(1)(d) of the *Insurance Act* are virtually identical to the provisions at issue in *Skunk*, *supra*, defining "uninsured automobile" as follows in s. 1(4) of Section D:

> … an automobile with respect to which neither the owner nor driver of it has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or the insured's spouse or common-law partner.

[44] In *Skunk*, *supra*, the Ontario Court of Appeal stated the following:

> 6 The appellant maintains that the motion judge erred in his interpretation of the provision. He argues that the exception to "uninsured automobile" insurance must be afforded a purposive interpretation. It was never intended to preclude insurance for a person injured while in their spouse's properly insured motor vehicle, only because that vehicle has been taken without consent of the spouse. He submits that any other interpretation would lead to an absurd result, as exemplified by the facts of this case. He relies upon this court's judgment in *Jubenville v. Jubenville*, 2013 ONCA 302, 360 D.L.R. (4th) 109 (Ont. C.A.), to advance this argument.
>
> 7 We disagree.

> 8 The principles of statutory interpretation require that the court first look to the plain meaning of the statute. If the words have a plain meaning and give rise to no ambiguity, then the court should give effect to those words: *R. v. Clarke*, 2013 ONCA 7, 293 C.C.C. (3d) 369 (Ont. C.A.), at para. 18. We conclude that the meaning of the definition of "uninsured automobile" under s. 265(2) is clear and unambiguous: "uninsured automobile means . . . but, does not include an automobile owned by or registered in the name of the insured or his or her spouse [emphasis added]."
>
> 9 As a general rule, clauses in insurance policies will be granted a liberal meaning "in favour of the insured and those clauses excluding coverage [will be] construed strictly against the insurer": *Chilton v. Co-operators General Insurance Co*. (1997), 97 O.A.C. 369 (Ont. C.A.), at para. 19. The difficulty here is that the provision, virtually identical to the wording of the same definition of "uninsured automobile" under s. 265(2), is clear on its face. In order to arrive upon the appellant's interpretation of the provision, it would be necessary to read words into the provision. The provision would have to be interpreted as meaning that an "uninsured automobile . . . does not include an automobile owned by or registered in the name of the insured or his or her spouse, [but only where the insured or his or her spouse has deliberately chosen not to insure the vehicle]." As this court noted in *Chilton*, at para. 20, "[r]eading the words out of an insurance policy or giving the words an opposite meaning is not synonymous with a liberal interpretation". The same can be said for adding the phrase that would be required to give effect to the appellant's submission.
>
> 10 Although *Jubenville*, at para. 25, suggests a reason for the exclusion within s. 265(2) — "to prevent individuals from relying on uninsured automobile coverage instead of insuring each of their vehicles" — there could be other reasons for the legislative choice of language. For instance, the legislature may have intended that the claimant spouses not be able to recover should they place the vehicle into an "uninsured automobile" context by, for example, driving the vehicle while an excluded driver. Where, as here, the exclusion provided for under s. 265(2) and the policy is unambiguous on its face, it is not the role of this court to rewrite the provision based on speculation. Although it is proper to resolve conflicts between two different interpretations, the provision presents no ambiguity.
>
> 11 The fact that this may produce a "harsh result" does not mean that it is an absurd result, as it is in accordance with the plain meaning of the unambiguous provision: *Chilton*, at para. 21.

[45] According to the Ontario Court of Appeal, while this may be a “harsh” result, it is the result which flows from the unambiguous wording of the policy and the Ontario *Insurance Act*. The plaintiff is not left without recourse. They have the ability to advance a claim against the Facility Association. This is a persuasive decision for my consideration.

[46] The issue before this Court was also dealt with in *Fosker v. Thorpe*, (2004) 244 D.L.R. (4th) 434, [2004] O.J. No. 4187 (ONSC). The court in *Skunk*, *supra*, did not reference this decision. In that case, the plaintiff was struck and injured by her own motor vehicle while it was being stolen. She was injured; the defendant, who stole the vehicle, was not. The defendant was not insured. In order to be successful in the claim against the insurer, the plaintiff in *Fosker*, *supra*, had to establish that her uninsured coverage applied in the circumstances; that is, that her car was an uninsured automobile at the time.

[47] The defendant brought a motion to determine whether the vehicle was an uninsured automobile at the relevant time. The Court allowed the motion and dismissed the plaintiff's action. As noted above, the definition of "uninsured automobile" in the Ontario standard policy excluded "an automobile owned by or registered in the name of the insured person".

[48] In *Fosker*, *supra*, the plaintiff argued that if an interpretation of the policy and the statute created an absurd result, that interpretation should not be followed. For the statement, *Becke v. Smith* (1836), 2 M. & W. 191, was relied on and in particular, page 195 of that decision, where the court said:

> It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further.

[49] In deciding whether an absurd result required a certain type of statutory interpretation, the court in *Fosker*, *supra*, said the following:

> [26] In *Beattie v. National Frontier Insurance Co.,* Borins J.A., writing for the court, points out, at para. 13, that "principles of [statutory] interpretation may be used to resolve an absurd interpretation" but first there must be a provision whose words "are reasonably capable of more than one meaning". His Lordship quotes from *Bell ExpressVu Ltd. Partnership v. Rex*, at para 29, which I will set out in part:
>
> > What, then in law is an ambiguity? … The words of the provision must be "reasonably capable of more than one meaning" … By necessity, however, one must consider the "entire context" of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.'s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings,

> each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids …". [page 760]
>
> [27] "[W]here, by use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be … The fact that a provision gives rise to absurd results is not … sufficient to declare it ambiguous and then embark upon a broad-ranging interpretative analysis": see *R. v. McIntosh, supra*, at p. 704 S.C.R.
>
> [28] Consequently, absurdity is not enough. Neither is harshness. There must first be ambiguity.
>
> [29] The wording of s. 265(2) of the *Insurance Act*, whether taken alone or in the "entire context" of the statute, is clear and unambiguous, as is O.A.P. No. 1, s. 5.1.2 and the OPCF 44R – Family Protection Endorsement, s. 1.11. As a result, I find that, because the Ford is owned by the plaintiff and she is the insured under the Policy, it is not an "uninsured automobile" as defined in the Policy or the legislation. The Ford is specifically excluded from the definition. The wording of the definition may lead to a harsh or even an absurd result but that is insufficient to permit me to rewrite the legislation or the Policy. Perhaps the legislature should have exempted the circumstances at bar from the exclusion. If so, that is a gap I am not permitted to fill: see R. Sullivan, *Sullivan and Driedger on the Construction of Statutues*, 4th ed. (Markham: Butterworths, 2022), at p. 136.
>
> [30] I should add, counsel did not suggest that I approach the interpretation of the Policy differently from s. 265(2) of the *Insurance Act*. The motion was argued as a case of statutory interpretation, not contractual interpretation.

[50] The court ultimately held that because the motor vehicle in question was owned by the plaintiff, and she was insured under the policy, it was not a "uninsured automobile" as defined in the policy or the legislation. This case supports Aviva's argument. I note that this decision as not referenced in *Skunk*.

[51] In *Jubenville v. Jubenville*, 2012 ONSC 5678, aff'd 2013 ONCA 302, the Court distinguished *Fosker, supra,* on the basis that in *Fosker*, the plaintiff was the owner and named insured under the subject policy. In *Jubenville*, the plaintiff was the five-year-old daughter of one of the insureds. The Court refused to hold that the vehicle was not an uninsured automobile. The insured's husband was driving his uninsured vehicle when he struck the plaintiff. The daughter was insured under her mother's policy, against whom the action was brought. The defendant, Economical, argued that the plaintiff's parents were spouses at the time of the accident and that policy reasons dictated that a domestic couple should not be able to benefit from insuring only one vehicle in a family setting where more than one vehicle was owned or registered. The court noted that established principles governed the interpretation

of insurance contracts; that coverage provisions were interpreted broadly, and exclusions narrowly; and that ambiguities are resolved in favor of the insured. The court discussed the objectives of the *Insurance Act* and the uninsured coverage as follows:

> [16] It must be remembered that one of the main objectives of the *Insurance Act* is consumer protection … The legislative intent was to internalize the costs to the activity of driving and not externalize it to the general public who would fund the MVAC Fund. Section 265 of the *Insurance Act* was therefore to be seen as remedial and given a broad and liberal interpretation …

[52] On appeal, the Ontario Court of Appeal brought a purposive analysis to this issue, making the following comments about the purpose of uninsured automobile insurance while holding that the plaintiff should not be excluded from the uninsured automobile statutory accident benefits:

> [23] First, the language of the *Insurance Act* should be interpreted harmoniously with the scheme and object of the *Act* and the intention of Parliament. As the motion judge noted, the purpose of the *Insurance Act* is to internalize the costs of driving so that they do not fall on the public purse. This principle militates in favour of interpreting the definition of "uninsured automobile" in a way that does not exclude dependent relatives of policy holders from access to insurance coverage. In *Wing v. 1198281 Ontario Ltd*. (2006), 46 C.C.L.I. (4th) 154 (Ont. S.C.), Brown J. came to a similar conclusion. In that case, he was interpreting a fleet policy of insurance where there are often many insured in the one policy. In explaining why he interpreted the equivalent of s. 4.2.4 in the same way as the respondents in this case, Brown J. stated, at para. 22, that to
>
> > … reduce the number of persons covered by the uninsured automobile provisions of a policy, especially in cases involving fleet policies of insurance, and require more claimants to look to the Fund for compensation … would run counter to the intent of the Act to internalize the costs resulting from injuries caused by uninsured automobiles.
>
> [24] Second, a principle of interpretation specific to insurance contracts and legislation is that any ambiguities in provisions governing the extent of coverage should be resolved in favour of the insured …
>
> [25] Finally, the motion judge's decision finds support in the interests of fairness and public policy. Excluding an individual like Ashley from coverage leads to an unjust result. Ashley, at five years old, had no control over the scope of her parents' insurance coverage. Even accepting that the goal of the exclusionary phrase is to prevent individuals from relying on uninsured automobile coverage instead of insuring each of their vehicles, such a goal would not be undermined by the interpretation given to the section by the motion judge. The motion judge's

> interpretation makes certain that people who are responsible for insuring their vehicles and their spouses will be penalized for failing to insure each vehicle they own. This is achieved by disentitling the claimant and his or her spouse from any claim under the uninsured coverage whenever one or the other is the owner of the uninsured vehicle. Those who have no control over coverage decisions, such as dependent relatives, will nonetheless be entitled to make a claim.

[53] The Court held that the term "the insured" must be the named insured, not a child or dependant. The court found there was coverage. Clearly, the facts are distinct, and consequently *Jubenville*, *supra*, is a less compelling precedent to guide my interpretive exercise. Furthermore, the court in *Skunk*, *supra*, addressed this precedent, and as noted earlier:

> 10 Although *Jubenville*, at para. 25, suggests a reason for the exclusion within s. 265(2) — "to prevent individuals from relying on uninsured automobile coverage instead of insuring each of their vehicles" — there could be other reasons for the legislative choice of language. For instance, the legislature may have intended that the claimant spouses not be able to recover should they place the vehicle into an "uninsured automobile" context by, for example, driving the vehicle while an excluded driver. Where, as here, the exclusion provided for under s. 265(2) and the policy is unambiguous on its face, it is not the role of this court to rewrite the provision based on speculation. Although it is proper to resolve conflicts between two different interpretations, the provision presents no ambiguity.

[54] Given how the Ontario Court of Appeal addressed this decision, it is not of persuasive assistance for the Facility Association.

[55] In *George v. George* (2008), 60 C.C.L.I. (4th) 252, [2008] O.J. No. 832, the plaintiff rented a car from Enterprise Rent-A-Car. The car was insured by the defendant Allianz.

[56] The defendant George took a vehicle that the plaintiff had rented from Enterprise without the plaintiff's consent. The rental agreement between Enterprise and the plaintiff indicated that only the plaintiff could drive the vehicle. The plaintiff reported that the vehicle had been taken by George. The plaintiff later located George and arranged to pick up the vehicle. When the plaintiff arrived to pick up the vehicle, George assaulted the plaintiff, pushed him into the vehicle and drove off. The police located George, tried to stop the vehicle, and George lost control and hit a hydro pole. The plaintiff claimed under the insured motorist coverage in the Allianz policy. Allianz denied that the plaintiff was entitled to coverage, as the vehicle was not an "uninsured automobile" because the owner, Enterprise, had insurance.

[57] Allianz argued that the vehicle fell within the definition of "uninsured automobile" under s. 265(2) of the Ontario *Insurance Act* because it was an automobile owned by or registered in the name of the "the insured", that is, Enterprise. The court held that there was insurance on the Enterprise vehicle, and the plaintiff was not excluded because the plaintiff did not own the vehicle.

[58] This case is not factually similar to the matter before me and was decided before the more recent Ontario Court of Appeal decision.

[59] The court distinguished *Fosker*, *supra*, on the basis that in *Fosker* the plaintiff was the insured and fell within the exclusion. In distinguishing *Fosker,* the Court stated:

> 17. There is no question in this case that there is a policy of insurance on the Enterprise vehicle and that it has uninsured motorist coverage. As long as the plaintiff is not excluded, he has the benefit of that coverage. Since I am satisfied that he is not excluded, I find that this is not an appropriate case for dismissal of the action against Allianz.

[60] In *Wing v. 1198281 Ontario Ltd*. (2006), 46 C.C.L.I. (4th) 154, [2006] O.J. No. 5040 (ON SC), the Court distinguished *Fosker*, *supra*, on the basis that in *Wing*, the plaintiff was not the named insured. The issue in *Wing* involved the meaning of the term "insured" and the Ontario exclusionary clause. Rick Amyotte owned a courier company, the defendant 1198281 Ontario Ltd. Royal and Sun Alliance Canada issued a fleet automobile liability policy to Mr. Amyotte and the company. The policy recorded the plaintiff, Mr. Wing, as a designated driver of the courier truck that he drove, a vehicle covered under the policy. Mr. Amyotte owned a jeep. It was registered in his name but neither had a license plate nor was it insured. The jeep was parked at the company's premises. After Mr. Wing had completed his runs for the day, working as a courier, he walked over to the jeep with Mr. Amyotte, who was trying to start the vehicle. At the request of his boss, Mr. Amyotte, Mr. Wing poured gasoline into the jeep's carburetor. During this process, the ignition engaged and an explosion occurred that seriously injured Mr. Wing. He brought a claim for compensation as a result of these injuries. Royal and Sun Alliance denied that it provided coverage to the jeep. The Minister of Finance filed a Statement of Defence on behalf Amyotte, pleading that the plaintiff was insured under the Royal and Sun Alliance policy and was entitled to uninsured motorist coverage.

[61] The question was whether or not the jeep fell within the exclusionary clause of the definition of "uninsured automobile" because it was a "automobile owned by

or registered in the name of the insured". Brown J. discussed the statutory nature of uninsured motorist coverage and its purpose:

> 8 Section 265 of the *Insurance Act* creates an obligation that Ontario automobile insurance policies contain uninsured automobile coverage …
>
> 9 Under section 22(1) of the *MVAC Act*, no payment shall be made out of the Motor Vehicle Accident Claims Fund (the "Fund") in respect of a claim for damages "of an amount paid or payable by an insurer by reason of the existence of a policy of insurance."
>
> 10 In the present case the Minister of Finance argued that an amount will be payable by Royal under its policy of insurance with D.O.T. Express because the Jeep was an 'uninsured automobile' within the meaning of the policy.
>
> …
>
> 13 Whether the Jeep was an 'uninsured automobile' within the meaning of section 265(2) of the Act requires an interpretation of the word 'insured' in the exclusionary language of the definition of an 'uninsured automobile' – "an automobile owned by or registered in the name of the insured". In *Fosker v. Thorpe* (2004), 72 O.R. (3d) 753 (Sup. Ct. J.) J.W. Quinn J. considered the meaning of 'uninsured automobile' in s. 265(2) of the Act, but in that case the injured person making the claim was the person who was the named insured in the policy. In the present case, the injured person making the claim is not the named insured. Counsel advised me that they were unable to find any precedent dealing with the facts similar to those in this case.
>
> 14 When looking to interpret the words of a statute, the Supreme Court of Canada, in *Bell ExpressVu Ltd. Partnership v. Rex,* [2002] 2 S.C.R. 559 (S.C.C.), stated, at para. 26, that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." This approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: *Bell ExpressVu , supra*., at para. 27.
>
> 15 While the task at hand involves interpreting a statute, one must keep in mind that the Act forms the basis for a contract of insurance. Accordingly, one must recall the principles informing the interpretation of insurance contracts set out by the Supreme Court of Canada in *Consolidated-Bathurst Export Ltd. v. Mutual Boiler & Machinery Insurance Co*. (1979), [1980] 1 S.C.R. 888 (S.C.C.), at p. 901:
>
> > Consequently, literal meaning should not be applied where to do so would bring about an unrealistic result or a result which would not be contemplated in the commercial atmosphere in which the insurance was contracted. Where words may bear two constructions, the more reasonable one, that which produces a fair result, must certainly be taken as the interpretation which would promote the intention of the parties.

[62] Section 265 of the Ontario *Insurance Act* did not contain a definition of "insured". Brown J. cited In *Taggart (Litigation Guardian of) v. Simmons* (2001), 52 O.R. (3d) 704, where the Ontario Court of Appeal noted that the definition of "insured" found in section 224(1) of the Ontario *Act* applied to section 265. Section 224(1) defined "insured" as follows:

> a person insured by a contract whether named or not and includes every person who is entitled to statutory accident benefits under the contract whether or not described therein as an insured person.
>
> [Emphasis Added]

[63] The Nova Scotia exclusionary clause does not refer to "an insured", but "the insured". In *Wing*, *supra*, Mr. Amyotte was "the named insured" and the plaintiff was an "insured person". The term "insured person" was dealt with in 5.1.2 of the O. A. P. 1, as follows:

> **5.1.2 What is an Uninsured Automobile?** An uninsured automobile is one for which neither the owner nor the driver has liability insurance to cover bodily injury or property damage arising out of its ownership, use or operaton, or the insurance is not collectible. *However, this does not include an automobile owned by or registered in the name of the insured person or their spouse"* (emphasis added).

[64] The court found that "insured person" would mean the plaintiff and, since he did not own the jeep, that vehicle would constitute an "uninsured automobile" on the Royal and Sun Alliance policy. The court held that this interpretation would be harmonious with the scheme of the Act:

> 21. Such a conclusion fits harmoniously with the scheme of the Act. In *Chambo v. Musseau* (1993), 15 O.R. (3d) 305 (Ont. C.A.) Osborne J.A., at para. 11, described the purpose of the statutory uninsured motorist coverage regime in the following terms:
>
> > Uninsured motorist coverage became part of the standard form of automobile insurance policy in March 1980. It was part of a broad statutory scheme which required that all motor vehicles in Ontario be insured and which provided that all automobile insurance policies issued in Ontario had to include, among other things, uninsured motorist coverage. The coverage is statutory in the sense that its basic elements are set out in s. 231 [now s. 265] of the *Insurance Act*. The legislative intent was to internalize costs to the activity (driving a motor vehicle) which created them. Before March 1980 the costs resulting from the negligence of an uninsured driver were

> externalized, in that they were paid by the taxpayers generally, through the Motor Vehicle Accident Claims Fund. In my view, the uninsured motorist coverage legislation is remedial and should be given a broad and liberal interpretation.

[65] The facts of *Wing*, *supra*, are distinguishable in that Mr. Wing was not the named insured and did not own the automobile that caused his injuries.

[66] The foregoing decisions make it relatively clear that in Ontario, where the plaintiff is a named insured, they are excluded from coverage on the basis that the uninsured automobile excludes them from coverage.

[67] The plaintiff and the Facility Association raise the obvious difficult implications of the result argued for by Aviva. The plaintiff - who has paid her insurance premium for coverage if injured by an uninsured motorist – was injured in a carjacking. But, it just so happened the accident involved her own vehicle. Having paid her premium, she would nonetheless be denied access to Section D insurance when her own car was uninsured, on a literal interpretation of Section D, supported by Ontario case law. However, there would still be recourse for the plaintiff through the Facility Association – the public purse. The plaintiff and the Facility Association argue that the Ontario caselaw should not be followed.

[68] This does seem like a potentially harsh result. The Ontario Court of Appeal took note of this result, but nevertheless ruled in favor of the interpretation as argued by Aviva. Additionally, the limits of both Section D and the Facility Association coverage is the same - $500,000 - and therefore there should be no detrimental or harsh result to the plaintiff in terms of monetary impact.

[69] The Facility Association submits that to apply the exclusion as suggested by Aviva in these circumstances would create an absurd, harsh, and unacceptable result. In the often-cited text on the *Construction of Statutes* (LexisNexis, 7th ed.), Ruth Sullivan explains “consequential analysis” and discusses why absurd results should be avoided:

> §10.01 When a court is called on to interpret legislation, it is not engaged in an academic exercise. Interpretation involves the application of legislation to facts in a way that affects the well-being of individuals, entities, and communities for better or worse. Not surprisingly, the courts are interested in knowing what the consequences will be and judging whether they are acceptable. Consequences judged to be good are presumed to be intended and generally are regarded as part of the legislature’s purpose. Consequences judged to be contrary to accepted norms of justice or reasonableness are labelled absurd and are presumed to have been

> unintended. If adopting an interpretation would lead to absurdity, the courts may reject that interpretation in favour of a plausible alternative that avoids the absurdity.

[70] The result here is not absurd. It may be harsh, but the wording of the *Insurance Act* is not ambiguous and is clear on its face. Furthermore, there is no ambiguity on the face of the policy wording. In *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24, the court stated the following concerning the doctrine of *contra proferentem*:

> (ii) *Contra Proferentem*
>
> Since insurance contracts are essentially adhesionary, the standard practice is to construe ambiguities against the insurer … A corollary of this principle is that "coverage provisions should be construed broadly and exclusion clauses narrowly": *Reid Crowther & Partners Ltd. v. Simcoe & Erie General Insurance Co*., [1993] 1 S.C.R. 252, at p. 269; *Indemnity Insurance Co. of North America v. Excel Cleaning Service*, [1954] S.C.R. 169, at pp. 179-180, per Estey J. Therefore one must always be alert to the unequal bargaining power at work in insurance contracts, and interpret such policies accordingly.

[71] There is no need to rely on this interpretation principle as there is no ambiguity on the policy.

[72] The Facility Association lastly points to *Poulin v. Wawanesa Mutual Insurance Company*, 2016 ABQB 547, where Groves was killed while attempting to stop a carjacking by Cardinal. Grove's family brought an action against their SEF44 Family Protection Endorsement insurer, Wawanesa. The SEF44 policy contained the same definition of "uninsured automobile" as the section of the *Insurance Act* and policy provisions here. Justice Sanderson held that Wawanesa had to indemnify the insured's family under the policy, finding that the wording of the SEF44 Endorsement was ambiguous. Justice Sanderson also found that the purpose of the exclusionary phrase (the same as relied on by Aviva on this motion) was to prevent a person from owning and operating two or more vehicles, but only insuring one of those vehicles. In other words, it was never meant to exclude coverage in circumstances like those in this case. Justice Sanderson said:

> [16] What is the mischief attempting to be prevented by drafting the exclusion clause in this fashion? It would appear as if it is aimed at a family unit that chooses to insure only one vehicle when they are driving more than that vehicle. If an uninsured vehicle driven by a family member is involved in an accident, no claim can be made under the S.E.F. No. 44 Endorsement in relation to the insured vehicle.

> The exclusion is designed to prevent an inappropriate advantage being gained by taking the extra coverage in relation to a single vehicle.
>
> [17] Having found an ambiguity in relation to the policy's language, the second situation in *Ledcor* must be examined. Any interpretation of the policy should be consistent with the reasonable expectations of the parties, as long as that interpretation is supported by the language of the policy. The interpretation should not give rise to results that are unrealistic or that the parties would not have contemplated at the time that the policy was purchased. The expectations of Mr. Groves and his family have been set out.

[73] The Facility Association argued that in order to interpret the provision "uninsured automobile" in a manner harmonious with the entirety of the Section D insurance provisions and the protective scheme set out therein, one has to interpret the reference to "an automobile", as a reference to "such an automobile", which, in the context of this provision, means an automobile left uninsured. The Facility Association says, "Then everything makes sense".

[74] The Facility Association would have the court read in additional words to change the meaning of the clause. They argue that if a person's own vehicle on which they have placed coverage is used by an unauthorized person to injure the owner, then the vehicle owner, who has secured and paid for insurance to protect him/herself, should not be barred from recovering Section D benefits. Otherwise, it is argued that the insurer would be avoiding payment of the very thing purchased in the first place. While the Facility Association says this would make the clause "make sense", I find, and in keeping with the Ontario Court of Appeal in *Skunk, supra,* that adding in a word changes the meaning. That is not the court's job in this interpretative exercise.

Conclusion

[75] The intent of the *Insurance Act* and the Standard Insurance Policy is to internalize the costs of injuries caused by uninsured drivers. However, there remain cases where recourse still must be had to external funds such as the Facility Association. This is such a case.

[76] Despite the able arguments of the Facility Association and plaintiff, I will follow the most recent Ontario jurisprudence and refuse to read in words to the *Insurance Act* as written by the legislature. I grant Aviva's summary judgment motion.

[77] Given the unique interpretation issue and the novelty of this question, the parties agreed that they should bear their own respective costs. I agree.

Brothers, J.