

**CITATION:** Urban Lennox Gibbs v. Security National Insurance Company et al, 2025  
ONSC 4656

**COURT FILE NO.:** CV-23-00702821-0000

**DATE:** 20250813

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** URBAN LENNOX GIBBS, Applicant

**AND:**

SECURITY NATIONAL INSURANCE COMPANY AND DEFINITY  
INSURANCE COMPANY, (FORMERLY ECONOMICAL INSURANCE  
COMPANY), Respondents

**BEFORE:** Parghi J.

**COUNSEL:** *Karen J. Sanchez*, for the Applicant

*Erik L. Shum*, for the Respondent Security National Insurance

*Damien Van Vroenhoven*, for the Respondent Definity Insurance Company

**HEARD:** July 3, 2025

**Amended Decision:** Paragraph 1 of this Endorsement was amended on August 14, 2025, as explained in the Addendum to this Endorsement.

**AMENDED ENDORSEMENT**

[1] On July 3, 2021, the Applicant, Urban Lennox Gibbs, suffered a sudden medical episode while driving. He lost consciousness and rear-ended the vehicle in front of him. He is now a named defendant in a personal injury action commenced by the accident victim. The accident victim's automobile insurer, the Respondent Definity Insurance Company (formerly Economical Mutual Insurance Company), is also a defendant in that litigation and has crossclaimed against Mr. Gibbs.

[2] At the time of the accident, Mr. Gibbs had an insurance policy with the Respondent Security National Insurance Company ("Security National"). Security National has acknowledged liability under the policy for the property damage claims arising from the accident, but denies a duty to defend or indemnify Mr. Gibbs in the personal injury action, on the basis that he was driving with an expired G2 license at the time of the accident. In the course of this proceeding, Security National has further asserted that Mr. Gibbs willfully made false statements in respect of his claim, rendering his claim invalid under s. 233(1)(c) of the *Insurance Act*, R.S.O. 1990, c. I.8.

[3] Mr. Gibbs now brings this application under rules 14.05(3)(d) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. His primary submission is that he has made out the defence of due diligence to the offence of driving without a valid license; he accordingly requests a declaration that he is entitled to insurance coverage under his policy with Security National. In the alternative, he states that he is entitled to relief from forfeiture under s. 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and s. 129 of the *Insurance Act*.

[4] For the reasons below, I grant his application. I find that Mr. Gibbs has demonstrated a defence of due diligence to the offence of driving without a valid license. In the alternative, I find that he is entitled to the equitable remedy of relief from forfeiture.

### **Whether Mr. Gibbs has established the defence of due diligence**

[5] I find, first, that Mr. Gibbs has made out the defence of due diligence to the offence of driving without a valid license. I accordingly grant a declaration that he is entitled to insurance coverage under his Security National policy.

#### **The Law**

[6] The policy condition engaged in this matter is s. 4(1) of *Statutory Conditions - Automobile Insurance*, O. Reg. 777/93, enacted pursuant to the *Insurance Act*. It provides, “[t]he insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.”

[7] It is settled law that the offence of driving without a valid license is a strict liability offence for which a due diligence defence is available (*Kozel v. The Personal Insurance Company*, 2014 ONCA 130, 119 O.R. (3d) 55, at para. 15).

[8] The defence of due diligence is made out where the person accused of the offence either reasonably believed in a mistaken set of facts that, if true, would render the act or omission innocent; or took all reasonable steps to avoid the particular event (*Levis (City) v. Tetreault*, [2006] 1 S.C.R. 420, [2006] S.C.J. No. 12, at para. 15). They may show a reasonable misapprehension of facts or reasonable care with respect to the offence with which they are charged (*Kozel*, at para. 21). In the circumstances of this case, Mr. Gibbs must demonstrate that he acted reasonably with respect to the expiry of his driver’s license (*Kozel*, at para. 21). He need not have acted perfectly: the standard is one of reasonableness, not perfection (*Grondin v. Wawanesa*, (June 5, 2004), Hamilton, CV-23-1412 (ON SC), at para. 20).

#### **Analysis**

[9] I find that Mr. Gibbs acted reasonably with respect to the expiry of his license.

***He acted reasonably in maintaining a valid license before the expiry date and attending for a road test***

[10] Mr. Gibbs was duly diligent in trying to maintain a valid license immediately before the January 27, 2020 expiration date and in attending for a road test on February 18, 2020.

[11] Mr. Gibbs' evidence was that, in the latter half of 2019, understanding that his license was going to expire the following January, he tried, without success, to book a road test to complete his licensing process, *i.e.* to obtain his full G class license. On January 8, 2020, he scheduled the road test. It was to take place on February 18, 2020. That was the first available date. Security National has tendered no evidence to suggest that there were earlier dates available to Mr. Gibbs that he rejected. The booking confirmation for his road test is in the record before me.

[12] Mr. Gibbs gave evidence that, when he went to the DriveTest Centre to take his test on February 18, 2020, he was instructed not to enter the building and to wait in his car in the parking lot. He waited for about an hour. No one came to his vehicle to begin the road test. He went back home. He later learned that DriveTest had cancelled his road test appointment at 8:19 am, six minutes before its scheduled start time. No reason was provided for the cancellation. The cancellation email is in the record before me.

[13] Mr. Gibbs has provided affidavit evidence, travel documents, the road test confirmation, and the road test cancellation email. Together, these materials establish that he was in Canada at the time of the February 2020 road test, he scheduled a road test for February 18, 2020, he went to the DriveTest Centre on that date for his scheduled road test, and the road test was cancelled.

[14] Security National disputes Mr. Gibbs' evidence that he went for a road test on February 18, 2020. It does so on the basis that when Mr. Gibbs gave a handwritten, unsworn statement to Security National in September 2021, he said he was out of the country in February 2020, and he did not refer to his attempt to take a road test in February 2020. Security National submits that the information Mr. Gibbs provided in his statement should be preferred over the evidence in his affidavit.

[15] I reject this argument.

[16] It is clear that Mr. Gibbs' statement to Security National misstated his dates of travel, by suggesting that he was in his native country, the Bahamas, in February 2020 when in fact he went to the Bahamas in March 2020. This is not a critical inconsistency. Mr. Gibbs provided his statement over a year and a half after his trip. It was a handwritten and unsworn statement. He did not have counsel when he offered it. He had been in and out of the country. He did not have the opportunity to verify his precise travel dates. I am inclined to believe that he would not have understood the legal importance of being absolutely precise about his dates of travel, especially when Security National had not yet made any suggestion that he was not in the country in February 2020. Mr. Gibbs' evidence in this proceeding was that he was in Toronto from January 1 to March 13, 2020. I am satisfied that his account of these dates is credible, and his statement to Security National was an honest mistake.

[17] Furthermore, as discussed below, at the time Mr. Gibbs gave his statement, he believed, mistakenly, that his license continued to be valid due to the COVID grace period. I therefore doubt

that he would have understood that it was legally significant that he had tried, without success, to take a road test a year and a half earlier.

[18] Security National also disputes that Mr. Gibbs' February 2020 road test was cancelled by DriveTest. It does so on the basis of affidavit evidence tendered by Natasha Mistry, a coordinator at the Freedom of Information and Privacy Unit of the Ministry. Ms. Mistry's affidavit attaches a letter she prepared in response to a freedom of information request from Security National. The letter states that, on February 18, 2020, 96 road tests were conducted at Mr. Gibbs' DriveTest Centre, no road tests were cancelled due to COVID, and there was no prohibition on people entering the building.

[19] I do not admit Ms. Mistry's affidavit. The letter appended to the affidavit was drafted by Ms. Mistry but was not based on her direct knowledge. Ms. Mistry was provided with inquiries from Security National. She relayed those inquiries to unnamed, unidentified staff from the Ministry's oversight and service management office, who in turn consulted unnamed, unidentified, and undescribed information sources to generate answers to the inquiries. They then provided those responses to Ms. Mistry, who used them to create the letter. The affidavit thus consists entirely of double hearsay. On cross-examination, Ms. Mistry acknowledged that she did not compile the information provided in the affidavit and that she does not know who gathered the information, what documents they reviewed, or with whom they spoke in order to obtain the information in the affidavit.

[20] Security National has not persuaded me that it is necessary for me to admit Ms. Mistry's hearsay evidence. The DriveTest Centre is actively staffed by knowledgeable employees. Security National provides no explanation as to why the required information could not have been provided by one of them, or more than one of them, armed with direct knowledge and available for cross-examination. Even in oral argument before me, Security National was unable to offer a satisfactory explanation on this point.

[21] In any event, Ms. Mistry's affidavit is not persuasive. The affidavit speaks generally about road tests being conducted but says nothing about Mr. Gibbs' road test in particular. It says nothing to rebut his evidence that he had a road test scheduled and that it was cancelled. It says nothing about road tests that were cancelled for reasons other than COVID. It does not address the road test cancellation email that Mr. Gibbs received.

[22] Perplexingly, rather than obtaining admissible and persuasive evidence that Mr. Gibbs' road test was not in fact cancelled, Security National has asked Mr. Gibbs to provide even more and "better" evidence in support of his claim that it was cancelled, in the form of passport pages and cell phone location data or communication records. It criticizes him for not having done so.

[23] Security National now invites me to draw an adverse inference from Mr. Gibbs' inability to provide passport pages showing his travel dates in and out of Canada. Mr. Gibbs' evidence is that he no longer has his passport from that time frame. I decline to draw any adverse inference from the absence of passport evidence.

[24] Security National likewise invites me to draw an adverse inference from Mr. Gibbs' failure to provide cell phone location data and records that would confirm his whereabouts in February 2020. Such a request strikes me as rather zealous, and certainly not routine. I decline to draw the adverse inference requested by Security National.

[25] Security National cannot simply sit back and make escalating, even unreasonable, evidentiary demands of Mr. Gibbs because it is convinced he is lying. It must instead provide me with admissible and persuasive evidence that he is lying. It has not done so.

[26] Viewing the evidence as a whole, including the cancellation email, which Security National remains unable to explain, I find that Mr. Gibbs did, in fact, attend a road test on February 18, 2020, which was then unilaterally cancelled by DriveTest.

***He mistakenly but reasonably believed that the license did not expire due to the COVID grace period***

[27] I further find that, after the expiration date, Mr. Gibbs mistakenly but reasonably believed that the license expiration had been tolled due to COVID, with the result that it had not expired in January 2020.

[28] The cancelled road test was scheduled for February 18, 2020, shortly before province-wide lockdowns began due to COVID. Mr. Gibbs' evidence was that he inferred that the road test was cancelled due to COVID. Media reports indicated that road tests had started being cancelled across Ontario due to COVID around this time. The provincial government suspended the expiration of licenses due to COVID starting in March 2020. In addition, the Government of Ontario website indicated that if a motorist booked a road test before their license expires, they might be able to get an extension of their license validity until their road test date. Moreover, as detailed below, Mr. Gibbs was having difficulty rescheduling his road test, although he was able to renew his automobile insurance and pay his insurance premiums. Based on this information, Mr. Gibbs believed that any expiration of his driver's license had been suspended because road tests were unavailable, and, in turn, that his license was still valid at the time of the accident in July 2021.

[29] Mr. Gibbs' understanding was mistaken. The COVID-related grace period in fact commenced on March 1, 2020, ten days after his scheduled (and DriveTest-cancelled) road test, and 34 days after his license expired.

[30] Security National states that Mr. Gibbs' belief that he was protected by the grace period was unreasonable. It submits that at the time of his road test in February 2020, there were no media stories that suggested that there was a grace period in respect of expired driver's licenses due to COVID. When a grace period was enacted, it clearly commenced on March 1, 2020, and no earlier.

[31] I disagree. I find that Mr. Gibbs' mistake was reasonable. That is, it was reasonable for him to have believed, in the circumstances described above, that the grace period applied to him and that his license would remain valid.

[32] Security National further states that Mr. Gibbs had “a history,” going back 25 years, of letting his license lapse. He therefore could not have reasonably believed his license was still valid. It further submits that Mr. Gibbs has been driving his car with a lapsed license in the past.

[33] I reject this argument. I am unable to see how Mr. Gibbs’ alleged past license lapses are relevant to the question of whether he formed a reasonable belief, after his February 2020 road test cancellation, that he was covered by the grace period that came into effect 11 days later. Moreover, having a lapsed license is quite different from driving without one. I also note that Security National did not advance this claim in its October 2021 denial of coverage letter. Had it done so, Mr. Gibbs would have been able to respond to the (rather significant) allegation that he has a history of driving with a lapsed license and that that history is somehow relevant to the coverage dispute at hand.

[34] Finally, Security National asserts that Mr. Gibbs should have clarified with the Ministry that he was, in fact, covered by the grace period. It says that he cannot advance the defence of due diligence without having made inquiries about the grace period.

[35] I disagree. The standard for due diligence is not one of perfection, as *Grondin* makes clear. Mr. Gibbs was not required to make every inquiry conceivable to satisfy himself that he was covered by the grace period. He was simply required to act reasonably. For the reasons above, I am satisfied that he did.

[36] As such, based on the record before me, I am persuaded that Mr. Gibbs formed the mistaken but reasonable view that his license expiration was subject to the COVID grace period and accordingly did not expire in January 2020.

***He acted reasonably in trying to schedule another road test in 2020 and 2021***

[37] In addition, I find that Mr. Gibbs acted reasonably in trying to schedule another road test later in 2020 and into 2021.

[38] Mr. Gibbs’ evidence is that after his February 18, 2020 road test was cancelled, he tried to reschedule his road test, without success. He continued these efforts to no avail. Security National offers no evidence to suggest that road test dates were in fact available during this time frame, contrary to Mr. Gibbs’ evidence, or to otherwise rebut his version of events.

[39] On March 14, 2020, Mr. Gibbs travelled to the Bahamas to visit his sister. He intended to return on March 25, 2020, but because of COVID-related travel restrictions, he returned on July 20, 2020. Upon his return, he tried again to schedule his road test, but there were no available appointments. Again, Security National offers no evidence to suggest that road test dates were in fact available during this time frame or to otherwise rebut Mr. Gibbs’ evidence.

[40] He returned to the Bahamas on October 16, 2020 to visit his sister, who was ill and in the hospital. He planned to return on November 21, 2020. However, his sister’s health deteriorated, and he stayed until February 2021.

[41] When he returned to Ontario, he tried again to reschedule a road test, without success. His evidence was that he got “bounced” off the booking system repeatedly. Again, Security National offers no evidence to the contrary.

[42] Based on this evidence, I am of the view that Mr. Gibbs made appropriate efforts to schedule another road test after the February 2020 road test was cancelled by DriveTest and before the date of the accident. While he was not able to schedule a road test, this was because of COVID and his absence out of the country for family reasons, and against the backdrop of license renewal deadlines being extended due to COVID.

### **Conclusion**

[43] I accordingly conclude that Mr. Gibbs acted reasonably with respect to the expiry of his driver’s license by maintaining a valid license immediately before its January 2020 expiry and attending for a road test on February 18, 2020. I find that he reasonably (albeit mistakenly) believed that his license expiry was covered by the COVID grace period that came into effect 11 days after his unilaterally cancelled road test. I further find that he acted reasonably in trying to schedule another road test later in 2020 and 2021, after the cancelled road test and before the July 2021 accident. He has accordingly established the defence of due diligence to the offence of driving without a valid license and is granted a declaration that he is entitled to insurance coverage under his Security National policy.

### **Whether Mr. Gibbs is, in the alternative, entitled to relief from forfeiture**

[44] I also accept Mr. Gibbs’ alternative submission that, if his defence of due diligence fails, he is entitled to the equitable remedy of relief from forfeiture under s. 98 of the *Courts of Justice Act* and s. 129 of the *Insurance Act*.

### **The Law**

[45] Section 98 of the *Courts of Justice Act* provides, “[a] court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just.”

[46] Section 129 of the *Insurance Act* provides:

Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just.

[47] The Court of Appeal for Ontario has observed that relief from forfeiture provisions are to be construed broadly and given a fair, large, and liberal interpretation because they are remedial

(*Kozel*, at para. 54). In the context of insurance disputes, relief from forfeiture is intended to prevent hardship to insurance beneficiaries where there has been a failure to comply with a condition for receipt of insurance proceeds and where leniency in respect of strict compliance with the condition will not result in prejudice to the insurer (*Kozel*, at paras. 28-29; *Falk Bros. Industries Ltd. v. Elance Steel Fabricating Co.*, 1989 CanLII 38 (SCC), [1989] 2 S.C.R. 778, at p. 783. It is settled law that relief from forfeiture is a purely discretionary remedy (*Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994 CanLII 100 \(SCC\)](#), [1994] 2 S.C.R. 490, at p. 504).

[48] In exercising my discretion to grant relief from forfeiture, I am to consider three factors: the conduct of the applicant, the gravity of the breach, and the disparity between the value of the property forfeited and the damage caused by the breach (*Kozel*, at para. 31).

[49] In *Kozel*, the Court, applying this test, granted relief from forfeiture to an applicant who was driving with an expired license at the time she had a motor vehicle accident. The driver had received an envelope from the Ministry of Transportation containing renewal-related documents, but had not opened it. She had set it aside. She later took the envelope to a car dealership when she bought a new car, but did not appreciate at the time that the envelope contained renewal documents. She later had an accident, with her license still expired.

[50] The Court observed that where an insured’s breach of a statutory condition amounts to non-compliance with a condition precedent, relief under s. 98 is not available, but where the breach amounts to imperfect compliance, such relief will be available (at para. 40). It went on to hold that Ms. Kozel’s breach of the statutory condition – the same condition at issue here – amounted to imperfect compliance, and that, as such, relief from forfeiture was available. It did not amount to non-compliance with a condition precedent, which will be found “only in rare cases” where the breach is substantial and prejudices the insurer (at para. 50).

[51] The Court went on to grant relief from forfeiture. It observed that Ms. Kozel’s breach was “relatively minor.” There were no grounds to believe that the statutory condition was a fundamental term or that her breach of it was fundamental in nature. The breach did not affect Ms. Kozel’s ability to drive safely. She had always paid her premiums in a timely manner. She had always acted in good faith. She stood to lose \$1 million in insurance coverage. At the same time, the breach had caused no prejudice to the insurer (at para. 68). The Court concluded that it would be contrary to the principles of equity to let the insurer enjoy a large windfall at the expense of an insured who acted in good faith and whose breach caused no prejudice to the insurer (at para. 73).

### **Analysis**

[52] Based on the test articulated in *Kozel*, I find that it is appropriate to grant Mr. Gibbs relief from forfeiture.

[53] Turning to the first factor, I find that Mr. Gibbs’ conduct warrants relief from forfeiture. I note the following:

- a. He paid his premiums on time.
- b. There is no suggestion that he deliberately avoided renewing his license or that he knew that the COVID-related grace period did not apply to the expiration of his driver's license and acted intentionally, recklessly, or with willful blindness. Nor do I see any basis to find that he was negligent or inattentive.
- c. Given the information available to him at the time, he reasonably formed the (mistaken) view that his license expiry was suspended due to COVID. Although Security National disputes this claim, I reject their argument.
- d. He has not acted in bad faith vis-à-vis Security National. He provided a statement to them when asked to. He provided evidence in this proceeding and attended cross-examination. He has not concealed or made deliberate misrepresentations to Security National. Although Security National claims otherwise, as discussed elsewhere in these Reasons, I do not accept Security National's claims.
- e. After the accident, he continued to act responsibly, retaining counsel to defend the personal injury action commenced against him, so that Security National will not be prejudiced if it takes over his defence.

[54] Having regard to the second factor, I find that Mr. Gibbs' breach, of driving with an expired license, was minor and was not fundamental to the contract. I note the following:

- a. He had a valid license from the Bahamas at the time, and he was an experienced driver. His breach thus did not affect his ability to drive safely.
- b. His breach is comparable to the one committed by the insured in *Kozel*, which the Court of Appeal characterized as minor in nature. Ms. Kozel's breach was borne of inattention. Mr. Gibbs' breach was borne of an honest misunderstanding. Neither breach was the result of deliberate disregard, willful blindness, or recklessness.
- c. His license expired only 34 days before the province-wide grace period for license expirations took effect.

[55] Security National asserts that Mr. Gibbs' breach was not minor, noting that his license had expired in the past. It calls this a "repeated" and "significant" breach. For the reasons above, I do not agree that any alleged license expiries in the past, dating back up to 25 years, are relevant. I am to assess whether the breach giving rise to the current coverage dispute is minor. Based on the record before me and the jurisprudence, I find that it was.

[56] Finally, turning to the third factor, there is a significant disparity between the value of the coverage forfeited and the damage caused by Mr. Gibbs' breach.

[57] It is difficult to see that there is any damage or prejudice caused to Security National by Mr. Gibbs' breach. Security National is already a party to the action. The litigation is in its early

stages and indeed has been paused pending resolution of this coverage dispute. In any event, Mr. Gibbs has retained counsel to defend his interests in the litigation to date. For all these reasons, Security National will not be prejudiced if it takes over his defence. Security National has tendered no evidence to suggest otherwise.

[58] By contrast, if Mr. Gibbs is denied relief from forfeiture, he will lose at least \$800,000 in insurance coverage. He will have to fund his own defence costs as the action progresses. He may find himself personally indemnifying the plaintiff. He will face subrogation claims from Security National and Definity in the crossclaim. His personal assets will be exposed.

[59] In my view, the disparity is great, and comparable to the kinds of disparities that, in other cases, have been found to weigh in favour of relief from forfeiture (see, for example, *Kozel*, at para. 71, and *Sage v. Peel Mutual Insurance Co.*, 2005 CanLII 40383 (ON SC), [2005] O.J. No. 4714, at para. 52).

### **Security National’s Claim That Mr. Gibbs Wilfully Made False Statements**

[60] Security National takes the position that Mr. Gibbs has made false statements in respect of his claim, in violation of s. 233(1)(c) of the *Insurance Act*, which provides that if an insured “wilfully makes a false statement in respect of a claim under” an insurance contract, the claim is invalid and the insured forfeits their right to recover indemnity. Security National further submits that, as a consequence of these false statements, Mr. Gibbs does not have clean hands and cannot seek the equitable remedy of relief from forfeiture.

[61] I reject these arguments outright.

[62] As discussed above, Security National has asserted that Mr. Gibbs lied about his dates of travel, his presence in Canada in February 2020, his road test on February 18, 2020, and the cancellation of his road test on that date. I have rejected Security National’s claim that these were deliberately false statements.

[63] Security National has also speculated, rather shockingly, that Mr. Gibbs may have been drinking before the accident, in violation of the terms of his driver’s license. This suggestion is nothing more than idle conjecture. It is not appropriate. The uncontroverted evidence is that Mr. Gibbs likely suffered an unexpected seizure while driving. The accident report, which is in the record before me, contains no reference to alcohol use by Mr. Gibbs. It contains no suggestion that he was impaired. There is no indication that he was charged with impaired driving.

[64] Security National has further speculated that Mr. Gibbs may not have been driving home from St. Lawrence Market at the time of the accident, as he claims, because he has produced no receipts for his purchases from the market, and the location of the accident was too far west to be between the Market and his home. I attach no significance to the fact that Mr. Gibbs has not produced his receipt from a purchase he made at a market shortly before he experienced a seizure and car accident that sent him to the hospital via ambulance. I am surprised that Security National would. In any event, even if Mr. Gibbs provided incorrect information as to his direction of travel,

there is no basis for the suggestion that this was a deliberate false statement, triggering the operation of s. 233(1)(c).

[65] I accordingly reject Security National’s claims that Mr. Gibbs made false statements, that those false statements disentitle him to coverage under s. 233(1)(c) of the *Insurance Act*, and that the false statements mean he does not have clean hands and is not entitled to seek the equitable remedy of relief from forfeiture.

[66] Furthermore, I am troubled by how Security National has advanced these claims. Security National raised its various allegations of false statements for the first time in its factum in this proceeding. It did not refer to the alleged false statements in its denial of coverage letter in October 2021, in which the only stated ground for denial of coverage was that Mr. Gibbs did not have a valid license at the time of the accident. Nor did Security National provide Mr. Gibbs with formal notice of these allegations any time after October 2021, in a revised or updated denial of coverage letter or any other correspondence. Mr. Gibbs learned of these numerous, and, in some cases, rather shocking, allegations only when he received Security National’s materials in this application.

[67] An insured individual should be able to understand the basis for their denial of insurance coverage, so that they may respond appropriately to the denial. Where the basis for denying coverage evolves, as it seems to have here, an insured should be able to know that too, so that they may understand the evolving case to meet. They should have this information at the outset, or as soon as it becomes known to the insurer. They should not have to wait until after litigation is commenced. It is a matter of basic good faith and procedural fairness for an insurer to provide such notice to its insured. This court has recognized the importance of an insurer providing notice when denying a claim based on alleged false statements, so that the insured may “address the insurer’s [...] concerns” (*Ratnasingham v. Liberty Mutual Group*, 2003 CanLII 46151 (ON SC), at para. 29).

[68] I am of the view that Security National did not extend this basic fairness and expression of good faith to Mr. Gibbs. It has moved the goal posts on Mr. Gibbs. It has done so in a way that did not give him an adequate opportunity to respond to serious, and, as it turns out, unfounded allegations that he wilfully made false statements.

### **Conclusion**

[69] For the reasons above, I grant a declaration that Mr. Gibbs is entitled to insurance coverage under his policy with Security National.

[70] Mr. Gibbs is also entitled to his costs. He has been entirely successful in his application. The parties are to work together to resolve costs. If they are unable to do so within 30 days, they are to contact my judicial assistant, and I will set a timetable for the exchange of costs submissions.

Date: August 13, 2025

Amended: August 14, 2025

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Parghi J.

**ADDENDUM TO ENDORSEMENT**

[1] On August 14, 2025, paragraph 1 of the Endorsement was amended to reflect that the Respondent Definity Insurance Company is the automobile insurer of the victim of the motor vehicle accident involving Mr. Gibbs. Due to a typographical error, the Endorsement had previously incorrectly stated that Definity was Mr. Gibbs' insurer.

Date: August 14, 2025

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Parghi J.