

CITATION: Krandel v. CPA Professional Liability Plan Inc. et al, 2026 ONSC 262
COURT FILE NO.: CV-24-00714418-0000
DATE: 20260114

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Morris Krandel

AND:

CPA Professional Liability Plan Inc. and Continental Casualty Company

BEFORE: Merritt J.

COUNSEL: Morris Krandel - Self Represented

Jamie Macdonald, for the Respondent CPA Professional Liability Plan Inc.

Peter Askew and Kelly Charlebois for the Intervenor Dianne Herzog

Matthew Lerner and Andrew Locatelli for the Intervenor Melvin Pearl

Counsel for the Defendants

HEARD: December 9, 2025

ENDORSEMENT

OVERVIEW

[1] The applicant Morris Krandel was a Chartered Professional Accountant until he stopped practicing in 2023.

[2] The Respondent Continental Casualty Company (the “Insurer”) issued several professional liability policies to Mr. Krandel including a policy for the Policy Period of July 3, 2018 to July 3, 2019 with Limits of Liability of \$1,000,000 under policy no. 18-2121 (the “2018 Policy”), and a policy for the Policy Period of July 3, 2021 to July 3, 2022 with Limits of Liability of \$2,000,000 under policy no. 21-2121 (the “2021 Policy”).

[3] Mr. Krandel seeks a declaration that an action brought against him by the intervenor Dianne Herzog in her capacity as Estate Trustee of the Estate of Shalom Herzog, together with other plaintiffs in 2019 (court file no. CV-19-00620130-0000) (the “Herzog action”) and an action commenced against him by Melvin Pearl (court file no. CV-21-672311-0000) (the “Pearl action”)

in 2021 constitute separate claims under the two policies issued to him by the Insurer and that he has access to both limits of liability insurance.

[4] The Insurer submits that this Application is premature because Mr. Krandel is seeking a declaration that the Insurer owes him a duty to indemnify him before any such obligations have arisen as there is no judgment in the Intervenors' actions. The Insurer submits that in order to decide the Application, the court would have to make factual findings regarding the relationship between the Intervenors' two actions and the circumstances giving rise to them. The Insurer submits that this role is inappropriate because there is a risk I could make prejudicial factual findings, and there is a risk of inconsistent findings.

[5] Alternatively, the Insurer submits that the two actions are a single claim and any indemnity that the Insurer will owe to Mr. Krandel in relation to the two actions will be subject to the \$1,000,000 limits of liability in the 2018 policy. This is because the insurance policy provides that all demands or allegations arising from a common set of circumstances constitute a single claim, which is deemed to be first made and reported when those circumstances were first reported. The Insurer submits that the two actions arise from a common set of circumstances that Mr. Krandel first reported to the Insurer during the currency of the 2018 Policy. As such, the Insurer submits that the Pearl action is not excluded from coverage under the 2018 Policy just because it was made after the 2018 Policy expired.

[6] The Intervenors Diane Herzog and Melvin Pearl submit that the policies are "claims made" policies requiring that claims be made and reported during their respective policy periods. They argue that the claim relating to the Herzog action was made and reported during the 2018 Policy Period and the 2018 Policy applies. The claim relating to the Pearl action was made and reported in 2021 and the 2021 Policy applies. Alternatively, the Intervenors submit that there are two separate claims because the allegations and claims in the two actions are factually distinct in every respect including the relevant taxpayers, the time periods and the subject matter. The only commonality is that both actions contain allegations of professional negligence against Mr. Krandel.

[7] The issue here is not whether the Insurer has a duty to defend Mr. Krandel in the two actions; the Insurer is providing a defence to Mr. Krandel in both the Herzog action and in the Pearl action. Rather, the issue here is whether Mr. Krandel has coverage for indemnity under both the 2018 Policy and the 2021 Policy or just under the 2018 Policy.

THE ISSUES

[8] There are three issues as follows:

- 1) Are the Policies "claims made policies" such that only claims made and reported during the policy period apply?
- 2) Is the Application Premature?

3) If not, do the Herzog and Pearl actions constitute a single Claim under the 2018 policy?

DECISION

[9] The Application is premature because it is not appropriate to determine whether the claims made in the two actions are “demands or allegations arising from a common set of circumstances” based on an incomplete factual record.

THE EVIDENCE

[10] In his affidavit, Mr. Krandel sets out that he is bringing this Application to increase the amount of insurance available to indemnify him in the two actions:

As a result of the Respondents’ coverage position, I only have a total of \$1,000,000 in coverage (subject to certain deductions) to respond to both the Herzog Action and the Pearl Action. Had the Respondents covered the claims under the separate policy years in which they first came to my attention and were reported, I would have \$3,000,000 in total coverage (\$1,000,000 under the 2018 Policy and \$2,000,000 under the 2021 Policy).

[11] In his cross-examination on this Application, Mr. Krandel refused to answer questions concerning the two actions on the advice of his defence counsel in both actions. He refused to answer questions concerning his communications with and instructions from Mr. Herzog and Mr. Pearl, the services he provided to them, his knowledge of their business relationship, and his knowledge of the allegations against him in the two actions. He also refused to say whether he had any documents in his possession in which he described the tax reporting of income or distributions with both Mr. Pearl and Mr. Herzog for business ventures in which they were both involved, or any work papers or cross-reference files tracking the same ventures in which Mr. Herzog and Mr. Pearl may have been involved.

[12] Accordingly there is limited evidence from Mr. Krandel on this Application concerning the two underlying actions. The two underlying actions are at an early stage and the parties have not yet conducted examinations for discovery.

[13] The Intervenors point out that the Insurer did not bring a motion to compel Mr. Krandel to answer questions when he refused to answer on this application. It is not surprising that the Insurer chose not to force Mr. Krandel to give evidence which could prejudice his position in the underlying actions. The evidence does not establish that the Insurer acted improperly and strategically in not moving for answers to refused questions in order to better its position in this Application. In fact, the Insurer submits that forcing Mr. Krandel to answer questions on this Application, which might prejudice his position in the underlying action, may be acting in bad faith.

ANALYSIS

Issue 1: Are the Policies “claims made policies” such that only claims made and reported during the policy period apply?

[14] The parties agree on the proper approach for the interpretation of insurance policies as set out in *Simpson Wigle Law LLP v. Lawyers’ Professional Indemnity Company*:

The primary interpretive principle is that when the language of the policy is unambiguous, the court should give effect to clear language, reading the policy as a whole.

Where the language of the policy is ambiguous, the courts rely on general rules of contract construction. For example, courts should prefer interpretations that are consistent with the reasonable expectations of the parties, so long as such an interpretation can be supported by the text of the policy. Courts should avoid interpretations that would give rise to an unrealistic result or that would not have been in the parties’ contemplation at the time the policy was concluded. Courts should also strive to ensure that similar insurance policies are construed consistently. These rules of construction are applied to resolve ambiguity. They do not operate to create ambiguity where there is none in the first place.

When the rules of contract construction fail to resolve the ambiguity, courts will construe the policy *contra proferentem* -- against the insurer. ...One corollary of the *contra proferentem* rule is that that coverage provisions are interpreted broadly, and exclusion clauses narrowly.

2014 ONCA 492, 120 O.R. (3d) 655, at para. 54, citing *Progressive Homes Ltd. v Lombard General Insurance Co. of Canada*, 2010 SCC 33, [2010] 2 S.C.R. 245, at paras. 22-24.

[15] The Applicant and the Intervenors say that the Policies provide coverage to Mr. Krandel on a “claims made and reported” basis, meaning that the coverage available to Mr. Krandel under each Policy applies only to “Claims” made against Mr. Krandel and reported to the Insurer within the respective Policy Period.

[16] The 2018 Policy defines Claim as follows:

CLAIM:

- 1.(a) A written or oral allegation of breach in rendering or failure to render professional services; or
- (b) A written or oral demand for money or services arising from a breach in the rendering or failure to render professional services;

received by the INSURED and reported to the INSURER or CPA Professional Liability Plan Inc. during the POLICY PERIOD or during the EXTENDED REPORTING PERIOD, as applicable.

2. If during the POLICY PERIOD circumstances which any reasonable person would expect to give rise to a CLAIM are reported to the INSURER, then the INSURER will consider these a CLAIM even if a formal demand is advanced against the INSURED only after the POLICY PERIOD.

All demands or allegations arising from a common set of circumstances shall be considered a single CLAIM regardless of the number of INSUREDS, the number of persons or organizations making demands or allegations, or whether all such demands are made concurrently.

Any such CLAIM shall be subject to the Limits of Liability and DEDUCTIBLE in effect at the time the circumstances were first reported to the INSURER or CPA Professional Liability Plan Inc.

[17] The 2018 Policy only provides coverage for Claims that are made and reported to the insurer during the relevant Policy Period.

[18] The Intervenor Mr. Pearl submits that the correct interpretation is that the 2018 Policy means that the definition of “Claim” qualifies that all demands or obligations arising out of a “common set of circumstances” will be considered as one “Claim” under the Policy, but the qualification does not alter the temporal limitation on coverage under the Policy and that the qualification does not apply to a “Claim” made and reported outside of the policy period.

[19] I do not agree. The 2018 Policy may respond to a lawsuit that is commenced after the Policy Period if the circumstances that give rise to the claim relate to a common set of circumstances (which are deemed to be a single claim) that were first reported in 2018.

[20] The plain wording of the Policy is: “All demands ... arising from a common set of circumstances shall be considered a single CLAIM regardless of whether all such demands are made concurrently.” In my view, the correct interpretation is that the 2018 Policy means that the definition of “Claim” qualifies that all demands or obligations arising out of a “common set of circumstances” will be considered as one “Claim” under the Policy, regardless of when they are made and reported.

[21] Therefore, the issue is whether there is a “common set of circumstances”.

Issue 2: Is the Application Premature?

[22] The Insurer submits that it is premature to decide whether the actions share a “common set of circumstances” before the facts are determined in the underlying actions. The Applicant and the

Intervenors rely on cases where courts have determined whether the allegations in an underlying actions are a single claim or two separate claims before the underlying actions are decided.

[23] In *Simpson Wigle Law LLP*, the law firm brought an application for a declaration of coverage before the underlying litigation was commenced and the court relied on the alleged facts in the statement of claim and not findings of fact: at para. 6.

[24] In *Simpson Wigle Law LLP* the policy wording was: “All CLAIMS... which arise from a single or related error(s), omission(s), or negligent act(s), shall be considered a single CLAIM regardless of the number of INSUREDS or the number of persons or organizations making a CLAIM or the time or times the error(s), omission(s) or negligent act(s) took place”: at para. 56.

[25] The Court of Appeal was able to determine, on the basis of the pleading, that the claims did not arise from a related error, omission or negligent act meaning they did not have a sufficient association or connection between them, reading the policy as a whole and bearing in mind its objective.

[26] *Simpson Wigle Law LLP* is distinguishable on its facts. There, the two errors were very different in nature and kind: at para. 78. One claim related to the allegedly improper appointment of the deceased’s committee and the other claim related to improvident or unnecessary sales of land: at para.77. The two types of recovery were also different in nature and kind: at para. 79.

[27] In *Continental Casualty Company v. Lawyers' Professional Indemnity Company*, 2020 ONSC 7131, 154 O.R. (3d) 23 a lawyer gave tax advice to four sets of clients about a proposed plan whereby the client donated money to a Canadian charity and received a tax receipt. The Canada Revenue Agency (CRA) concluded that the plan was a tax shelter and disallowed the donations and the clients sued the lawyer. The issue before the court on the application was whether the claims were a single claim or related claims such that LawPRO’s policy provided for a single liability limit or whether they were not a single or related claim such that the aggregate limit would apply. As in *Simpson*, the policy provided that a single claim arises “from a single or related error(s), omission(s) or negligent act(s)”. It appears from the decision that the application was brought after at least one of the underlying actions was partly decided (i.e., liability only): at paras. 14-16.

[28] As in *Simpson Wigle Law LLP*, the court was able to find, on the basis of the pleadings, that one claim included a claim that was not related to the other claims because it had two additional errors.

[29] In *Dunn v. Chubb Insurance Company of Canada*, 2009 ONCA 538, 97 O.R. (3d) 701, the application judge dismissed an application for a declaration that the insurer was obligated to pay 90 or 100 per cent of the appellants’ defence costs. The policy provided coverage for “all Loss arising out of the same Wrongful Act and all Interrelated Wrongful Acts”: *Dunn*, at para. 55. “Wrongful Act” was broadly defined to include the type of conduct at issue in the Hybrid Proceedings, including misleading statements. “Interrelated Wrongful Act” was defined to mean

“all causally connected Wrongful Acts”. One of the issues was whether the insured’s conduct in 2003 was causally connected to, or the same as, the insured’s conduct in 2021. The Court of Appeal was able to determine, from reading the allegations in the pleading, that the “2003 Conduct is different in nature, in kind and in time from the 2001 Conduct alleged in the same proceedings” at paras. 58 and 59.

[30] The intervenor Mr. Pearl also relies on *Harbord v. Intact Insurance Company*, 2021 ONSC 8578, where there were three actions against a chiropractor. One plaintiff brought a motion for summary judgment against the chiropractor’s insurer after the trial of the underlying action. The issue was whether the aggregate limit or the single loss limit applied to the plaintiff’s claim which turned on the determination of whether the claims arose out of “interrelated circumstances”. The court found that the circumstances giving rise to the plaintiff’s claim were not interrelated with the circumstances of the other patients who made claims because in each of the three actions the claims were made by different plaintiffs and related to events specific to each plaintiff and as such there was no sufficient association or connection between the claims: *Harbord*, at para. 29. It was not sufficient that the plaintiffs in each action made similar allegations: *Harbord*, at para. 31.

[31] *Harbord* is distinguishable because it was a summary judgment motion decided after the trial and the court relied on the trial judge’s findings of fact: at para. 12. The court held that the determination of the issue of whether there were interrelated circumstances turned on the actual facts found at trial and not the pleadings:

Whether or not claims are a single loss is not determined by how the allegations were pleaded, as such allegations are invariably pleaded broadly. Rather, the question is whether the circumstances giving rise to those allegations are interrelated or not, as it is not an allegation that gives rise to a claim, but rather the underlying circumstances. This is not a duty to defend case; this is a case involving indemnity and the interpretation of the policy based on facts, not allegations: at para. 33.

[32] In *Canadian Lawyers Insurance Assn v. Drover*, 2023 NLSC 106, the court considered an insurance coverage issue with respect to a lawyers’ negligence where four clients made claims against the same lawyer with respect to advice given regarding mortgages obtained for the same property. The policy defined an error as an Occurrence but two or more “substantially related errors” were a single Occurrence. The court noted that the claims pertained to different periods of time, they related to distinct mortgages with different financing terms and purposes, and that each client had given the lawyer separate instructions. The court concluded the claims were not “substantially related” within the meaning of the policy such that they were not subject to one liability limit because each title certificate related to a deed or mortgage given at different times for different purposes: paras. 17- 23 and 68.

[33] From reviewing the above cases, it is apparent that determining whether an insurer is obligated to indemnify, and if so, under which policy or liability limit, is an exercise that turns on the specific wording of the policy and the particular facts of the case. In some cases, it may be

possible to answer these questions on the basis of the allegations in the claim. However, in this case it is premature to make such a determination for the reasons that follow.

[34] The Herzog action was commenced on May 1, 2019 and generally concerns allegations of negligence arising from professional accounting services that Mr. Krandel provided to Mr. Herzog.

[35] The Herzog action contains many allegations of negligence that are not contained in the Pearl action.

[36] Mr. Krandel tendered the Herzog action to the Insurer. The Insurer acknowledged its duty to defend Mr. Krandel and appointed counsel to defend him under the 2018 Policy. Mr. Krandel delivered his statement of defence in the Herzog action on March 13, 2020. The defence costs are outside of the policy limits and therefore the insurance limits whatever they may be will not be reduced by the cost of defending the underlying actions.

[37] The Pearl action was commenced on November 19, 2021 and generally concerns allegations of negligence arising from professional accounting services that Mr. Krandel provided to Mr. Pearl.

[38] The Pearl action claims damages arising from the Canada Revenue Agency's (the "CRA") reassessments of Mr. Pearl's personal income tax returns from 2015 and 2016. The reassessments increased Mr. Pearl's income tax for these years, resulting in an outstanding amount of \$2,727,283 plus penalties and interest.

[39] Mr. Krandel tendered the Pearl action to the Insurer. On February 10, 2022, the Insurer advised Mr. Krandel that it would provide a defence to Mr. Krandel in the Pearl action under the 2018 Policy as a single Claim with the Herzog action because Mr. Krandel told the Insurer that Mr. Herzog and Mr. Pearl were business partners and that the allegedly unreported income in the Pearl lawsuit concerned the same business ventures that are the subject of the Herzog action. The Insurer took the position that the \$1,000,000 liability limit in the 2018 policy applies to both actions.

[40] Mr. Krandel delivered his Statement of Defence in the Pearl action on April 27, 2022. The Statement of Defence includes the following allegations concerning the relationship between Mr. Herzog and Mr. Pearl:

17. It is understood [although not pled in the statement of claim] that the taxable income allegedly omitted from the 2015 and 2016 personal tax returns of Pearl were distributions from Lancashire Holdings Inc. ("Lancashire") totaling \$2,369,750 in 2015 and \$475,000 in 2016.

18. Lancashire held an interest in the Menkes (Gibson Square) Limited Partnership (the "Gibson Square LP"). Pearl held a 25% interest in Lancashire. Another 25% of Lancashire was held by Pearl's friend and business associate, Samuel Herzog ("Herzog"). The remaining 50% was held by other investors.

19. From time to time, the Gibson Square LP made distributions to Lancashire. Funds from those distributions were in turn paid to the investors in Lancashire [including Pearl and Herzog].

20. Both Pearl and Herzog were clients of Krandel and, usually together, they instructed Krandel that the payments from Lancashire were loans, as recorded in the accounting records of Lancashire, and were to be recorded as such for the personal tax filings.

21. Subsequent to Herzog's death in 2017, Krandel reviewed Pearl's tax returns with Pearl and followed Pearl's instructions to include receipts from Lancashire in Pearl's income. Pearl knew, and acknowledged to Krandel, that the amounts previously received from Lancashire had not been included in Pearl's prior taxable income. Pearl was aware that CRA could reassess him with respect to the receipts from Lancashire in 2015 and 2016; notwithstanding this, Pearl did not instruct Krandel to amend or refile the 2015 and 2016 tax returns. [...]

24. Krandel states that Pearl did not rely upon Krandel with respect to whether or not to report the distributions from Lancashire on his 2015 and 2016 personal tax returns. [...] In the alternative, to the extent that Pearl relied upon anyone other than himself, it was on advice and input from Herzog, Lancashire and/or the advisors to Lancashire.

[41] The allegations in Mr. Krandel's Statement of Defence suggest that the allegations in the Pearl action and some of the allegations in the Herzog action relate to a common set of circumstances i.e. the circumstances relating to the characterization of the payments from Lancashire as a loan as opposed to income. As set out under the Evidence section above, Mr. Krandel did not give evidence on this motion.

[42] Neither intervenor provided evidence that directly contradicts the allegations in Mr. Krandel's Statement of Defence, however, even if they did provide evidence to the contrary, it would not be appropriate to resolve this issue in this application before the facts are found in the underlying actions.

[43] The court will have to determine, based on the facts found from the evidence adduced, whether the claims in the Pearl action commenced in 2021 arise from a set of circumstances that are in common with the circumstances giving rise to the Herzog action, which that were first reported to the Insurer or CPA Professional Liability Plan Inc. in 2019 (but within the 2018 Policy Period).

[44] To determine the issues in this Application the court will have to decide factual issues that may also be in issue in the underlying actions and may affect his defence in the underlying actions. This is likely the reason Mr. Krandel was advised by his defence counsel not to answer questions in his cross-examination on this Application. The underlying litigation is the proper forum to make

factual determinations regarding the circumstances giving rise to the claims based on a full evidentiary record.

[45] Once the underlying actions are decided and the facts found, the Insurer may change its coverage position based on those findings of fact.

[46] It is premature to make findings of fact regarding the commonality, if any, in circumstances giving rise to the Pearl action and the Herzog action.

Issue 3: Do the Herzog and Pearl actions constitute a single Claim under the 2018 policy?

[47] Given my finding that this Application is premature, I will not decide whether the Herzog and Pearl actions constitute a single Claim under the 2018 policy.

COSTS

[48] I encourage the parties to agree on costs. If they cannot agree, I will consider brief written submissions. These costs submissions shall not exceed five pages in length, (not including any bill of costs or offers to settle). The Respondent shall file its written submissions within ten days of the date of these reasons. The Applicant's responding submissions shall be delivered within five days of receipt of the Respondent's costs submissions. Any reply submissions shall be delivered within three days of receipt of responding submissions and shall be no more than three pages long. Costs submissions shall be filed with the court and delivered to me by way of email to my Judicial Assistant.

Merritt J.

Released: January 14, 2026