Citation: *Trecartin v Sonnet Insurance Company,* 2026 NBKB 96

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

Court File No. MC-312-2022

BETWEEN:

JOHN PHILIP TRECARTIN

PLAINTIFF

- and –

SONNET INSURANCE COMPANY

DEFENDANT

DECISION

BEFORE:	Justice Maya Hamou
DATES OF HEARING:	October 2, 2025, and October 31, 2025
DATE OF DECISION:	April 30, 2026
APPEARANCES:	Angus T. Smith and Jordan Thompson, appearing on behalf of John Philip Trecartin Tristian Gaudet, appearing on behalf of Sonnet Insurance Company

OVERVIEW

1. This matter concerns reciprocal motions for summary judgment. The underlying action involves the denial of insurance coverage following a fire loss in November of 2021.

2. John Philip Trecartin ("Trecartin"), the Plaintiff, obtained a home insurance policy (the "Policy") from Sonnet Insurance Company ("Sonnet"), the Defendant, in July of 2021 for his property located at 2 Point Road in Nerepis, New Brunswick (the "Property"). Trecartin obtained the Policy for his Property by completing an online application for insurance through Sonnet's web application.

3. Trecartin's Property was destroyed by fire on November 3, 2021. Sonnet initially denied coverage under the Policy's vacancy exclusion provision, asserting the Property had been vacant for more than 30 days.

4. Trecartin seeks partial summary judgment on liability (or coverage), arguing Sonnet had no basis to deny coverage under the Policy. Trecartin is not seeking a determination of damages by way of summary judgment. Trecartin asserts the Property was not vacant as it was furnished and regularly visited with the intent of returning. Additionally, Trecartin challenges the evidentiary basis leading to the allegation of misrepresentation, relying on Sonnet's failure to produce the original insurance application. Finally, Trecartin challenges the allegation that a material change in risk occurred when Trecartin changed the power source at the Property from public utility power to generator power.

5. Sonnet also seeks summary judgment on the coverage denial, seeking a dismissal of the Claim in its entirety. Sonnet argues the Policy is void due to misrepresentation in the application for insurance as to the question of occupancy of the Property, failure to disclose material information as to the disconnection of power from the Property, and vacancy of the Property for more than 30 consecutive days.

6. This decision involves the interpretation of three provisions of the Policy and their application to the facts of the case. The conditions with respect to misrepresentation and material change in risk are also statutory conditions found in section 127 of the *Insurance Act*, RSNB 1973, c I-12.

> Vacant
>
> There is no coverage under this policy when your house has, to your knowledge, been vacant for more than 30 consecutive days.
>
> […]

> By vacant, we mean all residents have moved out with no intent to return or the house does not contain furnishings or household belongings sufficient to make it habitable.
>
> 1. Misrepresentation
>
> If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.
>
> […]
>
> 4. Material Change in Risk
>
> Any change material to the risk and within the control and knowledge of the insured voids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

ISSUES

7. By way of Motions for Summary Judgment, Trecartin seeks a determination that the Property was properly insured at the time of the loss while Sonnet seeks a dismissal of the Claim and relies on three points to assert the Property was not properly insured at the time of the loss.

8. Answering the following questions assists the Court in determining whether there is a genuine issue for trial:

    - **Vacancy** - Was the Property vacant for more than 30 consecutive days? More specifically, was the Property considered vacant if Trecartin attended the Property regularly and the Property was furnished?

    - **Misrepresentation** - Did Trecartin misrepresent, in his online application, that he or someone else would be living at the Property? Can Sonnet establish a misrepresentation by failing to provide a copy of the actual insurance application completed by Trecartin?

- **Material change in risk** - Was Trecartin required to, and did he fail to, advise Sonnet of a material change to the risk to the Property after the Policy was issued? Specifically, was Trecartin required to advise Sonnet that the public utility power (NB Power) had been disconnected from the Property and replaced with another power source for the Property? Did Sonnet establish that these events constitute a material change to the risk? Did Sonnet establish that Trecartin was aware that these events constituted a material change to the risk?

ANALYSIS

Summary Judgment – Rule 22 of the *Rules of Court*

9. Rule 22 of the *Rules of Court* provides that summary judgment shall be granted after the close of pleadings where there is no genuine issue for trial (Rules 22.01(1) and (3), and 22.04(1)(a) of the *Rules of Court*).

10. Justice Morrison in *Gaudet v Rogers et al.*, 2022 NBQB 87, at paragraph 20, summarized the key considerations arising from the New Brunswick Court of Appeal decisions addressing summary judgments (*O'Toole v Peterson*, 2018 NBCA 8 and *Russell et al. v Northumberland Co-Operative Limited*, 2019 NBCA 70).

> [20] […]
>
> > **1. The only test for summary judgment is whether there is a genuine issue requiring a trial;**
> >
> > **2. The burden of proof is on the moving party to establish there is no genuine issue requiring a trial and it is on the balance of probabilities;**
> >
> > 3. The importance of the parties putting their best foot forward and leading trump or risk losing is more significant under the new Rule 22;
> >
> > 4. The Rule provides for a two-step process to determine whether there is a genuine issue requiring a trial;
> >
> > 5. In step one the judge must determine if the evidence presented reveals a genuine issue requiring a trial. If, on the filed evidence alone, the judge can fairly and justly adjudicate the dispute there will be no genuine issue requiring a trial and the judge must grant summary judgment;

> 6. If the judge cannot adjudicate the dispute on the filed evidence he will proceed to step two. A judge only proceeds to step two if the assessment of the filed evidence leads to the conclusion that there may be a genuine issue requiring a trial. The judge will then determine if a trial can be avoided by resorting to the fact-finding powers of Rules 22.04(2) and (3) (the "mini-trial");
>
> 7. The guiding principle is that it will always be in the interest of justice for a judge to make use of the mini-trial where possible.
>
> [Emphasis added]

11. Sonnet relied on *Babin v C.J.M. Dieppe Investments Ltd. and TG 378 Gauvin Ltd. and Sood*, 2019 NBCA 44, to suggest a partial summary judgment was not available under Rule 22. However, that statement is incorrect, in *Babin v C.J.M. Dieppe Investments Ltd.* the question, rather, was whether summary judgment was appropriate in a case involving multiple defendants, some of which would be proceeding to trial. As noted by the Court of Appeal of New Brunswick in *Edmondson et al. v Edmondson et al.*, 2022 NBCA 4, at paragraphs 24 to 27, the Court may grant summary judgment on all or part of the Claim.

12. On the topic of the "mini-trial," outlined under Rule 22.04(3) of the *Rules of Court* and often referenced in the submissions of Sonnet, the Court notes that neither party requested this relief on the Motions for Summary Judgment, nor would it have been appropriate in the circumstances of this case. Chief Justice Drapeau (as he then was) in *O'Toole v Peterson*, at paragraph 72, noted that a judge should not order a "mini-trial" on their own initiative. This often-quoted passage from the *O'Toole v Peterson* decision provides guidance on the question and requires the proponent of a "mini-trial" to advance such a request to the Court.

Insurance Contract Interpretation Principles

13. This matter brings into question the principles of insurance policy interpretation. The principles may be summarized as follows:

    - First, effect should be given to clear language if the language in the insurance policy is unambiguous.

      > *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.,* 2016 SCC 37, at para 49 ("*Ledcor*"); *Progressive Homes Ltd. v Lombard General Insurance Co. of Canada*, 2010 SCC 33, at para 22 ("*Progressive Homes*"); *Non-Marine Underwriters, Lloyd's of London v Scalera*, 2000 SCC 24, at para 71 ("*Scalera*"); and *Crandall University v AIG Insurance Company of Canada*, 2025 NBCA 57, paras 17-19 ("*Crandall University*").

- Second, where insurance policy language is ambiguous, general rules of contract construction must be used to resolve the ambiguity supported by the language of the policy and consistent with the interpretation of similar insurance policies.

  > *Ledcor*, at para 50 citing *Progressive Homes*, at para 23; *Scalera*, at para 71; *Co-operators Life Insurance Co. v Gibbens*, 2009 SCC 59, at paras 26-27 ("*Gibbens*"); and *Consolidated-Bathurst v Mutual Boiler*, 1979 CanLII 10 (SCC), at pp 900-902 ("*Consolidated-Bathurst"*).

- Third, if the rules of construction fail to resolve the ambiguity, the courts are called to construe the policy *contra proferentem* – against the insurer. Insofar as they are ambiguous, the coverage provisions are interpreted broadly while exclusion clauses are to be interpreted narrowly.

  > *Ledcor*, at para 51 citing *Progressive Homes*, at para 24; *Scalera*, at para 70; *Gibbens*, at para 25; *Consolidated-Bathurst*, at pp 899-901; and *Jesuit Fathers of Upper Canada v Guardian Insurance Co. of Canada*, 2006 SCC 21, at paras 27-28 ("*Jesuit Fathers*").

14. These principles of insurance policy interpretation were applied and referred to in several New Brunswick Court of Appeal decisions (*Arch Insurance Canada Ltd. v Financial and Consumer Services Commission and Encon Group Inc. et al.*, 2016 NBCA 53, para 25; *Guardian Insurance Co. v Beaudin*, 2000 NBCA 4, paras 9-10, *Crandal University*, paras 17-19).

Vacancy

15. Sonnet denied coverage based on the vacancy exclusion in the Policy. The exclusion in the Policy provides that no coverage will apply if a property is vacant for more than 30 consecutive days.

16. Vacancy is defined in the Policy as "[…] all residents have moved out with no intent to return […]" or "[…] the house does not contain furnishings or household belongings sufficient to make it habitable." The specific wording of the Policy reads as follows:

> Vacant
>
> There is no coverage under this policy when your house has, to your knowledge, been vacant for more than 30 consecutive days.
>
> If the occupancy is indicated as vacant on your Policy Declaration Page(s) the Vacancy Permit will apply, and it is understood that the building indicated on the Policy Declaration Page may remain vacant for the policy term shown. The addition of the Vacancy Permit indicates that you agree

> that your house will be under the supervision and care of a competent person during the term the house is vacant, and the doors and windows will be securely closed and locked, and all rubbish must be removed from the building; otherwise the Vacancy Permit will be null and void.
>
> Even if we provide permission for your house to be vacant, there is no coverage once your house becomes vacant if loss or damage is caused by:
>
> - Vandalism;
> - Malicious acts;
> - Glass breakage; or
> - Water damage.
>
> By vacant, we mean all residents have moved out with no intent to return or the house does not contain furnishings or household belongings sufficient to make it habitable.

17. Trecartin maintains the Property was not vacant under the terms of the Policy. Trecartin relies on the definition of vacancy in the Policy and asserts that the evidence supports his continued intention to return to the Property and supports that the property contained sufficient furnishings to render the Property habitable. Trecartin argues that context is relevant to the assessment of whether the property may be deemed to be vacant.

18. Sonnet argues the Property should be deemed vacant based on all the evidence before the Court. Sonnet suggests that even if Trecartin's evidence is accepted that he visited the Property several times a month for extended periods, the Property would still be considered vacant under the Policy terms.

19. While there is some dispute between the parties as to certain facts in this case, the Court finds that the essential facts to address the vacancy argument are generally agreed to. The parties both acknowledge that at the time the Policy was obtained and at the time of the loss, Trecartin resided in the Moncton area due to parole conditions. The parties both acknowledge that a friend of Trecartin, Shane Ouellette ("Ouellette"), moved out of the Property around spring or summer of 2021; there is no evidence in the Record before the Court confirming whether Ouellette moved out before or after the Policy was obtained. Both parties also acknowledge that the source of power from the public utility (NB Power) was removed after the Policy was obtained and before the date of the loss.

20. Additionally, neither party suggested a notice of "vacancy" was provided to Sonnet or that a "vacancy permit" was obtained. Trecartin argues no such notice was required as the property was not vacant; Sonnet suggests the notice was required as the property was vacant. Ultimately, the Court must determine whether the Property was vacant.

21. In conformity with insurance policy interpretation principles, to determine whether the Property was vacant for more than 30 consecutive days consequently voiding the coverage, the Court will first examine the specific language in the Policy. Policy language will be given effect if the language is unambiguous. As a secondary step, if the language is deemed to be ambiguous, general rules of contract construction may be used to resolve the ambiguity having regard to the language of the policy and judicial consideration of similar insurance policies.

Habitable – Furnishings and Household Belongings

22. Under the terms of the Policy, a property is vacant if "[…] the house does not contain furnishings or household belongings sufficient to make it habitable."

23. Trecartin asserts the Property was always furnished from the date the Policy was purchased to the time of the loss. Trecartin provided a list of the items within the residence, including:

- Leather couch
- Chairs
- End Tables
- Coffee Table
- Speakers
- Television
- Family Photographs
- Refrigerator
- Stove
- Dishwasher
- Dishes
- Blender
- Beds
- Dressers
- Clothes Washer
- Clothes Dryer
- Pots and Pans
- Cutlery
- Towels
- Toothpaste
- Cleaning supplies

24. Additionally, Trecartin argues the house was habitable and operational at the time of the loss. On this point, Sonnet argues that the removal of power from the public utility (NB Power) rendered the Property uninhabitable. Trecartin argues that the lack of power from the public utility (NB Power) at the residence does not render the Property uninhabitable. Trecartin's discovery evidence details that a generator was used to power the Property instead of using power from the public utility. Trecartin noted the cost and the frequent power outages in the area as a reason for disconnecting from the public utility in August of 2021.

25. Sonnet suggested that shutting off the power and water is an indication of vacancy, however, Trecartin explained that power from the generator could be turned off via a switch during his absence from the Property. Similarly, the water valve could be shut off to avoid water freezing in the pipes during his absence from the Property.

26. Ultimately, the Property had furniture and household items which rendered it habitable. Shutting off the water and power during absences from the Property does not render the

Property uninhabitable. Further, the Court is not satisfied that disconnecting the public utility where generator power is available would render the Property uninhabitable.

27. The Property, in this case, had furniture and household belongings rendering it habitable.

Moved Out with No Intent to return

28. Under the terms of the Policy, a property is considered vacant if "[…] all residents have moved out with no intent to return […]".

29. This portion of the vacancy provision in the Policy includes a reference to "residency," it suggests and implies, as a starting point, that someone is "residing" on the Property. To assess whether residents had moved out with no intent to return, the Court must examine the specific residency background relating to this Property.

30. While the Policy was obtained in May of 2021, Trecartin owned the property for some time prior. Initially, starting in 2010, Trecartin acquired and resided at the property with his partner and obtained sole ownership of the Property in January of 2016. Trecartin's sister then resided at the Property from February 2016 until her passing in 2017. A friend of Trecartin's, Ouellette, subsequently resided at the Property from 2017 up to the spring or summer of 2021. It is unclear from the Record on these Motions for Summary Judgment whether Ouellette was residing at the Property at the time the Policy was obtained. Ouellette's date of departure from the Property is uncertain, possibly before or possibly after the Policy was obtained. However, both parties acknowledge that Ouellette would have departed the Property well before the date of the loss.

31. Trecartin was incarcerated until June 2020 and, following his release, he was legally required to live in the Moncton area. Trecartin acknowledges that he did not reside at the Property located in Nerepis but did obtain day passes to attend the Property beginning approximately August 30, 2020. As an indication of the frequency of his attendance at the residence, Trecartin's parole records indicate 9 day passes were obtained from August 2020 to May 2021. Trecartin then obtained an open pass to attend the Property starting in May of 2021.

32. The affidavit evidence from Trecartin's parole officer indicated that Trecartin was granted an open pass considering the frequency of his visits to the Property in Nerepis. Between May and November of 2021, Trecartin spoke frequently to his parole officer about his Property in Nerepis. Trecartin also provided gas receipts to support the inference that Trecartin was travelling to the Property often.

33. Trecartin's Affidavit outlines that he would stay at the Property overnight, occasionally with his daughter or his son. Trecartin's son additionally provided an affidavit in which he confirms that he attended the Property five or six times – confirming that cleaning, cooking and watching movies would occur during their visits. Trecartin's son also stated that his father would attend the Property several times a month.

34. Based on this information, Trecartin argues there was always an intent to return which is supported by the continuous visits to the property.

35. The Court acknowledges Trecartin's frequent attendance at the Property, at times for short visits to check on the Property, and at times for longer stays at the Property. However, attendance at the Property is not the question; residency at the Property is the foundation of the vacancy provision. Residency is explicitly included in the vacancy provision with the terms "all residents". This reference to residency in the vacancy provision denotes as a starting point that a person is residing at the Property. Therefore, the reference to "residents moving out with no intent to return" must be understood contextually to apply only if a person was a resident and moved out. The evidence in the Record does not support the conclusion that Trecartin or any other person resided at the Property with some permanency or regularity prior to the loss.

36. The Court is not satisfied there were residents on the Property or that these residents had an intention to return to the Property. The Court is satisfied that the Property was vacant for at least 30 days prior to the loss.

Judicial Consideration

37. Reviewing the judicial consideration of similar provisions in other insurance contracts assists in supporting the Court's interpretation of the clear and plain language of the Policy.

38. The parties both reference the matter of *Coburn v Family Insurance Solutions*, 2014 BCCA 73, in which the British Columbia Court of Appeal examined a similar insurance policy's vacancy provision. The Court noted at paragraph 33 that the vacancy provision must be interpreted disjunctively to reflect the wording in the policy. Meaning that the insurer can establish vacancy by proving either that the occupant moved out with no intent to return or by proving the dwelling did not contain sufficient furnishings to make it habitable. Only one of those two conditions is required to conclude a property is vacant.

39. Sonnet suggests the Court must adopt a similar interpretation in the current case. To distinguish *Coburn v Family Insurance Solutions*, Trecartin highlights that the case involved a rental property which was under renovation at the time of the loss. While those facts are different from the present case, it remains that the British Columbia Court of Appeal's reasons for adopting a disjunctive reading of the vacancy definition is based on sound reasoning from an appellate Court, which this Court adopts.

40. Additionally, the British Columbia Court of Appeal concluded in *Coburn v Family Insurance Solutions*, at paragraph 44, that even though the insured spent significant amounts of time at the property, the insured was not an occupant of the property as he continued to reside elsewhere.

41. The New Brunswick Court of Appeal dealt with the question of vacancy in an insurance policy context following the departure of a tenant. The Court concluded that completing repairs on the premises did not render the premise occupied (*Cormier et al. v Economical Mutual Insurance Co.,* (1977) 20 NBR (2d) 188 (NBCA)).

42. In addition, Trecartin referred the Court to *Taylor v Co-operators General Insurance Company*, 2017 ABQB 705 (paragraphs 27 and 31), where the Court determined the property was vacant, noting there was no one sleeping, cooking or eating in the dwelling, and no evidence of storage of personal items other than tools being used for a renovation. Trecartin highlights that in the current case there is evidence of all these considerations which could support a finding of residency on the Property prior to the loss.

43. Some of the other cases presented by the parties include different wordings of the vacancy provision and address other issues. The Court finds their application limited in the context of this case (*Duguay v Lloyd's Underwriters*, 2012 NBQB 357, *Halifax Insurance Co. v Killick*, 2000 NSSC 167, *Nicoli v Liberty Mutual Insurance Co.,* (1996) 1 OR (3d) 326 (ONSC), *Harnden Estate v Farmers' Mutual Fire Insurance Co. (Lindsay),* (1998) 37 OR (3d) 745 (ONSC), *MacLean v Canadian General Insurance Co. and Assurance Vienneau Ltée,* (1990) 103 NBR (2d) 402, and *Shaeen v Meridian Insurance Group Inc.*, 2011 ONSC 1578). This Court is mindful of the British Columbia Court of Appeal's comments in *Coburn v Family Insurance Solutions* at paragraph 32 reminding Courts to consider the actual words in the policy.

44. Trecartin argues residency informs the analysis of vacancy and urges this Court to be cautious and not to confuse the terms of occupancy and residency, submitting that occupancy is a

higher requirement than residency. While Trecartin resided in the Moncton area, Trecartin argues he could be considered a resident of the Property considering the frequent visits and activities undertaken at the Property.

45. As previously explained, residency is implicitly referred to in the definition of vacancy which refers to all “residents having moved out with no intent to return.” The provision, through its language, references residency as a starting point or a necessary element. Residency connotes a permanency, a landing place or an abode. The Court is unable to accept that Trecartin’s visits to the property, no matter the frequency of the visits, constitute residency. The prolonged absence of people from the Property, despite regular check-ins and visits, effectively created a vacancy.

46. Considering the entirety of the vacancy provision in the Policy and considering the judicial consideration of similar vacancy provisions in insurance contracts, the Court concludes the Property is deemed to have been vacant for over 30 consecutive days. Trecartin failed to advise Sonnet that the Property would be vacant. The vacancy exclusion provision outlined in the Policy applied in the circumstances and coverage was properly denied on this basis.

47. Therefore, based on the foregoing, the Court finds there is no genuine issue requiring a trial as it relates to Sonnet’s denial of coverage for the Trecartin Property.

48. In the event the Court erred in its interpretation and application of the vacancy exclusion in the Policy, the Court will address the other issues raised in the Motions for Summary Judgment, namely the question of misrepresentation on the application for insurance and the question of a material change in risk.

Misrepresentation

49. The misrepresentation clause in the Policy provides that a person applying for insurance must communicate material information to the insurer.

> If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

50. Both parties acknowledge the misrepresentation provision in the Policy relates to the application for insurance.

51. Sonnet asserts Trecartin misrepresented that he was applying for an owner-occupied policy and thus argues this alleged misrepresentation voids the Policy. Trecartin, on the other hand, asserts Sonnet has not met the evidentiary threshold to support such a claim of misrepresentation. Specifically, Trecartin argues that Sonnet cannot prove a misrepresentation took place as Sonnet has failed to produce the original insurance application.

52. By way of evidentiary context on these Motions for Summary Judgment, the Record did not include Trecartin's application for insurance form, nor was such a document produced to Trecartin in the context of this litigation. Rather, Sonnet produced a 2025 application template and illegible internal database screenshots which it suggests is tied to Trecartin's 2021 online application (see Exhibits B and C of MacPherson's Affidavit).

53. During the hearing, Sonnet provided the Court and Trecartin's Counsel a clear copy of the internal database screenshot. On this page, the following question and answer are listed, "How is the dwelling occupied – Owner occupied". Sonnet suggests the Court should draw an inference that the answer "owner occupied" was arrived at when Trecartin answered "yes" to the following question: "will you be living here on your coverage start date? Yes or No". The problem is that this question is found in the 2025 application template. No information is provided on the questions that would have been answered by Trecartin in the 2021 application template.

54. The Affidavit of Katelyn Despres, Litigation Paralegal at MacGillivray Law, casts some further doubt on the accuracy of the inference Sonnet wishes the Court to draw. Despres' Affidavit outlines Sonnet's online application process in July of 2025. On the page of the application requiring property details, Despres was presented with three options for ownership type "I own and live in it", "I rent it from someone else, and I live in it", and "I own, don't live in and rent it out."

55. Sonnet is accusing Trecartin of a misrepresentation at the application stage but provided no concrete evidence of that misrepresentation. Rather, Sonnet suggests the Court should conclude Trecartin made a misrepresentation by drawing an inference on the answer Trecartin could have provided on his application for insurance. Yet, there is no certainty as to the question asked and no certainty on the answer provided.

56. Considering the possible consequence of a misrepresentation, which could lead to the voiding of the Policy, more evidentiary rigour is required. To rely on a possible question and possible

answer in support of an allegation of misrepresentation, the Court needs more evidence capable of supporting such an inference.

57. Specifically, several questions arise with respect to the MacPherson Affidavit. For example, “owner-occupied” as an answer does not appear in response to a question in the 2025 application template, yet this answer is attributed to Trecartin. Further, there is no evidence of the data management and storage of information obtained from Sonnet’s online applications. The Court has some concerns about the reliability of comments contained in MacPherson’s Affidavit. Insufficient particulars were provided to support the suggestion that the data provided to the Court emanates from answers provided directly from Trecartin during his application for insurance.

58. Trecartin suggests the Court should draw an adverse inference from Sonnet’s failure to produce the application completed by Trecartin. Specifically, Trecartin requests that the Court draw an adverse inference that the application completed by Trecartin does not support the Defendant’s claim of misrepresentation. On the evidence before the Court, such a conclusion would be misguided. If Sonnet had a copy of the application completed by Trecartin, it would, in all probability, have produced it considering it would have supported its claim of misrepresentation. Rather, in this case, it appears more likely that the advent of electronic records within the organization has led to deficient electronic record keeping.

59. Based on the evidence presented in the Motions for Summary Judgment, the Court does not accept that Sonnet has established there is no genuine issue for trial as it relates to the alleged misrepresentation by Trecartin in the application for insurance. Issues remain as to the questions posed in the application completed by Trecartin and the data storage, retention and output from applications completed online. While inferences may be drawn at trial that could lead a Court to conclude a certain question was asked in the online application form and could lead a Court to conclude Trecartin misrepresented the occupancy of the Property, the evidence provided by both parties on these Motions for Summary Judgment lead to more questions than answers.

Material Change in Risk

60. The material change in risk provision of the Policy provides that where the material change in risk is within the control and knowledge of the insured, the insured must notify the insurer. A failure to do so voids the policy.

> 4. Material Change in Risk
>
> Any change material to the risk and within the control and knowledge of the insured voids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

61. Sonnet asserts Trecartin failed to notify Sonnet of a material change giving rise to a change in risk. The only specific change cited in the pleadings was the disconnection of power from the public utility (NB Power) on August 5, 2021. In the alternative, Sonnet suggests the purported operation of a generator which used 20 marine batteries and a unique set up constituted a material change in risk requiring notice to Sonnet.

62. Trecartin suggests there is no evidence to support that the change in power source constitutes a material change in risk. Trecartin asserts Sonnet failed to prove a material change occurred stating that while the source of power changed from public utility power to power from a generator, the Property continued to have power. Trecartin explained during discovery that the generator ran through 20 marine batteries without gas or fuel. Trecartin asserted that Sonnet provided no evidence from an underwriter to establish the material change in risk – at least not initially.

63. Following the arguments of Counsel for Trecartin at hearing of the Motions for Summary Judgment, Counsel for Sonnet formally requested leave of the Court to file an affidavit addressing the material change in risk. This affidavit, the Affidavit of Kristina Miloje, which Counsel for Sonnet sought leave to admit in the hearing, had previously been dropped off at the Court for filing outside the permitted filing timelines for Motions and outside the agreed upon filing timelines outlined in a Consent Order. The Court initially declined to admit the Miloje Affidavit without a request, a basis supporting and allowing the request, or an explanation for the delay in filing the Affidavit. During the hearing, after hearing the submissions of Counsel for Trecartin, Counsel for Sonnet, by way of an oral motion, formally sought leave to admit the Affidavit, citing its inability to “lead trump” if the Court refused to permit the filing of the Affidavit.

64. Ultimately, the Court granted Sonnet leave to file the Affidavit of Kristina Miloje and allowed Trecartin to file any responding affidavits it deemed appropriate. Significant costs were

attributed to Trecartin – the request was late, in violation of the *Rules* and the Consent Order, and Counsel for Trecartin had already spent significant time and effort in preparing for arguments. An oral decision on the issue was delivered within the Motions for Summary Judgment on October 14, 2025.

65. The Miloje Affidavit referenced tenants leaving the Property and references the disconnection of power from a public utility (NB Power). The Miloje Affidavit contains factual inaccuracies which taint the conclusion that Sonnet would have cancelled the policy if aware of these facts. First, the facts in the Record do not support the suggestion that Ouellette was a tenant at the Property at the time Trecartin applied for insurance. As previously mentioned, Ouellette may or may not have been residing at the Property once the insurance Policy was obtained. Secondly, as it relates to the disconnection of power from a public utility, the Miloje Affidavit simply references the cutting of power from a public utility source but does not reference the use of generator power to operate the Property.

66. In response to the Miloje Affidavit, Trecartin filed the Affidavit of Peter Morris, providing expertise in underwriting. The Morris Affidavit addressed the assessment of risk as it relates to the change in the power source from the public utility (NB Power) to power from a generator and whether it would have had an impact on the risk.

67. As noted in *Aviva Insurance Company of Canada v Thomas*, 2011 NBCA 96, a change is material if it would have had a bearing on an insurer's undertaking of risk or on the setting of premiums. Evidence of this change in risk is required (*MacLean v Canadian General Insurance Co. and Assurance Vienneau Ltée*, paras 38-39). The evidence presented in the Miloje Affidavit is founded on inaccurate facts and incomplete supporting information; it lacks the hallmarks of reliability considering the purpose for which it was tendered.

68. Sonnet relies on *Duguay v Lloyd's Underwriters*, at paragraphs 19 and 20, to suggest that an owner obtaining an owner-occupied policy and not moving into the property after acquiring the property, constitutes a material change in risk resulting in voiding of the policy if not disclosed to the insurer. Returning to the arguments outlined in the misrepresentation section, it remains unclear whether Trecartin advised Sonnet specifically that the property would be owner occupied.

69. Additionally, to constitute a material change in risk capable of voiding the Policy, Sonnett must establish that Trecartin was aware the change is material. Material change is a subjective test in New Brunswick, requiring the insured to have actual knowledge that the change would

influence the insurer's premium or risk assessment (*Aviva Insurance Company of Canada v Thomas*, para 57, and *Violette v Wawanesa Mutual Insurance Company*, 2012 NBQB 47, para 74). There is no evidence adduced on these Motions which would suggest Trecartin was aware of the material change in risk occasioned by the change in power source at the Property.

70. Based on the evidence presented in the Motions for Summary Judgment, the Court does not accept that there is no genuine issue for trial as it relates to the question of material change in risk. Sonnet failed to establish a material change in risk when Trecartin changed the power source from the public utility source (NB Power) to generator power. Additionally, Sonnet failed to establish Trecartin was aware of a material change in risk. Both parties presented evidence on this point that would require a more fulsome assessment of the underwriting process and would require some electrical expertise to understand the change in risk from one power source to another. Additionally, evidence from Trecartin or others would be required to address knowledge of the material change in risk.

Procedural History and Costs

71. In addition to a two-day hearing on the merits of the reciprocal Motions for Summary Judgment, the Court held several case management hearings at the request of the parties to address pre-motion evidentiary and procedural issues. In addition to issuing procedural and evidentiary rulings prior to the hearing of the Motions, the Court was also required to issue several rulings during the hearing.

72. The first case management hearing took place on October 15, 2024, and Counsel for Sonnet indicated an intention to file a reciprocal motion for summary judgment. During this period, Sonnet additionally amended its Statement of Defence to add defences relating to (1) misrepresentation in the application for insurance, and (2) failure to report a material change in risk. A further case management hearing took place in June of 2025, at which time the parties agreed, as directed by the Court, to file any additional affidavits, including an Amended Notice of Motion in accordance with timelines set by the Court and which lead to a Consent Order endorsed by the parties.

73. On September 11, 2025, the Court held a case management hearing at the request of Counsel for Trecartin seeking to strike portions of affidavits submitted by Sonnet and seeking to address the filing of affidavit evidence by Counsel for Sonnet outside the agreed upon

timelines provided for in the Consent Order. On September 29, 2025, a few days prior to the hearing, Counsel for Trecartin requested a case management hearing as Counsel for Sonnet had filed additional affidavit evidence (without seeking leave or direction from the Court and outside the filing timelines) for use on the Motions. At that time, the parties requested more time to address the recent attempted filing at the start of the Motions' hearing.

74. At the Motions hearing on October 2, 2025, the Court heard submissions and ruled on the admissibility of delayed filings by Sonnet. After hearing the submissions of Counsel for Trecartin on the merits of the Motions for Summary Judgment, Counsel for Sonnet again sought an adjournment and sought leave of the Court to admit an affidavit. A decision on this request was issued orally on October 14, 2025, allowing the filing of Sonnet's affidavit evidence and Trecartin's reply evidence prior to the resumption of the Motion hearing on October 31, 2025. On the day of the continuation, Counsel for Sonnet further objected to the filing of the reply evidence from Counsel for Trecartin which led to yet another decision by the Court.

75. While successful on its Motion for Summary Judgment, the conduct of Counsel for Sonnet in this case is not to be sanctioned or encouraged. The conduct included: (1) missed filing timelines in violation of a Consent Order agreed to by the parties several months prior to the hearing, (2) last-minute filings in violation of the timelines prescribed in the *Rules of Court* without seeking leave or direction of the Court, (3) last-minute objections to the admissibility of affidavits, and (4) untimely requests for adjournments and untimely requests for leave to file affidavit evidence.

76. In this case, a trial on the merits may very well have been more expeditious, less costly and a better use of judicial resources considering the number of procedural hearings and decisions required from the Court. After all, the purpose of the cultural shift regarding motions for summary judgment was meant to simplify pre-trial procedures, not the opposite (*Hryniak v Mauldin*, 2014 SCC 7, para 2).

77. The *Rules of Court* provide guidance on costs on motions for summary judgment. Presumptively, the successful party is entitled to costs but the issuance of costs on a motion remains a discretionary decision (Rules 59.01 and 59.08(1)(b) of the *Rules of Court*). Considering the conduct outlined above, the way the proceeding was conducted, and the conduct of Sonnet which unnecessarily lengthened the Motions for Summary Judgment, the Court declines to award costs to the successful party in the circumstances (Rule 59.02(e), (f) and (h) of the *Rules of Court*).

78. Thus, no costs will issue to Sonnet.

DISPOSITION

79. For the reasons outlined in this decision, Sonnet's Motion for Summary Judgment is granted without costs. Trecartin's Motion for partial Summary Judgment on the issue of coverage is dismissed.

80. Consequently, the Claim is dismissed in its entirety.

Justice Maya Hamou
Court of King's Bench of New Brunswick