

# COURT OF APPEAL FOR ONTARIO

CITATION: Monteith & Sutherland Limited v. Novex Insurance Company, 2026  
ONCA 384  
DATE: 20260603  
DOCKET: COA-25-CV-1128

Huscroft, Dawe and Wilson JJ.A.

BETWEEN

Monteith & Sutherland Limited

Applicant (Respondent)

and

Novex Insurance Company

Respondent (Appellant)

Mark Barrett, for the appellant

Cody Dolgay and Marco Falco, for the respondent

Heard and rendered orally: June 2, 2026

On appeal from the judgment of Justice Charles C. Chang of the Superior Court of Justice, dated August 15, 2025, with reasons reported at 2025 ONSC 4697.

## REASONS FOR DECISION

[1] The parties agreed to proceed by application on the basis that there is no dispute as to the underlying facts. The application judge made no error in proceeding on this basis.

[2] Nor did the application judge err in finding that the respondent did not breach its duty to cooperate. It was open to the application judge to find that there was no substantial breach of the duty to cooperate: *Ruddell v. Gore Mutual Insurance Company*, 2019 ONCA 328, 42 M.V.R. (7th) 14.

[3] Finally, the application judge did not err in interpreting the curative provision to permit notice to be given in the next policy period in the absence of any prejudice to the insurer.

[4] The appeal is dismissed.

[5] The respondent is entitled to costs in the agreed amount of \$79,100, all inclusive.

“Grant Huscroft J.A.”  
“J. Dawe J.A.”  
“D.A. Wilson J.A.”